

**(1996) 12 BOM CK 0027**

**In the Bombay High Court**

**Case No : Writ Petition No. 3016 of 1989**

Ramchand Gobindram Gurnani, since deceased through his  
heirs and legal representatives

**APPELLANT**

**Vs**

The State of Maharashtra and Others

**RESPONDENT**

**Date of Decision : 13-12-1996**

**Acts Referred:**

Displaced Persons (Compensation and Rehabilitation) Act, 1954 — Section 24, 33

**Citation : (1997) 3 BomCR 333**

**Hon'ble Judges : A.S. Venkatachala Moorthy, J;A.P. Shah, J**

**Bench : Division Bench**

**Advocate : Nari H. Gursahani, S.H. Gursahani, Ahmed A. Irani and Anandrao P. Pashte, for the Appellant; V.V. D'gama, A.G.P. for respondent Nos. 1 to 3, for the Respondent**

**Final Decision : Allowed**

## **Judgement**

A.P. Shah, J.—By the present petition which is filed under Article 226 of the Constitution, the petitioner is challenging the validity and legality of the order dated 28th February, 1989 passed by the Principal Secretary, Revenue Appeals & Revisions, Government of Maharashtra, cancelling the conveyance dated 20th May, 1985, issued in favour of the petitioner and remitting the case to the Collector of Thane for holding a fresh inquiry.

2. Briefly stated, the facts giving rise to the present petition are as follows :

The petitioner is a displaced person within the meaning of the term defined in the Displaced Persons (Compensation & Rehabilitation) Act, 1954 ("Act" for short). The petitioner and his family are the victims of partition. They had to flee the area now known as Pakistan and were faced with the problem of settling down. Many displaced persons were sent to this State for rehabilitation. There were number of transit camps near Kalyan which were used previously for prisoners of war. This area was located near Thane and was named as Ulhasnagar. The lands and barracks forming part in the said area were put into

compensation pool and were to be disposed in the manner laid down in the rules and notifications and policy decisions taken by the Central Government. As the barracks were hardly sufficient to such large number of refugees, some of them encroached upon the adjoining lands to the barracks allotted to them. In order to solve the problems of the refugees, the Central Government constituted a high power committee in 1965 and then again in 1968. The high power committee held meetings with the leaders of the displaced persons at Bombay and Ulhasnagar. The minutes of the meetings were recorded. It was decided that the displaced persons who had encroached upon the road side plots for the shops would be given those plot and those who had encroached upon open plots, the encroached area would be transferred to such displaced persons on payment of price fixed by the Government. It was further decided that those displaced persons who had occupied the plots would be granted ownership rights at particular rates if they were not in possession of other plot at other places and at higher rate if in possession of another plot elsewhere. It was also decided that all the encroachments made on the Government lands prior to 11th May, 1965 would be surveyed by the special cell and occupations would be regularised and the lands would be transferred to the displaced persons on the reserved price. Pursuant to the decision taken by the Central Government, a survey committee was appointed and that survey committee carried out survey of all unauthorised occupations made in Ulhasnagar. After the receipt of the survey report, the Central Government appointed a screening committee to consider such occupations and passed resolutions of regularising the encroachments in Ulhasnagar township. The procedure adopted at that time was that the screening committee would consider each sheet and consider the occupations of the displaced persons and pass minutes whether they propose to regularise or not. Such minutes then would be put up before the Chairman who would approve the same. After the minutes were approved by the Chairman, it would come up for confirmation before the screening committee at the next meeting and in that meeting the minutes would be confirmed. After the said minutes were confirmed, the matter would be sent to the managing officer for issuing allotment orders. By following this process, a large number of occupations in Ulhasnagar were regularised by the screening committee and the displaced persons who were occupying the lands, were granted conveyance deeds.

3. In or about 1971, the Central Government decided to transfer the remaining work of completing the rehabilitation of the displaced persons to the State Government. In view of the transfer of the power to the State Government, a fear was expressed by some of the displaced persons that the commitments made by the Central Government will not be honoured by the State Government. Some of the displaced persons, therefore, moved this Court by filing Writ Petition No. 1738 of 1971 whereunder the State Government agreed to abide by all the commitments made by the Central Government to the displaced persons. On 9th March, 1983, the State Government passed the following resolution :

"Government has appointed a High Power Committee under the Chairmanship of

Secretary (Revenue) to submit to Government after studying various aspects relating to Revenue and Rehabilitation. As decided by the High Power Committee, so far as Rehabilitation of Displaced Persons from West Pakistan is concerned, a model of comprehensive orders covering all important standing orders of Government has been prepared and attached as accompaniment to this circular for information of all concerned officials."

