(2009) 10 BOM CK 0001

In the Bombay High Court

Case No : Writ Petition No. 9006 of 2007

Bashir Ahmed Chand Shaikh through his Constituted Power of Attorney holder Mr. Chandrakant T. Bharekar	APPELLANT
Vs	
The State of Maharashtra, Urban Development Department and Competent Authority, Urban Agglomeration, Under Urban Land (Ceiling and Regulation) Act, 1976	RESPONDENT

Date of Decision : 16-10-2009

Acts Referred:

Bombay Land Revenue Code, 1879 — Section 211, 65
Constitution of India, 1950 — Article 226
Land Acquisition Act, 1894 — Section 4(1), 6
Urban Land (Ceiling and Regulation) Act, 1976 — Section 10(1), 10(3), 10(5), 12, 30
Urban Land (Ceiling and Regulation) Repeal Act, 1999 — Section 4

Citation : (2010) 2 BomCR 224 : (2010) 1 MhLj 500

Hon'ble Judges : Ranjana Desai, J;A.A. Sayed, J

Bench : Division Bench

Advocate : S.M. Gorwadkar, for the Appellant; V.S. Gokhale, A.G.P., for the Respondent

Judgement

Ranjana Desai, J.—In this petition filed under Article 226 of the Constitution of India, the petitioner has, inter alia, prayed that order dated 15/11/2007 passed u/s 34 of the Urban Land (Ceiling & Regulation) Act, 1976 (for short, "the U.L.C. Act") by the Government of Maharashtra be set aside.

2. The case of the petitioner:

(a) The petitioner owns land being Gat No. 458 (part) at Mauje Moshi, Taluka Haveli, District Pune, admeasuring about 23000 sq. meters (for convenience, "the said land"). Respondent 1 is the State Government, which is the appellate as well as the revisional authority under the U.L.C. Act. Respondent 2 is the Competent Authority created under the U.L.C. Act.

(b) On 12/7/1976, the U.L.C. Act was promulgated. In 1999, the petitioner filed an application before the Competent Authority i.e. respondent 2 praying for a declaration that the provisions of the U.L.C. Act were not applicable to the said land and for necessary certificate to that effect. By order dated 19/2/1999, respondent 2 declared that the provisions of the U.L.C. Act were not applicable to the said land.

(c). The petitioner decided to develop the said land. He got the necessary plans sanctioned on 29/6/2001. He obtained N.A. Permission on 21/8/2003. The development of the land was complete to the extent of about 80%. On 7/9/2006, the Pimpri Chinchwad Municipal Corporation directed the petitioner to stop the construction on the said land.

(d). On 14/3/2007, the Government of Maharashtra by Government Resolution proposed to repeal the U.L.C. Act for the State of Maharashtra. On 8/8/2007, respondent 2 directed the petitioner to remain present before the Chief Minister of Maharashtra on 13/8/2007 at 11.30 a.m. in respect of hearing u/s 34 of the U.L.C. Act. Accordingly, the petitioner''s lawyer remained present and inter alia pointed out that it was not lawful to exercise revisional powers in respect of the orders which were passed and concluded eight years ago. It was pointed out that eight years'' period cannot be called reasonable time for the Government to exercise its revisional powers. However, without considering the petitioner''s submissions, the Government of Maharashtra by impugned order dated 15/11/2007 set aside order dated 19/2/1999 passed by the Competent Authority holding that the provisions of the U.L.C. Act were not applicable to the said land. Being aggrieved by the said order, the petitioner has approached this Court.

3. It must be stated here that during the pendency of this writ petition, on 29/11/2007, the Government of Maharashtra has repealed the U.L.C. Act.

4. We have heard Mr. Gorwadkar, learned Counsel appearing for the petitioner. He submitted that it is an admitted fact that the possession of the said land is with the petitioner. Learned Counsel submitted that the Parliament enacted the Urban Land (Ceiling & Regulation) Repeal Act, 1999 (for short, "the Repeal Act"). By G.R. dated 14/3/2007, the Government of Maharashtra took a decision to propose to adopt the Repeal Act. The Maharashtra Legislative Assembly passed a resolution for adopting the Repeal Act in the State of Maharashtra with effect from 29/11/2007. Mr. Gorwadkar drew our attention to the judgment of this Court in Voltas Ltd. and Another Vs. Additional Collector and Competent Authority and Others, , wherein this Court has considered the effect of the Repeal Act and inter alia held that it is clear from the provisions of the Repeal Act that as a result of the Repeal Act, neither any proceedings can continue nor the State Government can claim that the land continued to vest in it if possession of the land in relation to which declaration under Sub-section (3) of Section 10 of the U.L.C. Act has been made, has not been taken away before 29/11/2007. Mr. Gorwadkar pointed out that the SLP filed against this judgment has been dismissed by the Supreme Court. Mr. Gorwadkar drew our attention to Section 4 of the Repeal Act and contended that as per this provision, all proceedings

