

(2001) 12 BOM CK 0038

In the Bombay High Court

Case No : Writ Petition No's. 390 and 442 of 1988

Pushpa Vashdev Lokwani and Others

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 19-12-2001

Acts Referred:

Displaced Persons (Compensation and Rehabilitation) Act, 1954 — Section 33

Citation : (2003) 1 MhLj 141

Hon'ble Judges : J.G. Chitre, J

Bench : Single Bench

Advocate : S.P. Kanuga, for the Appellant; V.P. Malvankar, A.G.P. for Respondent Nos. 1 to 3, for the Respondent

Final Decision : Allowed

Judgement

J.G. Chitre, J.—These two petitions are being decided by one common judgment and order as the petitions are revolving around the same sort of grievance echoed by the petitioners by assailing the same sort of judgment and order passed by the similar authority. In the matter of Writ Petition No. 390 of 1988 petitioners Pushpa Vashdev Lokwani and Nenumal Tejumal Pabul got a piece of land allotted to them in view of the scheme chalked out by the Government and its officers as well as the members of migrants from Pakistan in the year 1947 and on 22-2-1968. After elaborate discussion between the Ministers, Secretary and other officers on one side and leaders of such migrants from Pakistan the scheme was chalked out. The open plots were given to migrants who had lost the property in Pakistan as an attempt to compensate them. They were given full ownership of those plots and were authorised to sell them to other persons on getting consideration. The learned Counsel appearing for the petitioners submitted that there was a dispute on the point whether those persons were entitled for some reasonable surrounding lands for ingress and outgress to their plots. He submitted that the Government has also allowed them to have ownership over the surrounding land for the purpose of ingress and outgress

from said plots. Said extra land was also part and parcel of the original plots granted to them.

2. While dealing with said dispute the competent authorities were required to deal with said matters. In the matter of Departmental Reference of 86 in the case of Writ Petition No. 390 of 1988, Secretary to Government (Relief and Rehabilitation), passed an order on 15th July 1987. He ordered that "I have no hesitation whatsoever in holding that conveyance deed issued in favour of Smt. Sikiladibai Vashiyatimal by Pushpa Lokwani and Smt. Jankibai Nandlal Lokwani was illegal as the conveyance deed issued in favour of Pushpa and Jankibai Lokwani by Managing Officer and Assistant Administrator, Ulhasnagar Township vide his order No. ADM/Plot/C-2/WS/6/188 dated-29-5-1985 was treated to be cancelled. Action was directed to be taken to dispose of the land in accordance with the law within the period of three months from the date of receipt-of the order". In the matter of Writ Petition No. 442 of 1988 the order passed in Departmental Reference No. 34 of 1986 by Secretary (Relief and Rehabilitation) has been assailed which indicates "The present authority is vested with powers of Central Government. In exercise of this power, the conveyance deed issued in favour of the present respondent Shri Nenumal Tejumaal Pabul by the Assistant Administrator and Managing Officer, Ulhasnagar Township by his order No. ADM/Plot/C/2/WS/4932, dated 31-5-1985 for an area of 1130-1/9 sq. yards is hereby set aside."

3. The petitioners in both the petitions contended that the said orders are bad in law and contrary to the view taken by the Division Bench of this Court in two judgments.

(1) in the matter of Ramchand Gobindram Gurnani, since deceased through his heirs and legal representatives Vs. The State of Maharashtra and Others, , and in the matter of Ramesh Tulsidas Bhatia Vs. The Principal Secretary and Others, . In the matter of Ramchandra Gobindram Gurnani's case the Division Bench of this Court held that,

"it is settled law that once the property including open land vests in the allottee, it cannot be set aside u/s 33 of the Act. The fresh enquiry ordered by the Secretary is wholly unnecessary. Petitioner being in possession prior to 1965, he is entitled to regularisation"

In the matter of Ramesh Tulsidar Bhatia's case the Division Bench of this Court held that,

"Provisions of Section 33 of Displaced Persons (Compensation and Rehabilitation) Act, 1954 does not require much of elucidation as it is couched in simple language. All it is done is to empower the Central Government in the form of a residuary power. It empowers the Central Government at any time to call for any record and proceedings under the Act and passed any order in relation thereto as is required to be passed. It is obvious from the said provisions that it is applicable to a proceeding under the Act and that too it is residuary power given

to the Central Government. Meaning thereby that if there is no specific provisions anywhere in the Act to meet with certain situation, the provisions of Section 33 are to be resorted to. The underlying principle however, being that the same would relate only to any proceeding under the said Act. As far as the conveyance in favour of the petitioner is concerned, it cannot be equated with any proceedings. Moreover, once vesting of the property take place in favour of a person by way of conveyances, the same cannot be set aside in the manner in which it is sought to be done. It is settled law that the conveyance vests the person with title over the said land and the same can be displaced only by following due process of law and not by coming to a conclusion that it was in violation of a particular provisions as is sought to be done in the present case". It further held that,

