

(2006) 08 BOM CK 0007

In the Bombay High Court

Case No : Writ Petition No. 5415 of 1988

Bansrajidevi and others

APPELLANT

Vs

M/s Byramjee Jeejeebhoy Pvt. Ltd. and others

RESPONDENT

Date of Decision : 04-08-2006

Acts Referred:

Constitution of India, 1950 — Article 227

Land Acquisition Act, 1894 — Section 4, 6

Maharashtra Land Revenue Code, 1966 — Section 148, 149, 150, 154, 2

Citation : (2006) 6 MhLj 95

Hon'ble Judges : B.H. Marlapalle, J

Bench : Single Bench

Advocate : E.P. Bharucha, with K.K. Vyas and P.K. Vyas, for the Appellant; A.A. Kumbhakoni, Associate Advocate General with Ms. V. Mhaispurkar, For respondent No. 2, G. W. Mattos, For MHADA, for the Respondent

Final Decision : Dismissed

Judgement

B.H. Marlapalle, J.—This petition filed under Article 227 of the Constitution impugns the order passed by the Deputy Collector (Appeals) on 12-6-1986 and duly confirmed by the Additional Divisional Commissioner, Bombay Division in Revision Application No. 72 of 1986 filed u/s 257 of the MLR Code, on 19th February, 1988. The long chequered history of this petition requires to be noted as under :

2. The present respondent No. 1 holds some lands in Oshiwara, a part of the area of Bombay Municipal Corporation and about 190 acres of the said company's land was sought to be acquired by the State Government as per the notification issued u/s 4 of the Land Acquisition Act, 1894 on 22nd April, 1960. There was some typographical error in this notification and, therefore, corrected notification was issued on 27-6-1960. Even in this notification the land sought to be acquired from Survey No. 41 (Part) was not properly described and, therefore, another notification was issued on 11-6-1966, though the notification

u/s 6 of the Land Acquisition Act was published on 15th January, 1966 and consequent to this amendment another notification u/s 6 came to be issued on 11-6-1966. After hearing the parties the Land Acquisition Officer passed his award on 28th May, 1971 and it is evident from the said award that the respondent No. 1 - company had appeared before the Land Acquisition Officer and claimed compensation at the rate of Rs. 5 to Rs. 20/- per square yard and the last such representation was dated 24-12-1970. The present petitioners' predecessor Bhuvalsingh also claimed compensation at the rate of Rs. 20/- per square yard in respect of 27 acres of land from 3 Survey No. 41 (Part) by way of loss of agricultural income inasmuch as he claimed that he was growing grass for the last six years and in addition he claimed compensation for the structures at the rate of Rs. 5,00,000/-. As per him there were 17 structures on the land in Survey No. 41 (Part).

3. While these proceedings under the Land Acquisition Act were pending for passing the award, Shri Bhuvalsingh filed an application with the Talathi, Taluka Andheri requesting him to transfer 28 acres of land from Survey No. 41 of Oshiwara village in his name as a holder and he claimed that he was in possession of the said land since 1950. There is no dispute that one acre land from Survey No. 41 was given to Bhuvalsingh by the respondent No. 1-Company on lease and Bhuvalsingh further claimed that remaining 27 acres of land was cultivated by him for growing grass and the respondent No. 1 at no point of time objected to this activity and that is how he was holding the said 27 acres of land as well right from 1950 and the respondent No. 1 did not object to the same at any time nor did it take any steps for seeking possession of the said land. The Tahsildar, Andheri by his order dated 30-4-1971 declined to entertain his claim and he was of the view that the claim was in respect of the ownership by adverse possession which issue was required to be decided by the competent Court. Another order was passed on 4-11-1972 to the same effect and Bhuvalsingh, therefore, filed an appeal before the SDO, Bombay Suburban District and this appeal was dismissed on 18-3-1973. Revision application filed before the Division Commissioner, Bombay was decided on 13-4-1976 and Bhuvalsingh's application was remanded for fresh hearing by the Deputy Collector (appeals). On remand the Tahsildar, Andheri by his order dated 10-10-1981 allowed his application in terms of the following order :

"As Shri Bhuvalsingh Ramniranjansingh is in actual possession of part of suit land admeasuring 28 acres from S. No. 41 of Oshivara his name should be entered in other rights column for 27 acres and for one acre for leased land in kul and khand column of 7/12 extracts of S. No. 41 of Oshivara from the date of his application."

Emboldened by this order Bhuvalsingh approached this Court in Writ Petition No. 1630 of 1982 and claimed compensation of Rs. 21,45,000/- out of the total compensation payable to the respondent No. 1-Company of Rs. 99,00,000/- and this petition was rejected summarily and Writ Appeal No. 263 of 1983 against the

said order also came to be dismissed on 21st July, 1993. In the mean while and prior to the filing of this petition Bhuvalsingh had also approached to the City Civil Court by filing Long Cause Suit No. 5186 of 1979 and it was disposed off on 29th January, 1986 for want of jurisdiction and without granting any reliefs to the plaintiff. This order came to be challenged in Writ Petition No. 6542 of 1986 which was disposed off on 24th March, 1986. LPA No. 27 of 1986 was also summarily dismissed on 4th January, 1986 and SLP was dismissed by the Supreme Court on 11th April, 1986.