relating to any order made or purported to be made under the U.L.C. Act abate. The impugned order, submitted Mr. Gorwadkar is covered by Section 4. In this connection, Mr. Gorwadkar relied on the judgment of the Supreme Court in Mukarram Ali Khan v. State of U.P. and Ors. 2007 SCR 2767.

5. Mr. Gorwadkar then submitted that the impugned order is passed on 15/11/2007. It is true that it is on 29/11/2007 that the Repeal Act came into force and U.L.C. Act was repealed. But the State Government had by resolution dated 14/3/2007 proposed to repeal the U.L.C. Act for the State of Maharashtra and it was subsequently repealed. To such a situation, the doctrine of promissory estoppel is attracted. The State Government could not have invoked its suo motu power u/s 34 of the U.L.C. Act that too, after a period of eight years.

6. Mr. Gorwadkar further submitted that in any case, exercise of power u/s 34 of the U.L.C. Act after eight years is illegal and must be set aside. If the State Government wanted to exercise its revisional powers, it should have done it within a reasonable time. It was obligatory on the State Government to consider intervening circumstances and subsequent events so as to come to a conclusion whether revisional powers should be exercised or not. Mr. Gorwadkar submitted that in this case, the State Government has failed to do so and, therefore, the impugned order must be set aside. In support of this submission, Mr. Gorwadkar relied on the judgment of Pune Municipal Corporation Vs. State of Maharashtra and Others, . He also relied on the judgment of the this Court in Automotive Research Association of India and Anr. v. State of Maharashtra and Ors. 2003(1) Mh.L.J. 204. Mr. Gorwadkar pointed out that the State has given no explanation for the delay. He submitted that in the circumstances, the impugned order be set aside.

7. Mr. Gokhale, learned A.G.P. on the other hand, drew support from the affidavit of Sudhakar Baburao Nangnure, Deputy Secretary, Urban Development Department, Mantralaya. He submitted that the impugned order is illegal and inconsistent with the provisions of the U.L.C. Act and, therefore, the doctrine of `reasonable period'' will not be applicable to it. He submitted that the impugned order merits no interference.

8. We will deal with the second submission of Mr. Gorwadkar that the State Government could not have exercised its powers u/s 34 of the U.L.C. Act after such extraordinary delay. In this connection, it is first necessary to refer to Section 34 of the U.L.C. Act. 9. Section 34 empowers the State Government on its own motion to call for and examine the records of any order passed or proceeding taken under the provisions of this Act and against which no appeal has been preferred u/s 12 or Section 30 or Section 33 for the purpose of satisfying itself as to the legality or propriety of such order or as to the regularity of such procedure and pass such order with respect thereto as it may think fit. This section does not state the period within which the State Government can exercise its revisional powers. This section fell for consideration of the Supreme Court in Pune Municipal Corporation Vs. State of Maharashtra and Others, . In

that case, a notification u/s 10(1) of the U.L.C. Act was issued and published in Maharashtra Gazette. Notification u/s 10(3) was issued and the land stood vested in the State "free from all encumbrances". A notice was then issued to the landowners to hand over possession of the excess land and the possession was taken over by the authorities. The Pune Municipal Corporation applied for land and the State Government asked the Corporation to pay occupancy price, which was paid by the Corporation in February, 1979. On 9/1/1979, the Competent Authority also issued notice u/s 10(5) directing the landowners to hand over possession of the land within 30 days. The landowners preferred an appeal u/s 33 against the order passed u/s 10(3). The Appellate Authority held that the appeal was not maintainable. After lapse of more than a decade, on 21/5/1990, a power of attorney holder of one of the landlholders preferred a revision to the State Government u/s 34 of the U.L.C. Act. The revision was held not maintainable. Three years'' thereafter, a second revision u/s 34 was filed. The Revisional Authority observed that it was proved that the applicant had not been given sufficient opportunity for showing the ownership documents to the Competent Authority and prima facie, the order of the Competent Authority was wrong. In exercise of power u/s 34 of the U.L.C. Act, the order of the Competent Authority was set aside and the case was remitted for reconsideration to the Additional Collector and Competent Authority, Pune after giving sufficient opportunity to the applicant.

