

(1988) 06 BOM CK 0020

In the Bombay High Court

Case No : Writ Petition No. 1046 of 1988

L.L.Constructions and Others

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 09-06-1988

Acts Referred:

Maharashtra Land Revenue Code, 1966 — Section 257, 258

Maharashtra Regional and Town Planning Act, 1966 — Section 43, 44, 45, 45(2), 45(5)

Citation : (1988) 4 BomCR 129

Hon'ble Judges : Sujata Manohar, J

Bench : Single Bench

Advocate : A.J. Rana and N.H. Seervai, instructed by Majumdar and Co, for the Appellant; A.R. Shinde, for respondent No. 1, S.M. Tidke, for the Respondent

Judgement

Sujata Manohar, J.—The subject matter of this writ petition is land bearing C.T.S. No.24 in Village Paspauli of Kurla Taluka in the Bombay Suburban District. The 1st petitioner is the present owner of this property. The 2nd petitioner is a partner of the 1st petitioner firm. The original 3rd petitioner was claiming to be the previous owner of this property. The 3rd petitioner died before the hearing of this petition and his name has now been deleted. The land which is the subject matter of this petition was originally Khoti land and it formed part of Khoti Survey No.63. After the abolition of Khoti this piece of land was renumbered during a survey which was carried out in that village in the year 1957. The said land was entered in the revenue records as Gaothan land admeasuring 1 acre and 34 gunthas. The original third petitioner claimed to be in occupation of this land since the year 1949. As an occupant of gaothan land he claimed to be the holder of this land.

2. By an order dated 31st August, 1967 passed by Enquiry Officer No. VII City Survey, Bombay Suburban District, Bombay, the state of Maharashtra was declared as holder of the said land and the original 3rd petitioner was declared as an encroacher on Government Land. This order was passed after an enquiry at

which the original 3rd petitioner was present and his statement was recorded in evidence. As a result of the order of 31st August, 1967 the record of rights was amended to show the State of Maharashtra as the holder of the said land and the name of the original 3rd petitioner remained in occupation of the said land and he seems to have entered into subsequent dealings in respect of this land. As a result petitioners Nos. 1 and 2 today claim to be the owners of the said land. It seems that they acquired an interest in this land around 1984 or a little prior to it.

3. In the year 1984 the order of 31st August, 1967 was sought to be reviewed by the revenue authorities. It seems that the District Inspector of Land records cum City Survey Officer No.1, Bombay Suburban District Bombay by his letter dated 9th April, 1984 moved the Sub-Divisional Officer, Bombay Suburban District for review of the order of 31-8-1967 stating that on perusal of survey sheets in respects of the said land (C.T.S. No. 24 of Paspauli village) it was seen that C.T.S. No. 24 of Paspauli fell in the category of gaothan land. He said that in view of the submissions of the original 3rd petitioner recorded on 7th August, 1967 in the previous enquiry the name of the original 3rd petitioner should be entered in the revenue record as the holder of the said land. In response to this letter, the Sub Divisional Officer, Bombay Suburban District by his letter dated 4th May, 1984 stated that a proper enquiry was not conducted before passing the order of 31st August, 1967. He accorded his sanction u/s 258 of the Maharashtra Land Revenue Code 1966 to review the order of 31st August, 1967.

4. Thereupon the District Inspector of Land Records cum City Survey Officer, Bombay Suburban/District, Bombay passed his order dated 25th August, 1984 reviewing the earlier order of 31st August, 1967. He directed that the name of the original 3rd petitioner should be entered in the record of rights as the holder of Gaothan C.T.S. No. 24 after deleting the name of the State of Maharashtra.

5. After the order of 28th August, 1984 the petitioner applied for permission to develop the land u/s 22 of the Urban Land Ceiling Act. This application was made by the present petitioners 1 and 2 as Constituted attorneys of the original petitioner No. 3. They also applied to the Municipal Corporation for an I.O.D. which was granted on 18-10-1985. The petitioners however, were not granted a commencement certificate of construction work under the provisions of the Maharashtra Regional and Town Planning Act, 1966.

6. The petitioners have been informed by the Bombay Municipal Corporation, which is the sanctioning authority under the Maharashtra Regional and Town Planning Act that an objection has been raised by the Revenue and Forest Department, Government of Maharashtra in respect of this land. Hence the petitioners should obtain a no objection certificate/letter from the Revenue and Forest Department, Government of Maharashtra for obtaining a commencement certificate. In the letter dated 20th January, 1986 addressed by the Municipal Corporation to the Licensed Surveyor of the petitioners, it has also been stated that the conditions required to be complied with before the issue a commencement certificate are not complied with. Particulars of these conditions

are not given. The same position has been reiterated by the Municipal Corporation in their letter of 24th February, 1986 where they have asked for a clearance from Revenue and Forest Department, Government of Maharashtra as an objection from the Government of Maharashtra for the proposed development plan has been received by their office. As the petitioners have not been granted commencement certificate the present petition was filed by them on 11th April, 1986.

