
(2013) 05 BOM CK 0045

In the Bombay High Court

Case No : Notice of Motion No. 4376 of 2009 in Suit No. 2276 of 2009

M/s. Om Enterprises

APPELLANT

Vs

The Collector (ULC) and Others

RESPONDENT

Date of Decision : 08-05-2013

Acts Referred:

Urban Land (Ceiling and Regulation) Act, 1976 — Section 10, 10(1), 10(3), 10(5), 10(6)

Citation : (2013) 4 BomCR 731

Hon'ble Judges : Roshan Dalvi, J

Bench : Single Bench

Advocate : D.H. Mehta assisted with Mr. Aditya Shiralkar, Mr. Sushant Chavan, Mr. Rahul Kedar instructed by Shiralkar and Co, for the Appellant; Uma Palsule-Desai, AGP for Defendant Nos. 1 to 4 and Dr. Sainen Ghosh, Defendant No. 5 in person, for the Respondent

Judgement

Roshan Dalvi, J.—This Notice of Motion is taken out by defendant No. 5 society for the discharging/setting aside the injunction order dated 6th November, 2009 granted in favour of the plaintiff in Notice of Motion No. 3180 of 2009 in the above Suit, restraining defendant Nos. 1 to 4 from allotting to defendant No. 5 society the suit land and for discharging and setting aside the said order at least to the extent of the interest of defendant No. 5 society. The suit plot of land bear Survey No. 25 Hissa No. 2 CTS No. 1250 and Survey No. 25 Hissa No. 3 CTS No. 1251 in Kanjur village. The plaintiff sued for the declaration that it was the owner of the said land and the defendants had no right, title and interest thereto and for injunction restraining the defendants from disturbing the plaintiff's possession and declaring the notification issued under Sections 10(1) and 10(3) of the Urban Land (Ceiling and Regulation) Act, 1976 (the ULC Act) illegal and for incidental reliefs relating to the panchnama and the possession receipt executed and taken thereunder and the allotment made thereunder.

2. The Plaintiff's initial Notice of Motion was for injunction against the dispossession of the plaintiff against putting defendant No. 5 society in

possession. The plaintiff obtained an order of this Court in that Notice of Motion on 6th November, 2009 that the actions and steps that defendant Nos. 1 to 4 would take in respect of the suit land pending the suit would be subject to further orders and directions of the Court in this Suit. The order dated 6th November, 2009 does not grant an absolute injunction to the plaintiff as prayed for by the plaintiff in Notice of Motion No. 3180 of 2009 taken out in this suit.

The order dated 6th November, 2009 does not grant either of the injunctions prayed for.

3. The order considers the declaration sought by the plaintiff and the controversy in the suit relating to the subsisting owner's right. It refers to the affidavit-in-reply filed by the ULC authorities defendant Nos. 1 to 4. It also shows the steps taken by defendant No. 5 in respect of the suit land. It makes an observation that the land belongs to the Government and it can be allotted by the Government in accordance with law. This allotment was to be made to defendant No. 5. The order further refers to the fact that the society has deposited Rs. 62.65 lacs but possession is not given to defendant No. 5 society and that the society is operating through its Chief Promoter Dr. Sailen Ghosh. It shows the service sought to be effected upon the Chief Promoter of defendant No. 5 who could not be located. The suit land was not allotted to the society but the land was observed to be in possession of the Collector, MSD. Hence the order directs that the interest of justice would be sub served if the land proposed to be allotted to defendant No. 5 is not allotted to defendant No. 5 society. The other land which was not proposed to be allotted to defendant No. 5 society was in the possession of defendant Nos. 1 to 4 and it was directed that all the actions and steps that defendant Nos. 1 to 4 would take in relation to the suit property would be subject to further orders and directions of the Court in the suit.

4. The plaintiff had sought to serve the Notice of Motion upon the Chief Promoter of the society. His address had changed. Consequently the Notice of Motion could not be served and hence defendant No. 5 was observed not to have been in existence and could not be located. Thereafter defendant No. 5 took out this Notice of Motion. Defendant No. 5 is now represented. Defendant No. 5 is the main contesting defendant. All the parties are now required to be heard in the Notice of Motion taken out by defendant No. 5 at least to the extent if affects its interest.

