

(2011) 07 BOM CK 0094

In the Bombay High Court

Case No : Writ Petition No. 661 of 2011

Devendra Ganpatlal Chamedia, Sau. Prabhavati Sureshkumar
Agrawal (Since deceased through L.Rs.) (Suresh Narayan
Agrawal, Pravin Suresh Agrawal and Pankaj Suresh Agrawal)
and Manoj Ganpatlal Chamediya

APPELLANT

Vs

The Chief Officer and Competent Authority, Municipal Council
and Prashik Navyuwak Smittee

RESPONDENT

Date of Decision : 04-07-2011

Acts Referred:

Bombay Tenancy and Agricultural Lands (Vidarbha Region) Act, 1958 — Section 80
Constitution of India, 1950 — Article 226, 227
Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971 —
Section 10, 3, 4, 9

Citation : (2011) 4 BomCR 709 : (2011) 6 MhLj 226

Hon'ble Judges : R.M. Savant, J

Bench : Single Bench

**Advocate : V.R. Choudhari, for the Appellant; Kale, Addl. Govt. Pleader for
Respondent No. 1 and A.B. Moon, for the Respondent**

Final Decision : Dismissed

Judgement

R.M. Savant, J.—Rule, with the consent of the parties, made returnable forthwith and heard.

2. The above petition filed under Articles 226 and 227 of the Constitution of India takes exception to the order dated 4/5/2010 passed by the President, Maharashtra Slum Areas (Improvement, Clearance and Redevelopment), Tribunal, Mumbai, by which order the appeal filed by the Petitioners herein came to be dismissed.

3. The facts involved in the above petition can be stated in brief thus

The Petitioners are the owners of land bearing Survey No. 51 situated in Ward No. 19 of Municipal Council, Yavatmal. It appears that the Municipal Council by a

letter dated 23/7/1987 passed a Resolution that the said land situated in Ward No. 19 bearing Survey No. 51 be declared as Slum, as there are no basic facilities or amenities, and hence recommendation be made to the State Government. The Respondent No. 1 - Municipal Council in terms of the Resolution forwarded the proposal for declaring the land owned by the Petitioners for being declared as a slum, a declaration thereafter came to be published by the authorities in the Government Gazette dated 28/7/1988. It is pertinent to note that prior to the Resolution passed by the Municipal Council, the Petitioners on acquiring knowledge that a move was afoot to declare the land as a slum, represented to the Municipal Council by letter dated 21/7/1987. The Petitioners in the said letter mentioned the background of facts leading to the encroachment of the property when the property was leased out to various persons by the Tahsildar u/s 80 of the Bombay Tenancy and Agricultural Lands (Vidarbha Region) Act, 1958.

4. Aggrieved by the declaration dated 28th July, 1988 declaring the lands as slum, the Petitioners filed an Appeal as provided for u/s 4 of the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment), Act, 1971. It is significant to note that in the said appeal amongst the grounds of challenge to the declaration were three grounds which are reproduced herein under -

a) That the said land S. No. 51 of Yeotmal is owned by original Appellant Nos. 1 to 3 as successors entitle of the original owner Smt. Gulabbai w/o Ganpatlal Chamedia who died in the year 1970. It may be mentioned that original Appellate No. 2 expired during the pendency of the appeal, and Appellant Nos. 2(a) to 2(c) have come on record as the legal heirs of the deceased. That, the land continues to be agricultural land, in spite of the fact that in violation of the lease agreements the same was not cultivated by the various persons who were inducted at the instance of the Government. That, a part of the said land is declared as slum.

(b) That, no show-cause notice was served upon the Appellants and the property was declared as slum area without following the principles of natural justice.

(c) That, the Respondent did not observe all the mandatory provisions and the declaration is therefore illegal and bad in law.

In the said appeal, reply was filed by the Respondent No. 1 - Municipal Council dealing with the contentions in the Appeal filed by the Petitioners. As indicated above, the said Appeal came to be dismissed by the Tribunal by the impugned order dated 2/4/2010.

5. A perusal of the said order indicates that in so far as the said three grounds are concerned, which had been raised by the Petitioners, the said grounds have been brushed aside by the Tribunal on the ground that the Petitioners had addressed the said letter dated 21/7/1987 to the Respondent No. 1 - Municipal Council thereby had communicated their objection to the property being declared as slum and therefore, according to the Tribunal, the Petitioners were aware of

the said declaration. The Tribunal in the said circumstances came to a conclusion that no prejudice was caused to the Petitioners. How knowledge of an impending declaration can absolve the statutory authority from following the statutory procedure, as envisaged in the said Act, begs an answer. The Tribunal by merely taking the letter of the Petitioners into consideration has held that the procedure as envisaged in the Act cannot be said to be violated. The Tribunal thereby has glossed over the points raised by the Petitioners in the Appeal memo and which points go to the very root of the matter. It is also pertinent to note that the Petitioners had also relied upon a judgment of the Apex Court reported in *The Government of Mysore and Others Vs. J.V. Bhat and Others*, wherein the Apex Court in the contest of a declaration of a slum has held that there can be no two opinions about the need to hear the affected persons before declaring an area to be a slum area u/s 3, or an area as a clearance area u/s 9 or before taking action u/s 10. The Petitioners also relied upon a judgment of the learned Single Judge of this Court reported in 1997 (1) Mh.L.J. 107 in the matter of *Satish B. Kadhe and Ors. v. Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Tribunal, Bombay* wherein the learned Single Judge has followed the view taken by the Apex Court in the case of the Government of Mysore (supra) thereby holding that the affected persons have to be noticed. The impugned order of the Tribunal does not disclose that the judgments cited on behalf of the Petitioners were considered by the Tribunal. As can be seen, the Tribunal merely on the basis of the letter addressed by the Petitioners dated 21/7/1987 has failed to consider whether notice, in fact, was issued to the Petitioners and whether they were granted a hearing. The Tribunal has therefore, as mentioned herein above, totally glossed over the said points and by merely stating that there are 4000 to 5000 families residing in the land in question and the basic amenities were lacking, has dismissed the appeal filed by the Petitioners. In my view, for the reasons mentioned herein above, the impugned order passed by the Tribunal is unsustainable and is required to be set aside and is accordingly set aside and the following directions are issued.

(i) The Appeal filed by the Petitioners is remanded back to the Tribunal for a de novo consideration.

(ii) The Tribunal to consider the points raised by the Petitioners as regards no notice being issued to them and no hearing being granted to them prior to the issuance of the declaration as slum, as also to consider the judgments of the Apex Court as well as this Court that would be cited by the Petitioners.

(iii) The Tribunal to hear the concerned parties and decide the Appeal by 31st December, 2011.

(iv) Pending such consideration, no further steps to be taken pursuant to the said declaration.

Rule is accordingly made absolute in the aforesaid terms with parties to bear their respective costs.

Parties to appear before the Tribunal on 29th July, 2011.