10. The Corporation was not joined as party respondent. The Corporation therefore, filed a writ petition in the High Court. The High Court dismissed the petition and directed the Appellate Authority to decide the matter pending under Sections 8 and 9 of the U.L.C. Act within three months. The said order was challenged by the Pune Municipal Corporation in the Supreme Court. The Supreme Court allowed the appeal. The Supreme Court observed that where the period of limitation is not prescribed the concept of reasonable time can be invoked and power must be exercised within such period. In this connection, the Supreme Court relied on the judgment in The State of Gujarat Vs. Patil Raghav Natha and Others, , where an application was filed by the landowner u/s 65 of the Bombay Land Revenue Code, 1879 (for short, "the Code") for converting agricultural land to non-agricultural use. The permission was granted. The Municipal Committee, however, objected to such permission and the Commissioner, in purported exercise of revisional power u/s 211 of the Code set aside the order passed earlier. When the matter reached the Supreme Court, it was contended by the owners that though Section 211 did not prescribe period of limitation, revisional powers ought to be exercised within a reasonable time. The Supreme Court upheld the contentions and held that though no period of limitation is prescribed u/s 211, the power must be exercised in a reasonable time and the length of the reasonable time must be determined by the facts of the case and the nature of the order which is being revised. The Supreme Court observed that where the law does not prescribe limitation, the court would import the concept of "reasonable time". The Supreme Court added that what is

the length of reasonable time would depend upon the facts and circumstances of each case and no rule of universal application can be laid down. Following this judgment in Pune Municipal Corporation''s case (supra), the Supreme Court held that the revisional authority was duty-bound to take into account the length of delay, intervening circumstances and subsequent events from 1977 to 1995 and to consider whether the powers should have been exercised or not. Since no such exercise has been undertaken, the order suffers from legal infirmity and must be quashed. After so holding, the Supreme Court quashed the order.

11. In Moradabad Development Authority Vs. Saurabh Jain and Others, , the Supreme Court reiterated the same principle. In that case, the revisional power was exercised after lapse of 20 years. The Supreme Court referred to Pune Municipal Corporation''s case (supra) and observed that when the State Government exercises powers u/s 34 of the U.L.C. Act, it has to examine whether after long lapse of time, any action is warranted. In this exercise, filing of revision petition within a reasonable time is inbuilt. The Supreme Court observed that what would be the reasonable time would depend upon the facts of each case and no straitjacket formula can be adopted or applied.

12. A Division Bench of this Court in Automotive Research Association of India and Another Vs. State of Maharashtra and Others, , had an occasion to consider a case where the Minister had exercised revisional powers 17 years after notification under which land had vested in the State. This Court held that power of revision u/s 34 can be exercised by the State suo motu if appeal has not been filed by the aggrieved party and that this power to correct illegality has to be exercised within a reasonable period. This Court held that three years'' period would be a reasonable period.

13. In Smt. Meena Patil and Anr. v. State of Maharashtra and Ors., the Division Bench of this Court (D.K. Deshmukh & R.Y. Ganoo, JJ.) in Writ Petition No. 61 of 2008, the revisional powers were exercised by the State Government after about eight years. This Court followed the Automotive Research Association of India''s case (supra) and quashed the order.

14. It is also necessary to refer to the judgment of the Supreme Court in A.V. Papayya Sastry and Others Vs. Government of A.P. and Others, . It is not necessary to narrate the facts in detail. Suffice it to say that a notification u/s 4(1) of the Land Acquisition Act was issued on 10/8/1973. The U.L.C. Act came into force in the State of Andhra Pradesh on 17/2/1976. The appellant filed their declarations and took a stand that possession of the land had already been handed over to the Port Trust Authorities even before the U.L.C. Act came into force and the provisions of the U.L.C. Act were not applicable. The Competent Authority vide order dated 25/5/1981 declared that the landowners were non-surplus landholders. The Government again issued notification u/s 4(1) of the Land Acquisition Act on 29/8/1981 and invoked urgency clause and issued declaration u/s 6 on 12/10/1982. The Port Trust Authorities clarified to the Land Acquisition Officer that actual and physical possession of the land was not taken