5. The suit land is open land to which the ULC Act applied. The Plaintiff claims to have been transferred the said open land.

6. The case of the plaintiff is, therefore, required to be first seen. It is the plaintiff's case that the original owner of the suit land was one Girijashankar S. Pandey who executed an unregistered agreement dated 20.03.1980 with the Plaintiff. The Plaintiff was transferred the suit property under a later registered conveyance from the predecessor-in-title of Girijashankar S. Pandey himself dated 27.05.1998 Exhibit "J" to the plaint.

7. The plaintiff claims to have been put in possession pursuant to the said documents. The initial transaction in favour of the plaintiff is itself dated 1980, 4 years after the ULC Act came into force. The land is open land to which the Act applied. Hence upon the coming into force of the Act it had to be seen whether and how the then owner Girijashankar S. Pandey dealt with the suit land and how he or his predecessor-in-title could have given possession or title to the plaintiff in 1980 under unregistered agreement for sale or in 1998 under the registered conveyance.

8. What has transpired under the ULC Act has been dealt in the affidavit of defendant No. 2. Girijashankar Pandey filed his returns u/s 6 of the ULC Act in respect of the total land admeasuring 23080 sq. mtrs. showing that he had purchased that land from Mohd. Hafiz and others. The returns filed in July, 1976 inter alia shows the suit land. Consequent thereupon notice u/s 8 (3) of the ULC Act came to be issued upon Girijashankar Pandey referring to the returns filed by him dated 23.07.1976 and including the draft statement showing the vacant land and calling for his objections.

9. By his attorney's letter dated 20th July, 1976 Girijashankar Pandey claimed that he had made an application in the prescribed format u/s 21(1) of the ULC Act for construction of dwelling units for weaker sections and was awaiting the publication of the scheme. He, therefore, contended that no part of his land could be declared vacant land.

10. An order came to be passed in October, 1977 u/s 8(4) of the ULC Act taking into account the draft statement u/s 8(3) and the reply thereto as also the declaration u/s 21 made by him. His contention was rejected as untenable and his land was declared surplus.

11. Notice u/s 9 of the ULC Act came to be issued upon him on 30.03.2000 and final statement u/s 9 shows inter alia the suit land.

12. Thereafter notifications u/s 10(1) of the Act calling upon others who had vested interest in the land to file documentary evidence within 30 days from the publication of that notification came to be issued in respect of the suit land on 30.03.2000.

13. A notification u/s 10(3) of the Act further came to be issued in March, 2005 notifying that from 22.08.2006 the suit land would vest in the Government.

14. Thereafter notification u/s 10(5) came to be issued that the land had vested in the Government and that possession of the land would be taken by the person authorized in that behalf shown in the notification being the City Civil Officer, Kanjur, Kurla on 20.11.2006.

15. The Government accordingly took possession of the suit land and issued a possession receipt Exhibit 12, affidavit-in-reply with regard to the surplus land of Girijashankar Pandey which is the suit land on 20.11.2006 at 12.30 p.m. ex-parte in the presence of local panchas. The possession receipt was issued as an

acknowledgment of having taken possession. Panchnama was drawn up to that effect.

16. The office of the City Survey Officer addressed a letter to the Additional Collector and Competent Authority on 04.01.2007 regarding the visit dated 20.11.2006 at 12.30 p.m. and stating that the holder of the land or the representative was not present at site and hence ex parte possession of the property was taken under panchnama. The possession receipt, the panchnama and the copy of the property register card were submitted.

17. The Government has accordingly taken possession of the suit land on 20.11.2006.

18. The plaintiff claims that the possession has not been taken. The plaintiff claims that it was in possession of the suit land and it could not have been taken from the plaintiff. It is for the plaintiff to show how the plaintiff was in actual possession of the suit land at that time. Upon that being shown the plaintiff would be entitled to claim as the representative of the holder Girijashankar Pandey shown in the records of the ULC authorities under the ULC Act.

19. The plaintiff has not shown how it was in actual possession.

20. If possession of the plaintiff is not shown, the plaintiff cannot dispute taking over possession from the holder of the land, Girijashankar Pandey because admittedly Girijashankar Pandey was not in possession. He having agreed to sell the land to the plaintiff since 1980 and the conveyance having been executed in favour of the plaintiff since 1998.