7. Thereafter the petitioners were served with a notice dated 4-9-1986 stating that an enquiry had been ordered by the Government in respect of the ownership rights of the said land u/s 257 of the Maharashtra Land Revenue Code. The petitioners were required to remain present at the enquiry. Ultimately an order dated 26-9-1986 has been passed u/s 257 of the Maharashtra Land Revenue Code reviewing the order of 25th August, 1984. The District Inspector of Land Records has now been directed to delete the name of the original 3rd petitioner from the column of ""occupant"" in respect of this land and to enter the property against the name of the Maharashtra Government as ""occupant"". Thereupon the petition has been amended to challenge the order of 26-9-1986.

The order of 26-9-86 :

8. In short, under the order of 31st August, 1967 the name of the 3rd petitioner was deleted and the name of the State of Maharashtra was shown as ""occupant"" of this land. The order was reviewed after 17 years and in the year 1984 the position was reversed. Under the order of 25th August, 1984 the name of the original third petitioner was restored as the occupant of this land while the name of the State of Maharashtra was deleted. This order has been again reconsidered in the year 1986, and once again the position has been reversed.

9. In the present petition the orders of 1967 and 1984 are not under challenge. It is only the order of 26-9-1986 which has been challenged by the petitioners. Neither side has gone into any disputed questions of fact or made any submissions on the merits or demerits of the title of either side to the said land or the validity of the entries made in the revenue records on merit. I am therefore not called upon to decide whether the State of Maharashtra or the original 3rd petitioner is entitled to the said land or is the holder of the said land. Questions of title cannot normally be gone into in a writ petition. If, therefore, any disputes relating to title are to be resolved, the proper remedy would be the filing of a suit. Entries in the record of rights, it is well established, are not documents of title and they do not confer any title to the land concerned.

10. What is challenged before me by the petitioners is the order of 26-9-1986 which is passed u/s 257 of the Maharashtra Land Revenue Code, 1966. u/s 257 the State Government inter alia may call for and examine the record of any enquiry or the proceedings of any subordinate revenue or survey officer for the purposes of satisfying itself, as to the legality or propriety of any decision or order passed and as to the regularity of the proceedings. It is under this section

that the State Government has directed an enquiry as to the legality and propriety of the review order of 25th August, 1984.

11. The petitioners have challenged the exercise of powers u/s 257 of the Maharashtra Land Revenue Code 1966 on the ground that there is considerable delay in exercising this power u/s 257. It is submitted that although this section does not prescribe any time limit within which the power has to be exercised, the power must be exercised within a reasonable time. In the present case the power is exercised after a lapse of two years and one month. This delay, according to the petitioners is unreasonable delay and hence they submit that the State Government is not entitled to exercise powers u/s 257 and hence the order is bad.

12. In support of this contention, Mr. Rana, learned Counsel for the petitioners has cited a decision of the Supreme Court in case of *The State of Gujarat Vs. Patil Raghav Natha and Others*, . In that case the power of the Commissioner to revise an order, conferred on him by section 211 of the Bombay Land Revenue Code 1979 was examined by the Supreme Court. Section 211 of the Bombay Land Revenue Code is similar to section 257 of the Maharashtra Land Revenue Code 1966. The Supreme Court observed that although no period of limitation was prescribed u/s 211, this power must be exercised in 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. Since the order which had been revised in the case before the Supreme Court was an order u/s 65 of the Bombay Land Revenue Code, the Supreme Court examined the provisions of section 65 in this connection. It said that u/s 65 of the Bombay Land Revenue Code if the Collector does not inform the applicant of his decision on the application within a period of three months the permission applied for shall be deemed to have been granted. This section shows that a period of three months is considered ample for the Collector to make up his mind, and beyond that, the Legislature thinks that the matter is so urgent that permission shall be deemed to have been granted. In the context of revising an order u/s 65 by virtue of power u/s 211, the Supreme Court said, "Reading section 211 and section 65 together it seems to us that the Commissioner must exercise his revisional powers within a few months of the order of the Collector". The Supreme Court considered a period of more than a year as unreasonable in this context and it quashed the order of the Commissioner.

