

(2013) 09 BOM CK 0075

In the Bombay High Court

Case No : Writ Petition No. 9019 of 2011

Maniram Satyanarayan Chaudhari

APPELLANT

Vs

Estate Manager, Aurangabad

RESPONDENT

Date of Decision : 10-09-2013

Acts Referred:

Constitution of India, 1950 — Article 14

Maharashtra Housing And Area Development Act, 1976 — Section 66(1)(a)(iv), 66(2)

Citation : (2013) 6 ABR 777 : (2014) 1 ALLMR 340 : (2014) 1 BomCR 297

Hon'ble Judges : S.S. Shinde, J

Bench : Single Bench

Advocate : R.T. Nagargoje, for the Appellant; C.V. Thombre, Advocate h/f Mrs. Renuka Ghule, for the Respondent

Final Decision : Disposed Off

Judgement

S.S. Shinde, J.—Rule. Rule made returnable forthwith. Heard by consent of the parties finally. This writ petition takes exception to the judgment and order dated 23rd January, 2000 passed by the Competent Authority, Maharashtra Housing and Area Development Board, Aurangabad (hereinafter referred to as "the MHADA") in Case No. 44 of 1997 and the judgment and order dated 15th November, 2011 passed by the Appellate Officer under the Maharashtra Housing and Area Development Act, 1976 (hereinafter referred to as "the MHADA Act"), Aurangabad in Appeal No. 7 of 2000.

2. It is the case of the Petitioner that, the MHADA had allotted the tenement to the Petitioner from 19th November, 1988 and accordingly, the Petitioner had taken possession of the said tenement and since then, the Petitioner is residing in the said tenement.

It is the further case of the Petitioner that the Estate Manager had filed eviction proposal against the Petitioner u/s 66(1)(a)(iv) of the MHADA Act, before the Competent Authority of MHADA contending that the Petitioner had made addition and alteration in the tenement and made construction out of the said plot

boundary by making encroachment upon Board's land, without the previous permission of the Board and as such eviction proceeding be initiated against the Petitioner. Thereafter, show cause notice was issued to the Petitioner u/s 66(2) of the MHADA Act contending that the Petitioner had made encroachment outside the plot boundary on 13th October, 1997. The Petitioner filed say to the said notice and contended that the property belongs to the Society formed by the tenement holder and the Board has no authority to initiate proceeding for eviction and prayed to reject the eviction proceeding.

3. The Competent Authority of MHADA, Aurangabad passed ex-parte order thereby giving directions to the Petitioner to demolish the unauthorized construction.

4. Being aggrieved by the judgment and order dated 23rd January, 2000 passed by the Competent Authority of MHADA, the Petitioner filed Appeal No. 7 of 2000. However, the said appeal also came to be dismissed. The Appellate Authority not only dismissed the appeal, but the Board is directed to evict the Appellant from the premises allotted to him and also from the portion of the land, which he has encroached. The Board was directed to take action within 15 days from the date of disposal of the appeal. Hence, the present writ petition.

5. The learned counsel for the Petitioner submits that the judgments and orders impugned in this petition are passed without hearing the Petitioner. It is submitted that the Petitioner may be given an opportunity to appear before the Competent Authority and the Competent Authority may be directed to hear the Petitioner and thereafter, pass appropriate orders. It is submitted that though, it was brought to the notice of the Authorities that the civil suit is pending, the Authorities were not correct to hold that no evidence was brought by the Petitioner before it regarding the pendency of the civil suit. It is submitted that the Respondent had not led any evidence before the Authority to prove the alleged encroachment and no independent witness was examined to prove the encroachment. It is submitted that Appellate Authority had committed grave error in directing to evict the Petitioner from the premises allotted to him and further when the Competent Authority had directed only to demolish the alleged encroached structure and more so when the said order was not challenged by the Respondent. It is submitted that at the most the Appellate Authority could have passed the order of demolition of the alleged encroached unauthorized structure. However, the direction is given to evict the Petitioner from the premises allotted to the Petitioner. It is submitted that the Authorities are empowered to regularize the structure and they have exercised such power time to time and therefore, the prayer of the Petitioner for regularization of the unauthorized structure ought to have been considered by the Authorities. It is submitted that there are other tenement holders, who have made encroachment, however, no action has been taken against those persons. Therefore, learned counsel for the Petitioner submits that, the writ petition may be allowed.

6. The learned counsel for the Respondent invited my attention to the reasons

recorded by the Competent Authority and also the Appellate Officer and submits that, it is apparent that both the Authorities have held that there is encroachment and even details in respect of the encroached area have been given by the Competent Authority and therefore, this Court may not interfere in the concurrent finding of facts recorded by the Authorities below. It is submitted that the allottees cannot take liberty to make encroachment on the land belonging to MHADA. Therefore, relying upon the reasons recorded by the Competent Authority, which are confirmed by the Appellate Authority, the learned counsel for the Respondent submits that the petition deserves to be dismissed.