by the Port Trust vide its letter dated 19/12/1985. In view of this, the Competent Authority referred the matter to the Commissioner, Land Reforms and Urban Land Ceiling, Government of Andhra Pradesh to take up the matter u/s 34 of the Ceiling Act in suo motu revision. In the meantime, landowners filed writ petition in the Andhra Pradesh High Court for a direction to the State Authorities to complete the proceedings. During the pendency of the writ petition, revision was allowed by the State Government on 20/1/1995 and the order passed by the Competent Authority declaring that the appellants had no surplus land had been set aside. That order was challenged in the High Court. The High Court held that the suo motu revisional powers were exercised after 13 years. The action was, therefore, illegal. The High Court set aside the order passed u/s 34 of the Ceiling Act. The State Authorities filed application for recall of this order on the ground that there was a fraud committed by the landowners and material facts were suppressed from the court. It was urged that the possession of the land was never handed over to the Port Trust Authorities. The High Court in the circumstances recalled its order. That order was challenged in the Supreme Court. The Supreme Court noted that a fraud was committed. The Supreme Court observed that from the record, it was clear that neither the land owners nor the Port Trust were in actual possession of the land, but it was occupied by tenants and disputes were also going on between the tenants and landowners. Therefore, the basis on which the Special Officer and Competent Authority, Urban Land Ceiling proceeded to decide the matter was non-existent and non est. The Supreme Court considered several judgments, which have taken a view that no judgment of the court can be said to be a judgment, if it is obtained by fraud. The Supreme Court observed that in view of the serious allegation of fraud said to have been committed by the landowners in collusion with officers of the Port Trust and the Government, the High Court was justified in recalling the order, setting aside the order of the Competent Authority u/s 34 of the U.L.C. Act.

15. It is pertinent to note that in view of the serious allegations of fraud, the Supreme Court overlooked the delay of 13 years in exercise of powers u/s 34 of the U.L.C. Act. The principles which can be deduced from the above judgments is that powers u/s 34 of the Land Acquisition Act have to be exercised by the State within a reasonable time. What would be reasonable time would depend on the facts and circumstances of each case and no fixed formula can be laid down. There can be no rule of universal application in this behalf. Reasonable time would generally be a period of three years but not always. The facts and circumstances of the case would be determinative of the reasonableness of the time taken to exercise powers u/s 34 of the U.L.C. Act. However, where it is pointed out that a fraud is committed, the length of time in exercise of powers u/s 34 of the U.L.C. Act is immaterial as fraud vitiates everything. In such circumstances, order passed u/s 34 of the U.L.C. Act can be sustained even after extraordinary delay.

16. Coming to the facts of this case, we find that the State Government has given absolutely no explanation as to why it has taken such a long time to

exercise powers u/s 34 of the U.L.C. Act. There are no allegations of fraud made in the affidavit in reply. We asked Mr. Gokhale, learned A.G.P. to tell us whether there is any explanation for delay, he was unable to give any explanation. He was not in a position to tell us whether any fraud has been committed by the land owners in connivance with the officers of the State Government or any other persons. In such circumstances, in our opinion, in the light of the judgment of the Supreme Court in Pune Municipal Corporation''s case and Moradabad Development Authority''s case (supra) and in the light of the judgments of this Court in Automotive Research Association of India''s case (supra) and Smt. Meena Patil''s case (supra), we will have to set aside the impugned order.

17. To consider the submission of Mr. Gorwadkar that in view of the Repeal Act, the proceedings have abated, it is necessary to interpret Section 4 of the U.L.C. Act. It is necessary to see whether the impugned order is in the nature of a final order and, if yes, in view of the fact that there are no pending proceedings, whether Section 4 of the Repeal Act would be attracted. What meaning could be ascribed to the word "pending" found in Section 4 will have to be seen. Prima facie, we are of the view that the impugned order is a final order. In that case, the present matter will not be covered by Section 4 of the Repeal Act. It will have to be then seen whether the State had power under the U.L.C. Act to direct the petitioner to pay the present market value of the said land as determined by the Government Ready Reckoner. However, since in the light of the judgments referred to by us, we have come to the conclusion that exercise of powers u/s 34 of the U.L.C. Act after eight years is improper and illegal, it is not necessary for us to go into this aspect of the matter. We, therefore, keep all those questions open. We make it clear that we have not expressed any final opinion on those questions.

18. In the circumstances, the impugned order dated 15/11/2007 is quashed and set aside. The petition is disposed of.

