

(2010) 06 BOM CK 0034

In the Bombay High Court

Case No : Writ Petition No. 8672 of 2007

Mohamed Amin Bharmar since deceased through heirs and Others APPELLANT

Vs

Additional Collector and Competent Authority (ULC) and Others RESPONDENT

Date of Decision : 29-06-2010

Acts Referred:

Urban Land (Ceiling and Regulation) Act, 1976 — Section 10(3), 10(5), 11, 12, 13

Citation : (2011) 3 BomCR 783

Hon'ble Judges : Savant R.M., J;Majmudar P.B., J

Bench : Division Bench

Advocate : S.G. Karandikar, for the Appellant; P.S. Cardoza, A.G.P., for the Respondent

Final Decision : Allowed

Judgement

Majmudar P.B., J.—Rule. Learned AGP waives service of Rule on behalf of Respondents. With the consent of the parties, Rule is made returnable forthwith and heard.

2. By way of this petition, the Petitioners have challenged the order passed by the State Government dated 7th November, 2007 u/s 34 of the Urban Land (Ceiling & Regulation) Act, 1976 (hereinafter for brevity sake referred to as "the Act") by which the State Government set aside the appellate order passed by the Additional Commissioner, Konkan Division u/s 33 of the Act as also the order passed u/s 8(4) of the Act dated 23rd July, 2007. By passing the said order, the State Government also confirmed the original order passed by the Additional Collector and Competent Authority u/s 8(4) of the Act dated 13th May, 1982 and the consequent order passed under Sections 10(3) and 10(5) of the Act.

3. On the basis of the statement submitted by the Petitioner u/s 6 of the Act, the Additional Collector and Competent Authority came to the conclusion that the Petitioners are holding 817 sq. mtrs. of land as excess land and in view of the

said order the Competent Authority issued a notification u/s 10(3) of the Act stating that the surplus vacant land is required to be acquired. It is unfortunate that even though a notice for handing over possession was passed by the Competent Authority u/s 10(5) of the Act, it is an admitted fact that the physical possession of the land was never taken by the officers of the State Government for the reasons best known to them. Taking advantage of the said laxity on the part of the Officers, the Petitioners preferred an appeal before the Appellate Authority after about 24 years. The Additional Commissioner, Konkan Division, Mumbai, by his order dated 1st March, 2007 condoned the delay and remanded the matter to the Competent Authority for considering the matter de novo. The aforesaid order was taken into revision by the State Government u/s 34 of the Act. The State Government came to the conclusion that the appeal was not preferred within 30 days against the order of the Competent Authority and sufficient reasons were not given for condoning the delay in filing the appeal. The suo motu revisional proceedings were allowed by the State Government and the order of the Additional Collector and Competent Authority came to be confirmed. Against the aforesaid order, the present writ petition has been filed.

4. The learned Counsel for the Petitioners submits that the possession of the land all throughout remained with the Petitioners and in view of the repeal of the Act, the proceedings can now be said to have been abated and possession cannot be taken from the Petitioners. It is further submitted that it was not open for the State Government to take the proceedings in suo motu revision, as such revision is not competent against the appellate order. The learned AGP, on the other hand, submitted that since the appeal was entertained by the Appellate Authority after more than 24 years and that there was no sufficient and cogent reason for condoning the delay, the revisional authority has rightly exercised its jurisdiction. Of course, the learned AGP fairly stated that even though notifications/notices have been passed under Sections 10(3) and 10(5) of the Act, there is nothing to show that physical possession was taken away from the Petitioners.

5. We have heard the learned Counsel appearing for the Petitioners and the learned AGP. We have also gone through the orders passed by the Competent Authority, Appellate Authority as well as the revisional authority in order to appreciate as to whether the revision was competent. It would be necessary to refer to Section 34 of the said Act which reads thus:

34. Revision by State Government: The State Government may, on its own, 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.

Provided that no such order shall be made except for giving the person affected a reasonable opportunity of being heard in the matter.

Considering the said provision, it is clear that the revisional powers can be exercised where no appeal has been filed under Sections 12, 30 and 33 of the Act and in such case, in order to satisfy itself about the legality and propriety of the said order or as to the regularity of such procedure, the revisional powers can be exercised. In the present case, the appeal had been filed against the original order and, therefore, there is no scope for taking the appellate order into revision u/s 34 of the Act. Reading Section 34 of the Act it is clear that if no appeal is filed against the original order, then such order can be taken into revision by the State Government u/s 34 of the Act.

6. In the case of *Pune Municipal Corporation Vs. State of Maharashtra and Others*, the Supreme Court has observed as under:

25. But reading of the above provision makes it clear that revision is not an additional remedy over and above remedy of appeal u/s 33 of the Act. Section 34 of the Act authorises the State Government to exercise revisional jurisdiction in those cases in which "no appeal has been preferred". Thus, the remedy of revision is alternative to appeal and not additional or supplementary.

In view of the above and on reading of Section 34 of the Act, it is clear that the revisional power can be exercised in case no appeal is filed. There is no further revisional powers available with the State Government to take even the appellate order into revision. Considering the aforesaid aspect, in our view, even though reasons have been given by the revisional authority in passing the impugned order, such revision was not maintainable and, therefore, the order passed by the State Government in revision is required to be set aside.

7. Since it is not in dispute that all throughout the possession of the land remained with the Petitioners with the blessings of the Officers of the State Government, in view of the repealed Act, now further proceedings under the Act have abated. Reference in this connection is required to be made to Sections 3 and 4 of the repealed Act. The same reads thus:

3.(1) The repeal of the principal Act shall not affect:

(a) the vesting of any vacant land under Sub-section (3) of Section 10, possession of which has been taken over by the State Government or any person duly authorized by the State Government in this behalf or the Competent Authority;

(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;

(c) any payment made to the State Government as a condition for granting exemption under Sub-section (2) of Section 20.

(2) Where

(a) any land is deemed to have vested in the State Government under Sub-

section (3) of Section 10 of the principal Act but possession of which has not been taken over by the State Government or any person duly authorized by the State Government in this behalf or by the Competent Authority; and

(b) any amount has been paid by the State Government with respect to such land, then, such land shall not be restored unless the amount paid, if any, has been refunded to the State Government.

4. 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 nay Court, Tribunal or other authority shall abate.

Provided that this section shall not apply to the proceedings relating to Sections 11, 12, 13 an 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 authorized by the State Government in this behalf or by the Competent Authority.

8. It was pointed out that even otherwise when the State Government exercised revisional powers, order of remand passed by the Appellate Authority was already implemented by the Competent Authority and fresh order was passed declaring certain land as excess land and that order was also taken into revision by the State Government.

9. Considering the aforesaid aspect, in our view, since the revisional order is not sustainable as the revision was not competent u/s 34 of the Act against the appellate order, the petition is required to be allowed and is accordingly allowed by setting aside the impugned order. Rule is accordingly made absolute.

10. Before parting with the order, we would like to draw the attention of the State Government as to how the concerned officers have obliged the Petitioners in retaining the possession of the land for over 24 years inspite of the notice issued u/s 10(5) of the Act. Similarly, the Appellate Authority exercised the powers after 24 years which order was taken into revision by the State Government. It is for the State Government to take appropriate proceedings as deemed fit against such erring officers if they are in service.