13. Mr. Rana has urged that in view of this decision exercise of powers in the present case u/s 257 after 2 years constitutes an unreasonable delay in exercising the power. The reasonableness of length of time, however, must be judged on the facts of each case and in the light of the nature of the order being reviewed. The facts of the present case are quite different from the facts before the Supreme Court. In the present case the original order of 1967 was sought to be reviewed u/s 258 of the Maharashtra Land Revenue Code after a lapse of 17 years. Mr. Rana was sought to justify this on the ground that the original 3rd

petitioner was not given a copy of the order of 1967. The entry in the enquiry register, however, shows that the order was served on the original 3rd respondent on 29-9-1967/30-10-1967. Be that as it may, when a review u/s 258 takes place after a lapse of 17 years, an examination of such a review order u/s 257 after a lapse of two years cannot be considered as so unreasonable as to amount to the order being without jurisdiction.

14. For explaining this delay of two years that the 1st respondent have alleged that they were not given any notice of hearing before passing of the order of 25-8-1984. It was therefore after some time that they became aware of this order. There is no material to show that a notice of hearing was in fact given to the Tahsildar concerned or to the Collector concerned, though undoubtedly the revenue authorities are an organ of the State Government. There is therefore some force in the explanation offered by the State Government for the delay. But in any case, in the circumstances set out earlier, a delay of two years in exercising powers u/s 257 in the present context cannot be considered as unreasonable, when the review order u/s 258 was passed after 17 years. The order is therefore passed by exercising jurisdiction validity.

15. It is next submitted by Mr. Rana not without some jurisdiction, that the order of 26th September 1986 is patently illegal and without jurisdiction because it proceeds on a wrong footing. He has pointed out that the entire reasoning in the last but one paragraph of this order is fallacious and based on a misunderstanding of both facts and law. Now, this paragraph deals with the exercise of powers u/s 258 of the Maharashtra Land Revenue Code. It concludes that powers u/s 258 was wrongly exercised in passing the order of 25-8-84. Hence the order of 25-8-84 must be set aside.

16. u/s 258 of the Land Revenue Code, the State Government and every revenue or survey officer may, either on his own motion or on the application of any party interested, review any order passed by himself or any of his predecessors-in-office and pass such orders in reference thereto as he thinks fit. Under the proviso to section 258(1) when any officer subordinate to a Collector or Settlement Officer, propose to review any order on a ground other than that of a clerical mistake, whether such order is passed by himself or his predecessor, he shall first obtain the sanction of the authority to whom he is immediately subordinate.

17. The Superintendent of Land records who has passed the order of 26th September, 1986 seems to have proceeded on an erroneous footing namely, that the order of 25-8-1984 was passed by the Sub-Divisional Officer when, in fact, it was passed by the District Inspector of Land Records. He also seems to be in error when he states that the 1984 order was not passed by a predecessor-in-office of the Sub-Divisional Officer, Bombay Suburban District. Therefore, there seems to be some confusion relating to facts and law in the mind of the Superintendent of Land Records who passed the order of 26-4-1986 as to the application of provisions of section 258.

18. Had the order of 25-8-84 been reviewed only on the ground that the impugned order of 25-8-84 did not comply with the provisions of section 258, Mr. Rana would undoubtedly have been right in contending that the order of 26-9-86 is misconceived and should be set aside: In the present case, however, apart from the ground of alleged non compliance with section 258, the order of 26-9-1986 has also been passed after examining the merits of the disputed entries on the basis of material disclosed from the records in the previous two enquiries. The earlier order of 25-8-1984 has been reviewed on the basis of the materials and facts as disclosed in the earlier two enquiries. The order 26-9-86 therefore does not set aside the earlier order of 25-8-84 only on a technicality. It is set aside on merit also. It cannot therefore be said that the entire order is bad in law because of the defective reasoning relating to the application of section 258. The challenge of the petitioners to the order of 26-9-86 on this ground must therefore be negated.

19. Mr. Shinde, learned Counsel for the 1st respondent has also ought to justify the order of 26-9-1956 and challenged the order of 25th August, 1984 on some additional grounds. He has alleged that proper sanction as required u/s 258 was not obtained by the District Inspector of Land Records before reviewing the order of 31st August, 1967. He has also challenged the validity of the order of 25th August 1964, on the ground of lack of notice of hearing to the 1st respondents. However, since the order of 25th August, 1984 is not under challenge before me I need not examine this aspect of the question. These submissions can be made more appropriately in the appeal which is pending from the order of 26-9-86.