21. It may be mentioned that the suit land was declared surplus. That declaration has never been challenged. That order has never been set aside. Once the land was declared surplus under the letter dated 19.09.1977 issued in October, 1977, Girijashankar Pandey could not have transferred the land to the plaintiff. Any transfer thereafter would be void u/s 5 (3) read with Section 27 (1) of the ULC Act. The very initial agreement is after that date. It is, therefore, void under the ULC Act as against the ULC Authorities. Justifiably, therefore, the plaintiff could not claim possession or agitate as an owner. The plaintiff has nevertheless claimed declaration that the plaintiff is the owner of the suit land. Under the document of the title as per the Plaintiff's own case in the plaint it would become the owner only under the conveyance dated 1998 which is well after the land was declared surplus.

22. It is contended on behalf of the plaintiff that the possession of the land was not taken and hence it continued with the plaintiff. Even if the possession is not taken it would continue with the original holder. It cannot continue with the plaintiff because the original holder could not have parted with the possession to the plaintiff as he could not transfer the property to the plaintiff in any manner whatsoever after the land was declared surplus under the ULC Act. The notice, if any, had, therefore, to be given to the original holder. It was he who was to be

present on the suit land when the possession was sought to be taken over by the Government consequent upon the declaration that the suit land was vacant. Upon the plaintiff's own case it can be seen that the original holder, Girijashankar Pandey could not have been in possession and could not have resisted giving possession and could not have remained present at the time of taking over possession of the suit land. The possession of the suit land could, therefore, be taken over only ex parte under panchnama as was done in this case.

23. The plaintiff had neither the right nor the authority to claim possession or to be in possession. The plaintiff had no right or authority to claim ownership also under the ULC Act. The agreement with the plaintiff and the conveyance in favour of the plaintiff is non est and a nullity under the Act. The plaintiff could not have been in possession and could not be the holder on 20.11.2006 when possession of the land was taken over.

24. That done, the process under the ULC Act was completed on 20.11.2006.

25. The ULC Act was repealed on 18.03.1999. The Repeal Act of 1999 came into force on 01.12.2007 in the State of Maharashtra. However the repeal of the Act would not affect the suit property at all. The repeal of the Act does not set aside all the acts which have taken place and which were completed by the process set out under the legislation prior to the repeal. It would only affect those lands which were not declared vacant and the possession of which were not taken over prior to the date of repeal. Section 3(1) of the Repeal Act, 1999 specifically saves the vesting of vacant land u/s 10 (3) of the ULC Act, 1976, the possession of which land had been taken over u/s 10 (6) of the said Act by the State Government or the Competent Authority prior to repeal. In this case the land vested in the State Government on 22.08.2006 and possession was taken on 20.1.2006.

26. The plaintiff has relied upon the various judgments under which the lands in those cases having been declared surplus land. Possession of those lands were not taken over prior to the repeal of the Act. In those cases the lands were saved by the repeal Act and remained with the holder of the land.

27. In the case of Voltas Ltd. and Another Vs. Additional Collector and Competent Authority and Others, and Vithabai Bama Bhandari Indian Inhabitant Vs. State of Maharashtra and Deputy Collector and Competent Authority Ulhasnagar Urban Agglomeration, possession of the land was not taken over. In the case of Abdul Aziz Alisaheb Bharmar and Others through the Power of Attorney holder Shri Abdul Aziz Ali Saheb Bharmar Vs. The State of Maharashtra and Additional Collector and Competent Authority under U.L.C. Act, part of the land was not even declared surplus. No action was taken under Sections 10 as well as 20 of the ULC Act and a part of the land was not even covered under the ULC order. All those lands were saved. The case with regard to the suit land claimed by the plaintiff is wholly different. The suit land was not saved from the provisions of the

ULC Act during the time the Act was in force.

