

(2012) 08 BOM CK 0145

In the Bombay High Court

Case No : Writ Petition No. 2594 of 2011

Bhagwant Dharmaraj Radke

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 08-08-2012

Acts Referred:

Constitution of India, 1950 — Article 226

Urban Land (Ceiling and Regulation) Act, 1976 — Section 11, 12, 13, 14, 20

Urban Land (Ceiling and Regulation) Repeal Act, 1999 — Section 3, 3(1), 3(1)(b), 4

Citation : (2012) 6 ALLMR 560 : (2012) 6 BomCR 424

Hon'ble Judges : Vasanti A. Naik, J;A.B. Chaudhari, J

Bench : Division Bench

Advocate : B.N. Mohta, for the Appellant; A.R. Taiwade, Asstt. Govt. Pleader for the Respondent Nos. 1 to 6, S/Shri H.N. Verma and A.S. Jaiswal, counsel for the Respondent No. 7, for the Respondent

Judgement

A.B. Chaudhari, J.—Both these petitions are taken up for hearing and disposal in view of the identical facts involved therein. In these two petitions, there are several prayers made by the respective petitioners. There is challenge to the orders dated 06/07/2004 passed by the Minister for State, Urban Land Ceiling, Maharashtra State and another dated 23/11/2007 passed by Hon"ble Chief Minister holding the portfolio of Urban Land Development Department, Maharashtra State in the matter of an order made u/s 20 of the Urban Land (Ceiling and Regulation) Act, 1976.

2. It is not in dispute that proceedings under the Urban Land (Ceiling and Regulation) Act, 1976 were undertaken against the landholders and they culminated into declaration by which the lands held by these petitioners in both the petitions were declared surplus u/s 8(4) of the Act of 1976. In case of petitioner in Writ Petition No. 2495/2001 land to the extent of 71710.6 sq.mtrs. and in case of other petitioner in Writ Petition No. 2502/2011 land admeasuring 58717 sq. mtrs. was declared surplus.

3. It appears that thereafter allotment of surplus land to respondent No. 7-MHADA was made by the State Government in exercise of power u/s 23 of the Urban Land (Ceiling and Regulation) Act, 1976 in the year 1989, but the possession was not delivered to respondent No. 7-MHADA and it remained with the original owner. It further appears that the original owner in Writ Petition No. 2502/2011 sold the land to the present petitioner in Writ Petition No. 2495/2011 obviously in violation of the provisions of the Urban Land (Ceiling and Regulation) Act, 1976. Thereafter the petitioners in both the writ petitions made applications to the State Government purportedly u/s 20 of the Urban Land (Ceiling and Regulation) Act, 1976 claiming exemption and also claiming benefits under Talegaon-Dabhade Scheme that was floated by the State Government. Those applications appear to have been made well before 06/07/2004 since on that date the Minister for State, Urban Development Department passed an order asking the competent authority to consider the case u/s 20 of the Urban Land (Ceiling and Regulation) Act, 1976.

4. It then further appears that the Urban Development Department having realized that the Minister for State had no power to make order u/s 20 of the Urban Land (Ceiling and Regulation) Act, 1976, the papers were placed before the Hon"ble Chief Minister, who was competent to pass orders in such matters and that is why the Hon"ble Chief Minister took up these matters for hearing and in our opinion, rightly since the Minister for State was not authorized to consider or decide the applications u/s 20 of the Urban Land (Ceiling and Regulation) Act, 1976 that too in the revisional jurisdiction u/s 34 of the Act of 1976. The Hon"ble Chief Minister passed an order on 23/11/2007 and he cancelled the order dated 06/07/2011 passed by Minister for State and thereafter made an arrangement to the effect that 50% of the surplus land was given back to the land holders for implementing the scheme namely Talegaon-Dabhade Scheme and the balance 50% land was allowed to be retained by respondent No. 7-MHADA, which as earlier stated was allotted u/s 23 of the Urban Land (Ceiling and Regulation) Act, 1976 way back in the year 1989 for development of low-cost houses. The petitioners then kept quiet obviously because the order was in their favour in the sense that the petitioners got back at least 50% land when they had nothing. Thereafter the State Legislature passed a resolution on 29/11/2007 adopting the Urban Land (Ceiling And Regulation) Repeal Act, 1999 and the said resolution was brought into force from 01/12/2007 in the State of Maharashtra. After repeal also, the petitioners continued to be satisfied with the said order dated 23/11/2007. However, in May, 2011, both the petitioners instituted these petitions in this Court and now the claim is that not only 50% land granted by the Hon"ble Chief Minister should be allowed to be retained with them, but the entire surplus land should be returned to them in view of the provisions of the Urban Land (Ceiling and Regulation) Repeal Act, 1999 and that as a sequel, the order passed by the Hon"ble Chief Minister on 23/11/2007 is required to be quashed and set aside. This is the sum and substance in the present writ petitions.