4. The order passed by the Tahsildar on 10-10-1981 as quoted hereinabove came to be challenged by the respondent No. 1 in an appeal before the Sub Divisional Officer, Bombay Suburban District and the said appeal was dismissed on 5-12-1985. The Company, therefore, moved the Deputy Collector by Second Appeal and the same has been allowed on 12-6-1986. The Deputy Collector held, inter alia, that there was no documentary proof that Bhuvalsingh had come in possession of the suit land in 1950, though he claimed to be in occupation of the said land, he was not in legal occupation and there was no document in support of his contention that he was in occupation of the said land, mere occupation itself would not entitle Bhuvalsingh for allowing his application by the Tahsildar to enter his name in Other Rights column in respect of 27 acres of land and unless the requirements as set out in section 2(12), 148, 149 and 150 of the Maharashtra Land Revenue Code, 1966 were satisfied in support of the alleged possession/occupation, the Tahsildar had no powers to entertain and allow the application filed by Bhuvalsingh. The Additional Divisional Commissioner by his impugned order dated 19-2-1988 has confirmed the view taken by the Deputy Collector (appeals) and, therefore, the petitioners, who are the successors of Bhuvalsingh, claimed that the order passed by the Tahsildar is required to be confirmed in this petition.

5. There is no doubt that after the Land Acquisition Officer passed the award on 28-5-1971 the compensation amount of Rs. 99,00,000/- (Rupees ninety nine lakhs) has been received by the respondent No. 1 and as per the State Government possession of the entire land covered by the award was handed over to Bombay Housing Area Development Authority) on 5-2-1979 (possession receipt has been placed on record). This authority who was put in possession of the said land has been renamed as Maharashtra Housing and Area Development Authority ("MHADA" for short) under the Maharashtra Housing and Area Development Act, 1976 and the said Authority has filed Civil Application No. 1863 of 2006 for being impleaded as one of the respondents. MHADA has also pointed out that 17 H. and 9 R. land from Survey No. 41 (Part) has been handed over by it to the Bombay Metropolitan Regional Development Authority (presently known as MMRDA) on 22-6-1993 and based on these events the MHADA contends that this petition does not survive any further as the subject land came to the ownership of the said Board and subsequently it has been handed over to MMRDA. It also needs to be noted that during the pendency of the revision application filed by the petitioners' predecessor, Civil Suit No. 315 of

1987 came to be presented on the Original Side of this Court on 27th May, 1987 claiming for a declaration of ownership by adverse possession over the 27 acres of land in Survey No. 41 (Part) of Oshiwara i.e. the same land which is covered by this petition and the said Suit is still pending.

6. As per Mr. Bharucha, the learned Senior Counsel the petitioners' predecessor - Bhuvalsingh was very much in possession of the suit land right from 1950 and the respondent No. 1 or any of its officers did not object to this possession nor did they take any steps for his eviction and, therefore, it must be inferred that he was in legal possession of the said land all along. In these obtaining circumstances it was necessary that Bhuvalsingh's name was entered in the Other Rights column in the ROR register maintained by the Tahsildar, Andheri and the view taken by the Deputy Collector and the Additional Commissioner is quasi erroneous and is required to be set aside, urged the learned Senior Counsel.

7. Section 2 of the MLR Code, 1966 deals with the definition clause and some of the relevant definitions are reproduced as under:

(12) "to hold land" or "to be a landholder" or "holder of land" means to be lawfully in possession of land, whether such possession is actual or not.

(23) "occupant" means a holder in actual possession of unalienated land, other than a tenant or Government lessee: provided that, where a holder in actual possession is a tenant, the landholder or the superior landlord, as the case may be, shall be deemed to be the occupant.

(24) "occupation" means possession.

(25) "to occupy land" means to possess or to take possession of land.

As per section 148 of the Code the Record of Rights shall be maintained in every village and such record shall include the following particulars:

(a) the names of all persons (other than tenants) who are holders, occupants, owners or mortgages of the land or assignees of the rent or revenue thereof;

(b) the names of all persons who are holding as Government lessees or tenants including tenants within the meaning of the relevant tenancy law;

(c) the nature and extent of the respective interests of such persons and the conditions or liabilities, if any, attaching thereto.

Section 149 of the Code deals with the acquisition of rights to be reported and states that any person acquiring by succession, survivorship, inheritance, partition, purchase, mortgage, gift, lease or otherwise, any right as holder, occupant, owner, mortgagee, landlord, Government lessee or tenant of the land situated in any part of the State or assignee of the rent or revenue thereof, shall report orally or in writing his acquisition of such right to the Talathi within three months from the date of such acquisition, and the said Talathi shall at once give

a written acknowledgment of the receipt of such report to the person making it. After due enquiry the Talathi is then expected to proceed to take action u/s 150 of the Code. It would be appropriate to reproduce section 150 as under:

"150. Register of mutations and register of disputes cases :- (1) The Talathi shall enter in a register of mutations every report made to him u/s 149 or any intimation of acquisition or transfer u/s 154 or from any Collector.

