

(1996) 02 BOM CK 0044
In the Bombay High Court
Case No : Writ Petition No. 754 of 1992

Satish B. Kadhe and Others

APPELLANT

Vs

Maharashtra Slum Areas (Improvement, Clearance and Re-Development) Tribunal

RESPONDENT

Date of Decision : 28-02-1996

Acts Referred:

Limitation Act, 1963 — Section 12, 14, 4, 5

Citation : (1996) 98 BOMLR 671

Hon'ble Judges : R.M. Lodha, J

Bench : Single Bench

Judgement

R.M. Lodha, J.—Mr. Oka, learned Counsel for the petitioners has filed Counsel Note today stating therein that petitioner No. 1 has expired and his name may be deleted from the array of parties. In view of the Counsel Note submitted by the learned Counsel for the petitioners, name of petitioner No. 1 Ramniklalbhai is allowed to be deleted from the array of parties. The learned Counsel for petitioners is directed to carry out the necessary amendment in the array of parties forthwith.

2. Heard the learned Counsel for the parties.

3. Mr. A.B. Oka, learned Counsel for the petitioners, vehemently contends that the order passed by the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Tribunal, Bombay, on 22.8.1990 in Appeal Nos. 6/89, 7/89, 78/89, 79/89, 80/89, 81/89 and 83/89 cannot be sustained being in contravention of Sub-section (4) of Section 4 of the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971 (for short, "the Slum Areas Act, 1971"). According to the learned counsel, the order passed by the Maharashtra Slum Areas Tribunal on 22.8.1990 in Appeal No. 7/89 deserves to be quashed and set aside and the matter be sent back to the said Tribunal for proceeding with the appeal in accordance with law and upon compliance of Sub-section (4) of Section 4 of the Slum Areas Act, 1971, the appeal be heard and

decided afresh.

4. Mr. Kulkarni, Learned Counsel for respondents 4 to 7, on the other hand submits that by the impugned order the Maharashtra Slum Areas Tribunal has only remanded the matter back to the competent authority for making fresh enquiry before publishing the declaration under the Slum Areas Act of 1971 and, therefore, no interference deserves to be made in the impugned order.

5. Briefly stated facts are that the petitioners are occupying the various portions of the building known as "Wali Building" situated in Sitabuldi, Nagpur, as tenants and the said building is owned by respondents 4 to 7. As usual the tenancy disputes between the landlords and the tenants in the said building had been going on for quite some time. The competent authority in exercise of the powers conferred under the Slum Areas Act of 1971 issued a notification dated 24.1.1976 which was published in the official gazette on 5.2.1976 declaring the said Wali Building and the adjacent buildings situated in Gawlipura, Tekadi, as slum area. The said notification dated 24.1.1976 which was published in the official gazette on 5.2.1976, whereby the Wali Building came to be declared as slum improvement area, came to be challenged by the owners of Wali Building, namely respondents 4 to 7 herein, by filing an appeal u/s 4(3) of the Slum Areas Act of 1971 before the Maharashtra Slum Areas Tribunal, Bombay, in the month of December 1988. The said appeal was registered as Appeal No. 7/89. The Tribunal considered the said appeal along with other appeals and held that since the persons whose rights in the immovable property were affected by the said notification have not been noticed nor their objections invited nor considered, the notification dated 24.1.1976 published on 5.2.1976 in the official gazette was in contravention of the provisions of law and accordingly quashed the notification dated 24.1.1976 published on 5.2.1976 and sent the matter back to the competent authority for making fresh enquiry after issuing show cause notices to the affected persons and hearing the objections from them and then passing the speaking order accordingly.

6. The Slum Areas Act of 1971 came into force with effect from 11.8.1971. The Act was enacted for making better provision for the improvement and clearance of slum areas in the State and the redevelopment and also for protection of occupiers from eviction and in that background it was found expedient to make the provisions relating thereto. The Act defines, building, occupier, owner, slum area and works of improvement in Section 2(b), (e), (f), (g) and (j) respectively. Appointment of competent authority under the Act is required to be made in accordance with Section 3 which provides that the State Government may, by notification in the Official Gazette, appoint any person to be the Competent Authority for the purposes of this Act, for such areas as may be specified in the notification. Chapter II of the Slum Areas Act of 1971 deals with the slum areas and upon satisfaction by the Competent Authority, declaration of slum areas be made. According to Sub-section (1) of Section 4 where the Competent Authority is satisfied that any area which is or may be dangerous to the health, safety or