7. I have heard learned counsel for both the parties at length. With their able assistance, perused the entire material placed on record, including the reasons assigned by the Competent Authority and further by the Appellate Authority. The argument of the learned counsel for the Petitioner that other tenement holders have also encroached upon the land belongs to the MHADA and no action is taken against them and therefore, there is a discrimination. Such argument deserves to be rejected, at the threshold. Article 14 of the Constitution of India cannot be invoked so as to contend that some other tenements have illegally encroached and no action is taken against them and therefore, the illegal encroachment by the Petitioner on the land of MHADA should be regularized.

It appears that, there is encroachment by the Petitioner on the land belonging to MHADA as it is evident from the reasons recorded by the Competent Authority and also by the Appellate Authority. Such encroachments have been made way back and the Deputy Engineer measured the land and thereafter, on the basis of the Deputy Engineer's measurement dated 29th June, 1996, the eviction proposal u/s 66(1)(a)(iv) of the MHADA Act, was received from the Estate Manager, Aurangabad Board stating therein that the Petitioner has carried out material addition and alteration in the premises i.e. T. No. 605, 93 tenements, MIG, New Aurangabad. It is not necessary for this Court to reproduce the details since the order passed by the Competent Authority has referred all these details. It further appears that show cause notice dated 13th October, 1997 was given to the Petitioner. However, the Petitioner avoided to appear before the Competent Authority though number of chances were given to him and lastly the Competent Authority by its order dated 26th January, 2000 was pleased to direct the Petitioner to demolish unauthorized structure within 10 days from passing of the order, failing which the Reporting Officer shall demolish the same and report the compliance immediately.

8. Upon careful perusal of the judgment and order passed by the Appellate Authority in Appeal No. 7 of 2000, the Appellate Authority in paragraph No. 3 framed necessary points for consideration and recorded the reasons and held that the Appellant has made unauthorized construction as mentioned in the map. It is proved that the Appellant has made temporary compound with M.S. Gate and therefore, the Appellate Authority confirmed the order passed by the Competent Authority. The Appellate Authority has recorded the submissions of

the Appellant that he had made encroachment and also made construction as mentioned in the charge-sheet. The Appellant further pleaded that he is ready to pay the charges for regularization of the construction and for the allotment of encroached land made by him. The Appellate Authority found that the Appellant has committed breach of the conditions of the allotment by making additions and alteration, and encroached on the land, which was not allotted to him and in view of the factual position, the Appellate Authority recorded that the charges framed against the Appellants are proved and accordingly, the Appellate Authority confirmed the order passed by the Competent Authority. Upon careful perusal of the reasons recorded by the Competent Authority, which are confirmed by the Appellate Authority, it is abundantly clear that the Petitioner clearly admitted before the Appellate Authority that he has made encroachment and alterations and prayed for regularization of the said encroachment. Therefore, in the aforesaid background, this Court is not inclined to entertain this writ petition. If the Petitioner's prayer is entertained, the same may amount to adding premium on illegal and dishonest acts of the Petitioner who has encroached on MHADA's land and also made the alterations contrary to the Rules and Regulations. The extra-ordinary writ jurisdiction cannot be invoked so as to exercise the discretion in favour of the person, who has committed illegality and irregularity. Therefore, this Court is not inclined to entertain the prayer of the Petitioner's either to remand the matter back to the Competent Authority or to accept his prayer for regularization of the encroachment. However, it appears that in the appeal filed by the Petitioner, the Appellate Authority has directed to evict the Appellant from the premises allotted to him. The direction so far evicting him from the encroached portion is concerned, the said direction deserves to be confirmed. However, the direction to evict the Appellant from the premises allotted to him cannot be allowed to sustain for the simple reason that, in an appeal filed by the Petitioner, no disadvantageous order to his interest beyond the prayers and pleading in the appeal can be allowed. Therefore, this Court is of the opinion that the direction of the Appellate Court by the impugned judgment and order dated 15th November, 2011 to evict the Appellant from the premises allotted to him, deserves to be interfered with and the same is quashed and set aside. However, the rest of the impugned judgment and order dismissing the appeal and also directing to evict the Appellant from the portion of the land, which he has encroached stands confirmed.

However, if the Authorities feel it appropriate in accordance with the relevant provisions to initiate proceeding against the Petitioner to evict the Petitioner from the premises allotted to him for breach of Rules and Regulations, in that case, the Authorities would be free to initiate separate proceeding and merely because in this petition this Court has quashed and set aside the direction of the Appellate Authority to evict the Appellant from the premises allotted to him, is no impediment to initiate such action. It is merely because no disadvantageous order can be passed in an appeal filed by the Petitioner beyond the prayers and pleadings, this Court has set aside the direction of the Appellate Authority to

evict the Appellant from the premises allotted to him.

In light of the above, the writ petition is allowed to above extent. Rule is made absolute in the above terms. Writ Petition is disposed of. No order as to costs.