"Senior advocate for the petitioner is right in relying on the decision of a Division Bench reported in Bhoorsingh Palasingh Vs. Kesumal Aratmal and Others, wherein the Division bench had an occasion to deal with the provisions of Section 24 of the said Act which provides that the Chief Settlement Commissioner may at any time call for the record of any proceeding under the act in which a Settlement Officer, an Assistant Settlement Officer etc. has passed an order for the purpose of satisfying himself as to the legality or propriety of any such order and may pass such order in relation thereto as he thinks fit. Court is aware of the fact that the provisions in question which is involved in the case is Section 33 and not Section 24. Both the provisions are aimed at meeting with similar situation. Even assuming that power u/s 33 of the Act was correctly invoked, Senior Advocate for the petitioner is right in his submissions that the impugned order was passed without giving any opportunity much less reasonable opportunity of being heard. Admittedly no show cause notice was issued. Admittedly again no hearing was given. Affording of reasonable opportunity of being heard is sine qua non to passing of valid order. Cancellation of conveyance undoubtedly resulted in civil consequence. Least the authority could have done was to issue a show cause notice and to have heard the petitioner. Requirement of affording of reasonable opportunity of being heard should be read into Section 33 of the Act. In view of the matter as the impugned order was passed in breach of principles of natural justice, the same is a nullity".

4. In the matter of Ramchandra Gobindram Gurnani's case pursuant to the decision taken by the Screening Committee a conveyance deed was duly executed in favour of the petitioner for an area admeasuring 2452, 2/9 sq. yards on payment of Rs. 58,913,25 ps. After the conveyance was executed, the petitioner made an application to the Ulhasnagar Township, for granting a building permission. It seems that the Administrator of Ulhasnagar Township, while considering the case of the petitioner, expressed some doubt about the allotment of the open piece of land in favour of the petitioner. The Administrator felt that the Screening Committee had no jurisdiction to regularise open space of such huge size. Besides that the Administrator also felt whether such area can be granted more than the ceiling limit. In view of this, the Administrator made a

report to the State Government. The report was placed before the Principal Secretary, Revenue Appeals and Revisions, who was pleased to set aside the conveyance granted to the petitioner by the impugned order. It is now well settled by the decision of this Court in Writ Petition No. 5091 of 1987, dated 19th September, 1996 and Ramesh Tulsidas Bhatia Vs. The Principal Secretary and Others, that once vesting of the property takes place in favour of a person by way of a conveyance, it is not open for the State Government to set aside the conveyance by resorting to Section 33 of the Act. It was held by the Division Bench that Section 33 of the Act has no application after vesting of the property takes place in favour of a person by way of conveyance. In that connection this Court may also refer to an earlier decision of the Division Bench in Bhoorsingh Palasingh Vs. Kesumal Aratmal and Others, wherein the Division Bench had construed the provisions of Section 24 and came to the conclusion that after the conveyance, the Chief Settlement Commissioner cannot exercise power u/s 24. Even otherwise, Court is of the opinion that the Secretary was not right in setting aside the conveyance. It seems that the Secretary erroneously assumed that the Screening Committee had no jurisdiction to convey open area but this point is now concluded by an unreported judgment of the Division Bench of this Court wherein it has been held that the advantage of regularisation of unauthorised occupation is equally applicable to open spaces. But that apart, Court finds that the fresh enquiry ordered by the Secretary is wholly unnecessary. The survey report as well as the minutes of the Screening Committee meeting shows that the petitioner was in possession of the plot prior to 1965 and thus he was entitled to regularization of his occupation. It is an admitted position that the lands as well as the structures were encroached upon by the refugees and the very purpose of establishing the Screening Committee was to regularise such unauthorized occupation. In that view of the matter, the direction by the Secretary to find out the basis on which the review opponent i.e. the petitioner in the present case claims the ownership of the land is totally misdirected."

5. In these two matters, the competent authority by competent order allotted the plots to these petitioners. Shri Kanuga has rightly submitted that as a matter of necessity, the surrounding land has to be allotted to the allottees-petitioners in these two Writ Petitions because otherwise they would not be able to even make entry in the allotted plots. Therefore, as a natural corollary of the intention of the allotment for rehabilitation, the surrounding land stands lawfully, properly, legally allotted to the allottees of these plots. The said plots have been allotted to these allottees by following due process of law. Therefore, there was nothing for the concerned Secretary to probe into it and to treat it as illegal and to pass the orders which are assailed by these two writ petitions. Section 33 of Displaced Persons (Compensation and Rehabilitation) Act 1954 (hereinafter referred to as Act for convenience) empowers the Central Government to call for at any time the record of any proceedings. This Act empowers the Central Government to pass such order in relation thereto as in its opinion the circumstances of the case required and as it is not inconsistent with any of the provisions contained in this

Act or the rules made therein. But that does not mean that the orders which have been passed by following due process of law by the Competent Authorities should be impeached in the absence of reasonable grounds justifying such action. In these cases the decision was taken by Screening Committee. In the matter of Writ Petition No. 442/1988 the Secretary to Government of Maharashtra, Revenue and Forest Department as a delegatee of the powers of Central Government had passed the order which has been assailed by the said writ petition as without any reasonable base. In Writ Petition No. 390/1988 the Secretary of the same department has treated the said land as an encroachment in the similar fashion. Thus, in view of the facts and circumstances of this matter, as indicated above and in view of the judgments of this Court cited above, this Court comes to the conclusion that both the orders deserve to be set aside and deserve to be corrected. Thus, these two writ petitions are allowed.

A Writ of Certiorari stands issued in their favour by setting aside and correcting the judgments and orders which are being assailed by these Writ Petitions.

6. Petitions stand allowed with costs. Rule made absolute in terms of prayer (a) in both the petitions.