28. We would have to see the concept of "vesting" u/s 10(3) of the ULC Act. In the case of Omprakash Verma Vs. State of Andhra Pradesh 2010 STPL (Web) 833 SC drawing from earlier decision this concept is explained thus:

Once vesting takes place u/s 10(3) of the Ceiling Act, the State has absolute title and ownership over it. The owner has no further say in respect of the land that has vested in the State. This position has been explained by us in Smt. Sulochana Chandrakant Galande Vs. Pune Municipal Transport and Others, as under:

9. The meaning of the word "vesting" has been considered by this court time and again. In The Fruit and Vegetable Merchants Union Vs. Delhi Improvement Trust, , this Court held that the meaning of word "vesting" varies as per the context of the Statute in which the property vests. While considering the case under Sections 16 and 17 of the Act 1894, the Court held as under:the property acquired becomes the property of government without any condition or limitations either as to title or possession. The legislature has made it clear that vesting of the property is not for any limited purpose or limited duration.

Hence it has been held in that case that the land once vested cannot be divested. (See. Awadh Bihari Yadav and Others Vs. State of Bihar and Others,).

29. Further, there would be no rider on the State Government to change the user of the land once vested in the Government. (See. Gulam Mustafa and Others Vs. The State of Maharashtra and Others,). The claimants would not be entitled to the possession of the land even if the land was not used by the Government. The claimants would not be entitled to restoration of the possession of the land even if the land was used by the Government not for the original public purpose but for any other purpose. (See. C. Padma and Others Vs. Dy. Secretary to the Govt. of T.N. and Others,).

The legal position of the transferee of the claimant can be no better. The Court, therefore, laid down the summarized position of such vested land in para 16 thus:

16. In view of the above, the law can be summarised that once the land is acquired, it vests in the State free from all encumbrances. It is not the concern of the land owner how his land is used and whether the land is being used for the purpose for which it was acquired or for any other purpose. He becomes persona non grata once the land vests in the State. He has a right to get compensation only for the same. The person interested cannot claim the right of restoration of land on any ground, whatsoever.

30. In this case the Government has sought to allot the suit land to defendant No. 5 society. Defendant No. 5 society was earlier allotted some other land. Defendant No. 5 society is a society of employees of BARC. The earlier allotment did not materialise. Hence the Government has allotted the suit land to defendant No. 5. The allotment is perfectly valid as held in the case of Gulam

Mustafa (supra). As the land had vested in the Government since 2006, the land could be allotted to defendant No. 5 society.

31. It is, therefore, that defendant No. 5 has taken out this Notice of Motion for setting aside the order dated 6th November, 2009 restraining defendant Nos. 1 to 4 from allotting the suit land to defendant No. 5.

32. Defendant Nos. 1 to 4 claimed that they are in possession. Defendant Nos. 1 to 4 do not hold the land for themselves. The surplus vacant land has been taken by defendant Nos. 1 to 4 for public purpose. It is for them to decide what public purpose they desire to use the land for and also to change the purpose of user. They have decided to allot it to defendant No. 5. The Government cannot be divested of the land. There cannot be any rider on the power of the Government to use the land. The original holder, who is the plaintiff's predecessor-in-title was only entitled to compensation. Consequently the plaintiff to whom the land could not be transferred by the holder as per the mandate contained in Section 5 (3) read with Section 27(1) of the ULC Act, 1976 can never have any right upon the suit land and can never claim restoration of the land any ground whatsoever.

33. When it is prima facie seen is that the plaintiff has no right in respect of the suit land, the plaintiff cannot injunct defendant Nos. 1 to 4 to allot it to defendant No. 5.

34. If the possession of the land was not taken in 2006, the plaintiff would have been entitled to the suit land upon the repeal of the ULC Act. It is not that the transactions which were completed prior to the repeal of the Act coming into force can be set at naught by the repeal. It is only those transactions which were not completed and in which possession remained with the holder that the land could not have vested in the Government. Hence only such lands, under the aforesaid judgments, would be entitlement of the holder or the transferee upon repeal of this ULC Act. The suit land is not one such. The entire process was completed before the repeal of the Act. The transaction in favour of the plaintiff was void u/s 5 (3) read with Section 27 (1) of the ULC Act.

35. The plaintiff, therefore, cannot claim any injunction pending the suit. Hence the order dated 6th November, 2009 restraining defendant Nos. 1 to 4 from allotting any part of the suit land to defendant No. 5 is set aside to the extent it affects the interest of defendant No. 5.

36. Notice of Motion is disposed of accordingly. This order is stayed till 14.06.2013.