As a result of the above resolution, several thousands of cases came to be disposed by the screening committee. Even the previous decisions taken by the screening committee which were not implemented were carried out and transfers were effected in favour of the displaced persons.

4. Coming to the facts of the case, it is seen that the petitioner was in possession of an area of 2452.2/9 sq. yards and consisted of "U" Nos. 2A, 2B, 3, 4, 5, and 6, sheet No. 27, Camp No. 4, Ulhasnagar, District Thane. Part of the said property was constructed and the land was used for a cracker factory. The screening committee in its meeting held on 6th November, 1982 had taken a decision in respect of the property in possession of the petitioner as under :

"U. Nos. 2-A, 2-B, 3, 4, 5 and 6 belong to Shri Ramchand Gobindram. U. Nos. 2-A, 2-B, 3, 4 and 5 are constructed. U. No. 6 is a temporary wire fencing. All are unaffected by development plan proposal. Party represented that they are using the land for a crackers factory. The site will be visited by D.I.L.R. and Assistant Director of Town Planning to find out the actual requirement of the party and to see the conformity to the Development Plan, use of area."

Again on 21st April, 1984 the case was put up before the screening committee, when the case was deferred for discussion and on 21st July, 1984 the case of the petitioner was considered and decided by the screening committee as under :

"The abovesaid cases were placed before the screening committee meeting held on 6-11-1982. The decision of the case was as under :

Belong to Shri Ramchand Gobindram. U. Nos. 2-A, 2-B, 3 to 6 are constructed. U. No. 6 is a temporary wire fencing. All are unaffected by the Development plan proposals. This case was again considered by the screening committee in its meeting held on 31st March, 1984 and it was decided that the opinion of Explosive Department be taken. In today's meeting it was unanimously recommended to regularise this case in view of the fact that the Municipal Council has given the licence and Explosive Department has renewed the licence since 1952 till today."

5. Pursuant to the decision taken by the screening committee a conveyance deed dated 20th May, 1985 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 Municipal Council 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 that whether such area can be granted more than the ceiling limit. In view of this, the administrator made a report dated 19th June, 1986 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 will be useful to reproduce the reasons given by the Secretary for setting aside the conveyance and the same reads as follows :

"My examination of the record and proceedings as furnished by the administrator shows that the following are wanting :

1. The date from which the review opponent is in possession of these lands ; and
2. the basis on which the review opponent claims the ownership of these lands.

In the light of the foregoing discussions, the conveyance deed dated 20-5-1985 issued in favour of the review opponent is cancelled and the case is remitted to the Collector who should authorise an officer to hold the necessary enquiries. Evidently further action in this case will depend on a finding whether the review opponent was in unauthorised possession of these plots prior to 11-5-1965. If the answer is in the negative in respect of part or whole of the land then the provisions of the Maharashtra Land Revenue Code will apply to that land. If the unfurling in the enquiry so requires the Collector should submit further proposals for the approval of the Government, either under the Displaced Persons (C&R) Act, 1954 or M.L.R.C. or both as the case may be."

6. After hearing learned Advocates for the parties, we are of the opinion that the impugned order passed by the Secretary cannot be sustained in law. In the first place, it is now well settled by at least two decisions of this Court {Writ Petition No. 5091 of 1987 M/s. Hindustan Tools and Hardwares Mart & Anr. v. State of Maharashtra & ors., (Coram: N.D. Vyas & S.S. Nijjar, JJ.,) dated 19th September, 1996 and Writ Petition No. 3174 of 1989 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 a conveyance. In that connection we are 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, we are 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 {vide : Writ Petition No. 4681 of 1985 Dr. Bhagwandas S. Agicha v. Shri V. Ranganathan & ors., (Coram : M.L. Pendse & Dr. B.P. Saraf, JJ., dated 6th November, 1992)}. But that apart, we find 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 prior to 1965 and thus he was entitled to regularisation 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 unauthorised 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 lands is totally misdirected. The screening committee has carefully screened the case of the petitioner and came to the conclusion that he is entitled to regularisation of the occupation of the lands in his possession. Consequently, a deed of conveyance is duly executed in favour of the petitioner. In these circumstances, the Secretary was not at all justified in reopening the case by setting aside the conveyance.

In the result, petition succeeds. Rule is made absolute in terms of prayers (a) and (b). No order as to costs.

Petition allowed.