20. I have not gone into the merits or otherwise of the entries in question. Both sides have proceeded on the basis that I should not examine this aspect,

21. Moreover the petitioners have also filed an appeal from the order of 26-9-86. In the appeal they can take up their contention relating to the wrong interpretation of section 258 of the Maharashtra Land Revenue Code in the impugned order, as also challenge the merits or otherwise of the revised entries. The appeal was filed on 20th January 1987 during the pendency of this petition. The 1st respondents are therefore directed to decide this appeal on merit and are directed not to reject the appeal on the ground of delay, if any in filing it.

Commencement certificate

22. The original contention in this petition relates to not granting of a commencement certificate to the petitioners. u/s 43 of the Maharashtra Regional and Town Planning Act, 1966 no person can carry out any development of land without permission in writing of the Planning Authority. u/s 45, the Planning Authority is required to pass an order in writing either granting permission unconditionally or conditionally, or refusing permission. Under sub-section (5) of section 45 if the Planning Authority does not communicate its decision whether to grant or refuse permission to the applicant within 60 days from the date of the receipt of his application such permission shall be deemed to have been granted

on the date immediately following the expiry of 60 days.

23. In the present case the Planning Authority which is respondent No. 2 has not passed an order granting permission conditionally or unconditionally. Nor has it refused permission expressly. It has directed the petitioners to obtain a "no objection" letter or certificate from the Revenue and Forest Department, Government of Maharashtra. Respondent No. 2 has informed the petitioners that an objection had been raised by the Revenue and Forest Department though the nature of the objection has not been communicated to the petitioners. They have directed the petitioners to satisfy this third party and get the objection withdrawn first. There is nothing in section 43, 44 or 45 which requires the petitioners to obtain such "no objection" certificate from another department of the Government. It is the Planning Authority which has to apply its mind to the application before it and decide whether to grant permission or not. It cannot act on the dictates of the other departments of the State Government or suspend decision so long as a third party objects to the application. The power conferred on the Planning Authority must be exercised by that authority and not by any other authority. It must decide for itself whether in the light of the objection raised, commencement certificate shall be issued or not. If any cases are required to be cited for this proposition, one may cite the decision in the case of Commissioner of Police, Bombay Vs. Gordhandas Bhanji, . At paragraphs 17 and 26 the Supreme Court has observed that the power which is vested in the Commissioner of Police to cancel or suspend any licence is a power which can be exercised only in his discretion and not at the behest of the State Government. There are similar observations in the case of The Purtabpore Co., Ltd. Vs. Cane Commissioner of Bihar and Others, where the Supreme Court held that the power exercised by the Cane Commissioner is a statutory power which he alone can exercise and while exercising that power he cannot abdicate his responsibility in favour of any one, not even in favour of the State Government or the Chief Minister.

24. In the present case the 2nd respondents by directing the petitioners to obtain a "no objection" certificate from the State Government seem to be acting in a similar manner. Instead of deciding the petitioners application themselves, the 2nd respondents desire a clearance from the State Government. This is contrary to law. Section 45 enjoins the 2nd respondents to decide the application. They cannot abdicate their responsibility by waiting for a clearance from the State Government. It is contended by Mr. Tidke learned advocate for the 2nd respondents that the 2nd respondents have, in effect, conveyed to the petitioners that there is a dispute between the petitioners and the State Government relating to title to the said land and hence, unless this dispute is resolved, they are declining to grant a commencement certificate. This is not what is stated by the 2nd respondents in their letters to the petitioners. There is nothing to show that the 2nd respondents have declined to grant the commencement certificate on the ground of any dispute relating to petitioner's title to the said land. They have merely asked the petitioner to get a clearance

from the State Government. The 2nd respondents are required therefore to deal with the petitioners application for commencement certificate in accordance with law.

25. It is submitted by Mr. Rana that the deeming provision of section 45 sub-section (5) should be brought into operation, and it should be held that the 2nd respondents have not communicated any decision to the petitioners within 60 days. Hence they are deemed to have granted permission to commence development work. In the present case, however, the 2nd respondents have clearly informed the petitioners that they do not propose to grant a commencement certificate unless the petitioners obtain a no objection certificate from the State of Maharashtra. This amounts to a conditional refusal. This direction may not be valid in law. But it cannot be said that the Planning Authority in such a situation, has not communicated any decision to the petitioners. The deeming provision of section 45 (5) cannot come into operation in the present case.

26. In the premises the decisions of the 2nd respondents as contained in letters dated 5th December, 1985 being Exhibit 1, 20th January, 1986, being Exhibit "AB" and 24th February, 1986 being Exhibit "AC" are set aside.

The 2nd respondent are directed to deal with the application of the petitioners for commencement certificate in accordance with law.

Rule is made absolute accordingly.

The 2nd respondents to pay to the petitioners costs of the petition.