5. In support of writ petitions, Mr. Mohta, the learned counsel for petitioners in both the petitions, vehemently made the following submissions.

(i) That there is no dispute and even as observed by Hon"ble Chief Minister in the impugned order that the possession of the suit land was never given by the land owners and according to him, even now the possession is with the petitioners.

(ii) The possession having not been taken, the provisions of Section 4 of the Urban Land (Ceiling and Regulation) Repeal Act, 1999 would operate with full force. That being so the said order made by the Hon"ble Chief Minister must yield to the effect of the repeal and consequently, the petitioners are entitled to return of the entire surplus land.

Referring to section 4 of the Urban Land (Ceiling and Regulation) Repeal Act, 1999 particularly the proviso, learned counsel Mr. Mohta argued that the said proviso provides for abatement of legal proceedings in respect of the lands of which possession has not been taken over by the State Government, and in these cases, possession was admittedly not taken. Learned counsel Mr. Mohta relied on the following decisions.

(1) 2008 (5) ALL MR 537 [2008 (5) BCR 746] (Voltas Limited & Anr. Vs. Additional Collector and Competent Authority, Thane & Ors.).

(2) Vithabai Bama Bhandari Indian Inhabitant Vs. State of Maharashtra and Deputy Collector and Competent Authority Ulhasnagar Urban Agglomeration, .

(3) Writ Petition No. 682/2009 dated 02/07/2009 (Waman Sukhdeo Tabhane and others Vs. State of Maharashtra and others).

(4) Writ Petition No. 2694/2010 (Kalidin Mathura Chamele Vs. State of Maharashtra and another).

(5) Ritesh Tewari and Another Vs. State of U.P. and Others, .

(6) Mukarram Ali Khan Vs. State of U.P. and Others, .

(7) Urban Improvement Trust, Jodhpur Vs. Gokul Narain and another, .

(8) Jaipur Development Authority Vs. Radhey Shyam and Others, .

(9) Sushil Kumar Mehta Vs. Gobind Ram Bohra (Dead) through his Lrs., .

(10) 2008 (3) Mh.L.J. 65 (SC) (Chief Engineer, Hydel Project and others v. Ravinder Nath and others).

(11) 2010 (6) Mh.L.J. 549 (Abdul Aziz Alisaheb Bharmar and others v. State of Maharashtra and another).

(12) 2011 (3) Mh.L.J. 486 (FB) (Shireen Sami Gadiali and another v. Spenta Co-op. Hsg. Soc. Ltd. and others).

(13) Writ Petition No. 1290/2012 dated 30/07/2012 (Mr. Manik M. Ragit Vs. State of Maharashtra and another).

(14) Writ Petition No. 545/2011 dated 28/02/2012 (Anand Kawadu Chokhandre and another Vs. State of Maharashtra and others).

6. Mr. Mohta, the learned counsel for petitioners, next submitted that pursuant to the judgment of this Court in the case of Kalidin Mathura Chamele v. State of Maharashtra and another in Writ Petition No. 2694/2010, the competent authority has made mutation and deleted the relevant entry and, therefore, on facts the land has actually been released from the provisions of the Act.

7. Per contra, Mrs. Taiwade, the learned Assistant Government Pleader, opposing the writ petitions argued that the writ petitions have been filed belatedly and at the outset it must be dismissed for delay and laches. According to her, the petitions have been filed after having seen the implementation of the Urban Land (Ceiling and Regulation) Repeal Act, 1999 by the State Legislature. At any rate, according to her, even on merits the petitions are liable to be dismissed.

8. Mr. Verma, the learned counsel for the Housing Board, invited our attention to Section 3(1)(b) of the Urban Land (Ceiling and Regulation) Repeal Act, 1999 and argued with reference thereto that the order made by the Hon''ble Chief Minister on 23/11/2007 stands fully protected despite repeal. He also invited our attention to the application of said sub-clause (b) of section 3(1) of the Urban Land (Ceiling and Regulation) Repeal Act, 1999 to buttress his argument that the ultimate object is to protect the schemes u/s 20 already be sanctioned even if the possession of the land under such orders were not taken. He further argued and pointed out that the possession of the land pursuant to the order of Hon''ble Chief Minister was subsequently taken in Writ Petition No. 2495/2010 on 29/09/2010 and in Writ Petition No. 2502/2010 on 06/10/2010, which fact is seriously disputed by learned counsel Mr. Mohta. According to Mr. Mohta, all that is the paper possession and the physical possession remained with the land holders.