convenience of the public of that area or its neighbourhood, for the reasons that it has no basic amenities or being insanitary, squalid, overcrowded or otherwise, may be declared as slum area. The building in any area used or intended to be used for human habitation, may also be declared as slum area if it is unfit for human inhabitation or by reasons of dilapidation, overcrowding, faulty arrangement and design of such buildings, narrowness or faulty arrangement of streets, lack of ventilation, light or sanitation facilities or any combination of these factors, detrimental to the health, safety or convenience of the public of that area. Such building or area may be notified in the Official Gazette declaring such area to be slum area by the competent authority. Once such area is declared slum area in the Official Gazette, such declaration is also required to be published by giving due publicity in the area or in such other manner as may be prescribed. Sub-section (2) of Section 4 makes the provision that the Competent Authority while determining whether the buildings are unfit for human habitation for the purposes of Slum Areas Act, shall consider various factors, namely repairs; stability; freedom from damp; natural light and air; provision for water supply; provision for drainage and sanitary conveniences; facilities for disposal of waste water and such building shall be deemed to be unfit and if it is not suitable for occupation in that condition. Sub-section (3) of Section 4 confers a right of appeal to the person aggrieved by the declaration made by the Competent Authority under Sub-section (1) of Section 4 of the Slum Areas Act. Such right of appeal is required to be exercised within limitation prescribed under Sub-section (3) of Section 4 and the said limitation prescribed is 30 days after the date of such declaration in the Official Gazette. It further provides that no such appeal filed after 30 days as aforesaid shall be entertained. However, Sub-section (1A) of Section 45 which deals with the provisions relating to hearing of appeals by Tribunal makes provisions of Sections 4, 5, 12 and 14 of the Limitation Act, 1963, applicable to every appeal and application made to the Tribunal under the Slum Areas Act, 1971. The scheme of Sub-section (3) of Section 4 read with Sub-section (1A) of Section 45 regarding limitation is that any aggrieved person may file appeal against declaration made by the competent authority u/s 4 of Sub-section (1) within thirty days of the date of declaration of such notification in the Official Gazette. The limitation thus commences from the date of declaration of slum area in the Official Gazette and the limitation for filing appeal under Sub-section (3) of Section 4 is thirty days. The expression, "no such appeal filed after the expiry of thirty days as aforesaid shall be entertained." occurring in Sub-section (3) has to be read with Sub-section (1A) of Section 45 which says that the provisions of Sections 4, 5, 12 and 14 of the Limitation Act shall apply to the filing of every appeal or application made to the Tribunal. Thus if sufficient cause is shown in filing appeal beyond 30 days, it is open to the Tribunal to condone the delay and the expression, "no such appeal filed after expiry of 30 days as aforesaid shall be entertained" shall yield to the provisions contained in Sub-section (1A) of Section 45 and on sufficient cause being shown, the delay may be condoned even if the appeal has been filed beyond 30 days from the date of declaration in the official gazette. Similarly, while computing limitation of 30 days

as provided in Sub-section (3) of Section 4, if the 30 days expires on the date when the Tribunal is closed, it would be open to an aggrieved person to file an appeal on the date the Tribunal reopens. Also, exclusion of time in legal proceedings permissible under Sections 12 and 14 of the Limitation Act would come to the rescue of an aggrieved person if the appeal has been filed beyond 30 days of declaration in the Official Gazette if the case is made out either u/s 12 or 14 of the Limitation Act. In the present case, admittedly the appeal was filed by the owners-respondents 4 to 7 beyond limitation of 30 days from the date of declaration in the Official Gazette but since they made an application for condonation of delay in filing the appeal belatedly setting out the cause which has been found to be sufficient by the Tribunal and the delay in filing the appeal has been condoned, therefore, on the question of limitation it cannot be said that the appeal filed by the owners was liable to be rejected.

7. The argument raised by Mr. Oka, learned Counsel, relating to the provisions of Sub-section (4) of Section 4 appears to have substance. It would be seen that when an appeal is presented under Sub-section (3) of Section 4, the said Sub-section (4) provides and makes obligatory upon the Tribunal to publish a public notice in the newspaper in Marathi language circulating in the local area in which the slum area is situated and also displayed at some conspicuous place in the slum area, call upon the residents of the slum area to file their objections, if any, to the appeal within a period of fifteen days from the date of publication of such public notice in the newspaper as aforesaid, either by themselves or through any association of residents in the slum area of which they are members. Sub-section (4) of Section 4 reads as under:

4. (1)

(2) ...

(3) ...

(4) When an appeal is presented under Sub-section (3), the Tribunal shall, by a public notice published in a newspaper in the Marathi language circulating in the local area in which the slum area is situated and also displayed at some conspicuous place in the slum area, call upon the residents of the slum area to file their objections, if any, to the appeal within a period of fifteen days from the date of publication of such public notice in the newspaper as aforesaid, either by themselves or through any association of residents in the slum area of which they are members.

The provision contained in Sub-section (4) of Section 4 about the publication of notice in the newspaper and displaying of the public notice at some conspicuous place in the slum area, calling upon the residents of the slum area to file their objections, if any, is mandatory. The reason is obvious that once an area or building has been declared slum area by the competent authority within Sub-section (1) of Section 4, all the residents or occupants in the slum area can be said to have interest and, therefore, deserve to be publicly noticed if they have

any objection or say in the appeal. On publication in the Official Gazette, of an area or building or slum area, the right of improvement of slum area is created in favour of the occupants and if a person aggrieved by such declaration challenges such publication of slum area in the Official Gazette, at least that person who is resident or occupant deserves to be publicly noticed to file" the objections or so in the appeal and justify the publication of the area in the slum area or building in the slum area by the competent authority. Non-compliance of the provision of Sub-section (4) of Section 4 by the Tribunal while deciding the appeal filed by an aggrieved person against the declaration made under Sub-section (3) of Section 4 shall vitiate such order of the Tribunal. In the present case, admittedly no public notice was published by the Tribunal in the newspaper in Marathi circulating in the local area where the slum area is situated nor it has been displayed at some conspicuous place in the slum area calling upon the residents to file their objections, If any, and in the absence of compliance of Sub-section (4) of Section 4, which is mandatory in character, the impugned order passed by the Tribunal on 22.8.1990 setting aside the declaration made in the official gazette on 24.1.1976 and published on 5.2.1976 cannot be justified and sustained.

8. The result of the foregoing discussion is that the order passed by the Maharashtra Slum Areas (I.C. & R.) Tribunal, Bombay, on 22.8.1990, allowing the Appeal No. 7 of 1989, is liable to be set aside and is set aside accordingly. The said Appeal No. 7/89 is sent back to the aforesaid Tribunal to first comply with Sub-section (4) of Section 4 and then hear and decide the appeal afresh in accordance with law. No costs. Rule is made absolute in aforesaid terms.