(2) Whenever a Talathi makes an entry in the register of mutations, he shall at the same time post up a complete copy of the entry in a conspicuous place in the Chavdi, and shall give written intimation to all persons appearing from the record of rights or register or mutations to be interested in the mutation, and to any other person whom he has reason to believe to be interested therein.

(3) When any objection to any entry made under sub-section (1) in the register of mutations is made either orally or in writing to the Talathi, it shall be the duty of the Talathi to enter the particulars of the objection in a register of disputed cases. The Talathi shall at once give a written acknowledgment for the objection to the person making it in the prescribed form.

(4) Disputes entered in the register of disputed cases shall as far as possible be disposed of within one year by a revenue or survey officer not below the rank of an Aval Karkun and orders disposing of objections entered in such register shall be recorded in the register of mutations by such officer in such manner as may be prescribed by rules made by the State Government in this behalf.

(5) The transfer of entries from the register of mutation to the record of rights shall be effected subject to such rules as may be made by the State Government in this behalf.

Provided that, an entry in the register of mutations shall not be transferred to the record of rights until such entry has been duly certified.

(6) Entries in the register of mutations shall be tested and if found correct, or after correction, as the case may be, shall be certified by any revenue or survey officer not below the rank of an Aval Karkun in such manner as may be prescribed:

Provided that, entries in respect of which there is no dispute may be tested and certified by a Circle Inspector.

Provided further that no such entries shall be certified unless notice in that behalf is served on the parties concerned.

(7) The State Government may direct that a register of tenancies shall be maintained in such manner and under such procedure as may be prescribed by rules made by the State Government in this behalf."

8. It is thus clear that to exercise the right u/s 148 read with Sections 149 and 150 of the Code for entering one's name in the Record of Rights, the applicant

has to be a holder, occupant, owner, mortgagee or tenant. Such a right is also available to a person acquiring interest in the property by succession, survivorship, inheritance, partition, purchase mortgage, gift, lease or otherwise. Bhuvalsingh claimed that he was in occupation of 27 acres of land and he was holder of the same right from 1950 and, therefore, his claim was required to be entered in the Other Rights column. These contentions have been rejected by the Deputy Collector and confirmed by the Additional Divisional Commissioner and rightly so. Merely a holder or occupant does not meet the requirements of law for exercising such a right. Section 2(12) of the Code, as reproduced hereinabove, makes it clear that to be a "land holder" or "holder of land" means to be lawfully in possession of land, whether such possession is actual or not and as per section 2(23) "occupant" means a holder in actual possession of unalienated land. It was, therefore, necessary for Bhuvalsingh to prove that his possession or occupation over the suit land was lawful or he had come in possession by a legal conveyance/title or any other instrument like receipt etc. to which the respondent No. 1 was a party or at its instance. Merely saying that none of the officers of the respondent No. 1 or its agents or representatives objected at any time to his possession does not make his possession lawful, even if it is accepted that he was in possession. He has to prove his title of possession by pointing out that it was lawful and if such requirement could not be proved, the revenue authorities below were right in calling Bhuvalsingh as the encroacher on the private land who was entitled to exercise such a right. The Tahsildar and subsequently the SDO did not consider the main issue as to whether Bhuvalsingh was in lawful possession of the suit land. Under the Maharashtra Land Revenue Code, the Government of Maharashtra has framed Maharashtra Revenue Record of Rights and Registers (Preparation and Maintenance) Rules, 1971 and Rule 10 thereunder gives form of register of mutations. Rule 11 is regarding making entries in register of mutations. Rule 12 is regarding recording mutations in certain cases, Rule 13 states that whenever an entry is made in the register of mutations under subsection (1) of section 150 in relation to any land, the Talathi shall indicate, in pencil the number of that mutation entry against the entry relating to that land appearing in the record of rights with the remark that the mutation entry has not been duly certified. After this pencil entry is certified, it becomes an ink entry confirming the entry made in pencil. It was necessary for the Tahsildar and the SDO to test Bhuvalsingh's application on remand on the basis of the provisions of sections 2(12), 2(23) and 148, 149 and 150 of the Code and both these officers appear to have been overwhelmed by the report or the Tahsildar's satisfaction by personal visit to the land that Bhuvalsingh was in possession of the said land. Recording the claimant's name in the other rights column merely on the basis of possession is nothing short of perversity and unless the officer concerned was satisfied that the said possession was lawful such an entry could not have been done irrespective of whether the original owners appeared and contested the plea and more so when the officer was performing a statutory duty. When the statute states that a duty has to be performed or an enquiry has to be conducted in a particular manner, it is well

settled, it has to be done in that manner alone and it was necessary for the Tahsildar to ensure that the requirements of the Code were satisfied by the petitioners' predecessor.

9. In the premises the impugned orders cannot be termed as perverse or grossly erroneous so as to call for interference under the supervisory powers of this Court under Article 227 of the Constitution and hence this petition must fail.

10. The same is hereby dismissed. Rule discharged, but without any order as to costs.