CONSIDERATION :

9. We have heard the learned counsel for the rival parties at length. We have gone through the record and pleadings in these two writ petitions. We find that respondent No. 7-MHADA was allotted the piece of land way back in the year 1989 in exercise of power u/s 23 of the Act of 1976, but the possession was not taken by respondent No. 7-MHADA. It is an admitted fact that the petitioners had made respective applications u/s 20 of the Act of 1976 to the State Government, requesting the State Government to grant exemption and apply Talegaon-Dabhade Scheme so that the land holders get some benefit rather than being deprived of the entire surplus land. It appears that these applications were made well before 2004. Acting on those applications u/s 20 of the Urban Land (Ceiling and Regulation) Act, 1976 made by the petitioners finally the competent authority namely the Hon''ble Chief Minister holding the portfolio of Urban Land

Development Department passed order on 23/11/2007 granting 50% land to the land holder and 50% land was allowed to be retained by respondent No. 7-MHADA on the usual conditions. It appears that even after the said order, the possession was not taken till the time, as claimed by learned counsel Mr. Verma it was taken in the year 2010 but even this fact is disputed by learned counsel for the petitioners. Section 20 of the Urban Land (Ceiling and Regulation) Act, 1976 reads thus -

20. Power to exempt.- (1) Notwithstanding anything contained in any of the foregoing provisions of this Chapter-

(a) where any person holds vacant land in excess of the ceiling limit and the State Government is satisfied, either on its own motion or otherwise, that, having regard to the location of such land, the purpose for which such land is being or is proposed to be used and such other relevant factors as the circumstances of the case may require, it is necessary or expedient in the public interest so to do, that Government may, by order, exempt, subject to such conditions, if any, as may be specified in the order, such vacant land from the provisions of this Chapter;

(b) where any person holds vacant land in excess of the ceiling limit and the State Government, either on its own motion or otherwise, is satisfied that the application of the provisions of this Chapter would cause undue hardship to such person, that Government may by order, exempt, subject to such conditions, if any, as may be specified in the order, such vacant land from the provisions of this Chapter:

Provided that no order under this clause shall be made unless the reasons for doing so are recorded in writing.

(2) If at any time the State Government is satisfied that any of the conditions subject to which any exemption under clause (a) or clause (b) of sub-section (1) is granted is not complied with by any person, it shall be competent for the State Government to withdraw, by order, such exemption after giving a reasonable opportunity to such person for making a representation against the proposed withdrawal and thereupon the provisions of this Chapter shall apply accordingly.

10. It is clear that Section 20 provides for a non obstante clause thereby reserving the power in the State Government to grant exemption. This is a salutary provision giving discretion to the State Government to find out in a particular case, if any, the undue hardship is caused to any land holder and then take a decision having regard to such undue hardship. Obviously the petitioners made applications under the said provisions to the State Government claiming that they were suffering undue hardship and, therefore, they should be given the benefit of exemption u/s 20 of the Act of 1976 on such terms as the Government deemed fit. The petitioners thus have well before 2004 taken the benefit of a beneficial provision for themselves and then kept quiet till the filing of these writ petitions. However, in May, 2011 they have filed these writ petitions and

suddenly put to challenge those old orders passed in the year 2007. In our opinion, the petitioners cannot be allowed to approbate and reprobate apart from the fact that the petitions suffer from delay and laches. In the case of Durga Prashad v. Chief Controller of Imports and Exports reported in 1969 (1) Supreme Court Cases 185 in regard to the powers of the High Court in the extra ordinary writ jurisdiction the Hon"ble Supreme Court held that though the jurisdiction is discretionary in such cases, the Court should not ignore the aspect of delay and laches of course representing the facts and circumstances of each case. We quote here the following observations of the Hon"ble Supreme Court made in para 4 of the judgment.

