

(2014) 07 BOM CK 0304
In the Bombay High Court
Case No : Writ Petition No. 6277 of 2013

Anil

APPELLANT

Vs

The Estate Manager

RESPONDENT

Date of Decision : 16-07-2014

Acts Referred:

Maharashtra Housing And Area Development Act, 1976 — Section 185(1), 65, 66, 66(1)(a), 66(1)(ii)

Citation : (2015) 1 ALLMR 166 : (2015) 5 BomCR 391 : (2015) 1 MhLj 914

Hon'ble Judges : Z.A. Haq, J

Bench : Single Bench

Advocate : A.K. Choube, Advocates for the Appellant; H.N. Verma, Advocates for the Respondent

Judgement

Z.A. Haq, J.—Heard Shri A.K. Choube, the learned Advocate for the petitioner, Shri H.N. Verma, the learned Advocate for the respondent Nos. 1 and 2 and Shri M.S. Sharma, the learned Advocate for the respondent No. 3. Rule. Rule made returnable forthwith.

2. The petitioner has challenged the decision of the Estate Manager, Nagpur Housing and Area Development Board, Nagpur by which he has cancelled the regularization of the tenement which was granted in favour of the petitioner. The Estate Manager has directed that further action be taken as per Section 66(1)(ii), (iv) and (v) and under Section 66(1)(a), (ii) and (iv) of the Maharashtra Housing and Area Development Act, 1976 (herein after referred to as "MHADA Act") against the petitioner and the respondent No. 3.

3. Shri Sharma, the learned Advocate for the respondent No. 3 has raised a preliminary objection to the maintainability of the writ petition on two grounds:

"(i) That the petitioner has alternate remedy of appeal under Section 70 of MHADA Act.

(ii) That the petition is premature."

Shri Sharma, the learned Advocate for the respondent No. 3 has submitted that the cancellation of the regularization of the tenement granted in favour of the petitioner by the impugned order is under Section 66 of the MHADA Act and therefore, the order is appealable under Section 70 of the MHADA Act. He further submits that the further action is required to be taken by the Competent Authority as stated in the impugned order, under Section 66(c) of the MHADA Act and therefore, the challenge as raised by the petitioner in the present petition is premature.

4. Shri Choube, the learned Advocate for the petitioner submits that the cancellation of the authorization of the tenement of the petitioner is without any power and authority as the Estate Manager is not Competent Authority to take any action under Section 66 of the MHADA Act.

5. Shri Verma, the learned Advocate for the respondent Nos. 1 and 2 has submitted that the Estate Manager has taken the decision pursuant to the directions given by this Court in the judgment given in Writ Petition No. 2661/2012 on 08.08.2012.

6. I have heard the learned Advocates for the respective parties and have examined the record. Section 65 of the MHADA Act provides that the State Government may, by notification in the Official Gazette, appoint an officer, who is holding or has held an office which in its opinion is not lower in rank than that of Deputy Collector or Civil Judge, to be the Competent Authority for performing the functions of such authority under Chapter VI of the MHADA Act, in such areas, or in respect of such premises or class of premises in any area, as may be specified in the notification.

Section 66 of the MHADA Act provides for the powers of the Competent Authority to evict certain persons from the tenement of Housing Board referred as Authority premises.

The Maharashtra Housing and Area Development (Estate, Management, Sale, Transfer and Exchange of Tenements) Regulations, 1981 have been made by the Government of Maharashtra in exercise of the powers conferred by Section 185(1) of the MHADA Act. Clause 2 (m) of the above mentioned regulations defines "Estate Manager" as follows:

"Estate Manager" means the officer of a Authority appointed as such, and includes an Assistant Estate Manager, appointed as such and duly authorized by the Board or by the Authority for the purposes of these Regulations, for managing the estate of the Authority specified in such authorization."

7. Considering the above provisions, it is clear that the Estate Manager cannot be said to be a Competent Authority entitled to exercise the powers under Section 66 of the MHADA Act. Therefore, the Estate Manager cannot cancel the regularization of the tenement granted in favour of the petitioner. The submission made on behalf of the respondent Nos. 1 and 2 that the Estate Manager has

passed the order in view of the directions given by this Court in Writ Petition No. 2661/2012 on 08.08.2012 cannot be accepted in law as it is the settled law that this Court cannot confer jurisdiction on the Authority if it is not provided by the statute.

8. On being faced with this situation, Shri Verma, the learned Advocate for the respondent Nos. 1 and 2 has submitted that clause (a) of the operative part of the impugned order has to be treated as report/recommendation of the Estate Manager as provided by clause (3), (5) and (c) of the Regulations of 1981. Shri Sharma, the learned Advocate for the respondent No. 3 has not been able to point out any provision which enables the Estate Manager to pass an order cancelling the regularization of the tenement granted in favour of the petitioner.

9. In view of this, it is clear that the clause (a) of the operative part of the impugned order has to be read as report/recommendation of the Estate Manager and it cannot have the effect of cancellation of the regularization of the tenement in favour of the petitioner. The decision will have to be taken by the Competent Authority as provided under Section 65 of the MHADA Act. The Competent Authority has to take appropriate decision as per provisions of Section 65 of the MHADA Act. In view of the above, the writ petition is partly allowed.

It is made clear that the clause (a) of the operative part of the impugned order does not have the effect of cancellation of regularization of the tenement granted to the petitioner and it has to be treated as report/recommendation of the Estate Manager under clause (3), (5) and (c) of the Regulations, 1981. The remaining part of the impugned order is maintained. The rights of the parties will not be considered by the Competent Authority in the proceedings under Section 66 of the MHADA Act. The petition is partly allowed in the above terms. In the circumstances, the parties to bear their own costs.