4. Gajendragadkar, C.J., speaking for the Constitution Bench, in Smt. Narayani Debi Khaitan v. The State of Bihar, C.A. No. 140 of 1964; judgment dated September 22, 1964, observed :

It is well-settled that under Article 226, the power of the High Court to issue an appropriate writ is discretionary. There can be no doubt that if a citizen moves the High Court under Article 226 and contends that his fundamental rights have been contravened by any executive action, the High Court would naturally like to give relief to him; but even in such a case, if the petitioner has been guilty of laches, and there are other relevant circumstances which indicate that it would be inappropriate for the High Court to exercise its high prerogative jurisdiction in favour of the petitioner, ends of justice may require that the High Court should refuse to issue a writ. There can be little doubt that if it is shown that a party moving the High Court under the law of limitation was barred at the time when the writ petition was filed, the High Court would refuse to grant any relief in its writ jurisdiction. No hard and fast rule can be laid down as to when the High Court should refuse to exercise its jurisdiction in favour of a party who moves it after considerable delay and is otherwise guilty of laches. That is a matter which must be left to the discretion of the High Court and like all matters left to the discretion of the Court, in this matter too discretion must be exercised judiciously and reasonably.

The vista stated by us above and the conduct of the petitioners having themselves obtained the orders u/s 20 of the Act of 1976 and then to get up and file these writ petitions in the year 2011 to challenge the said order dated 23/11/2007 leads to us to hold that this Court should refuse to exercise its high prerogative jurisdiction at the behest of the petitioners. We also hold that the petitions suffer from delay and laches.

11. Apart from that, we quote Section 3(1) (b) and section 4 of Urban Land (Ceiling and Regulation) Repeal Act, 1999 thus-

Saving.-(1) The repeal of the principal Act shall not affect-

(b) the validity of any order granting exemption under sub-section (1) of Section 20 or any action taken thereunder, notwithstanding any judgment of any court to the contrary;

4. Abatement of legal proceedings.-All proceedings relating to any order made or purported to be made under the principal Act pending immediately before the commencement of this Act, before any court, tribunal or other authority shall abate:

Provided that this section shall not apply to the proceedings relating to sections 11, 12, 13 and 14 of the principal Act in so far as such proceedings are relatable to the land, possession of which has been taken over by the State Government or any person duly authorised by the State Government in this behalf or by the competent authority.

12. Perusal of section 3(1)(b) and Section 4 together shows that Section 3 provides for "saving" while Section 4 provides for "abatement of legal proceedings". All that is not saved in Section 3 should get abated by virtue of operation of Section 4. The submission made by learned counsel Mr. Mohta that the proviso to Section 4 will have application as possession was admittedly not taken does not appeal to us. The reason is that Section 3(1)(b) in terms protects any scheme sanctioned or order passed on the application u/s 20 of the Act of 1976 granting exemption before the commencement of the Urban Land (Ceiling And Regulation) Repeal Act, 1999. That being so, in the instant case the exemption order was passed by Hon'ble Chief Minister on 23/11/2007 and the said order remained as it is. However, after repeal in the State of Maharashtra w.e.f. 01/12/2007, the validity of that order cannot be challenged due to the bar of Section 3(1)(b) of the Urban Land (Ceiling And Regulation) Repeal Act, 1999 providing for "Saving". The reason appears to be the consideration of providing for the need of the beneficiaries for whom schemes were sanctioned u/s 20 of the Act of 1976 by exemption before the repeal. In Ram Krishna Dalmia Vs. Shri Justice S.R. Tendolkar and Others, , the Apex Court, inter alia, laid down the following principle:

(a) ---

(b) ---

(c) that it must be presumed that the Legislature understands and correctly appreciates the need of its own people, that its laws are directed to problems made manifest by experience and that its discrimination are based on adequate grounds;

That is the reason why according to us Section 20 of the Act of 1976 has not been inserted in the proviso to Section 4 of Urban Land (Ceiling And Regulation) Repeal Act, 1999, in order that schemes sanctioned and the orders of exemption made u/s 20 of the Act of 1976 are saved. Mr. Mohta, learned counsel for petitioners, cited the decisions of the various Division Benches of this Court before us, which have no relevance to the cases at hand. One class of decisions cited before us show that in those cases exemptions were withdrawn. Therefore, even if possession was not taken pursuant to the order made by Hon'ble Chief Minister on 23/11/2007, it will not affect the protection granted by Section 3(1)

(b) of Urban Land (Ceiling And Regulation) Repeal Act, 1999 to the order u/s 20 of the Act of 1976 granting exemption. In the result, we find no merit in both the writ petitions. We make the following order.

ORDER

Writ Petition Nos. 2594/2011 and 2502/2011 are dismissed.

Rule stands discharged. No costs.