

(2016) 03 BOM CK 0125
In the Bombay High Court
Case No : Writ Petition No. 3114 of 2016

Shreeji Construction

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 29-03-2016

Acts Referred:

Constitution of India, 1950 — Article 226
Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971 —
Section 33, Section 35, Section 38

Citation : (2016) 5 ALLMR 579 : (2016) 4 BCR 783 : (2016) 3 MhLJ 822

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

Bench : Single Bench

Advocate : V.A. Thorat, Senior Advocate and R.P. Ojha, for the Appellant; S.D. Rayrikar, AGP, for the Respondent

Final Decision : Partly Allowed

Judgement

R.M. Savant, J.—1. Rule. Considering the nature of the challenge raised, made returnable forthwith and heard.

2. The Writ Jurisdiction of this court is invoked against the order dated 25-2-2016 passed by the Hon"ble Minister for Revenue, Government of Maharashtra, by which order the Hon"ble Minister has ordered status-quo in respect of the possession of the Respondent No. 5 herein pending the proceedings. The Respondent No. 5 had his structure in CTS Nos. 1110(part) and 1111 (part) of Mauje Kandivali, Taluka Borivali. The said lands are part of a slum redevelopment scheme which is implemented by the Petitioner herein. In so far as the said scheme is concerned, since the lands in question belonging to the Municipal Corporation of Greater Mumbai (for short the MCGM), Annexure -II containing the list of eligible slum dwellers was finalised by the Competent Authority of the MCGM i.e. the Assistant Commissioner, "R" south ward, Mumbai. The Respondent No. 5 is an eligible slum dweller, who is entitled to allotment of permanent alternate accommodation. In view of the fact that the Respondent No.

5 was not vacating the structure in question and thereby impeding the implementation of the said slum redevelopment scheme, a notice dated 26-11-2010 under Sections 33 and 38 of the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971 (for short the Slum Act) came to be issued to the Respondent No. 5 calling upon him to vacate the structure in question. The said notice resulted in the proceedings for eviction being initiated against the Respondent No. 5 culminating in the order dated 17-1-2011 passed by the Competent Authority i.e. the Assistant Commissioner (R/South) MCGM. The Respondent No. 5 aggrieved by the said order challenged the same before the Divisional Commissioner, Konkan Division, who was at the said time the Appellate Authority to consider the Appeals filed against the orders passed under Sections 33 and 38 of the Slum Act. The said Appeal came to be dismissed by the Divisional Commissioner by order dated 25-10-2012. It appears that after the order was passed by the Divisional Commissioner in Appeal, the Respondent No. 5 approached the then Hon"ble Minister of State for Revenue and Rehabilitation, Government of Maharashtra by way of a Revision. The Hon"ble Minister of State for Revenue admitted the Revision filed by the Respondent No. 5 by his order dated 2-11-2012 and thereby stayed the order dated 25-10-2012 passed by the Divisional Commissioner, Konkan Division.

3. This gave rise to the Petitioner herein filing Writ Petition (L) No. 2952 of 2012 in this Court. The said Writ Petition was disposed of in view of the fact that the Learned Counsel appearing for the Respondent No. 5 in the said Writ Petition was unable to substantiate the maintainability of the Revision before the State Government i.e. the Hon"ble Minister of State for Revenue. The Learned Counsel therefore sought leave to withdraw the said Revision filed before the Minister to adopt appropriate remedy before the appropriate forum. In view of the withdrawal of the said Revision Application, the said Writ Petition was accordingly disposed of. After the said Writ Petition (L) No. 2952 of 2012 came to be disposed of, the Respondent No. 5 filed Writ Petition (L) No. 3043 of 2012 challenging the order dated 25-10-2012 passed by the Divisional Commissioner, Konkan Division, dismissing the Appeal filed by him under Section 35 of the Slum Act. The said Writ Petition came to be dismissed by this court (R.M. Savant J.) by order dated 11-1-2013. In the context of the present Petition what is required to be noted is that in the said order dated 11-1-2013, the quote from the order passed by a Division Bench of this Court in the Writ Petition filed by the Respondent No. 5 herein being Writ Petition No. 2843 of 2003 was reproduced. The same is once again reproduced hereinunder for the sake of ready reference :

"In our view, petition involves disputed questions of facts. Petitioner will have to prove the title of deceased to the land in question. This issue can be gone into only after oral and documentary evidence is adduced in support thereof. Such an issue cannot be decided in our limited jurisdiction under Article 226 of Constitution of India. The remedy of petitioner is to lay a claim in appropriate court on title and prove the same in accordance with law. It will not be possible for us to decide disputed claims by scrutinizing several documents. More so,

when the contents thereof being not proved in accordance with law."

4. Hence the conspectus of facts as above disclose that the Respondent No. 5 after the orders were passed under Sections 33 and 38 of the Slum Act, had approached the State Government against the said orders and had sought reliefs which attempt was unsuccessful. The Respondent No. 5 had thereafter filed the said Writ Petition (L) No. 3043 of 2012 challenging the said orders passed under Sections 33 & 38 which challenge also was unsuccessful as the said Writ Petition was dismissed. It is after the dismissal of the said Writ Petition that the structure of the Respondent No. 5 came to be demolished. However, as and by way of indulgence, the belongings of the Respondent No. 5 were shifted to a structure which was not immediately required to be demolished for the purposes of implementing the scheme.

5. In view of the fact that the Respondent No. 5 was not removing his belongings from the structure in which they were kept, a notice under Sections 33 and 38 dated Nil came to be issued and the hearing was fixed on 29-2-2016, before the Competent Authority it seems that the notice was issued sometime around 20-2-2016. The said undated notice has triggered of the instant application filed by the Respondent No. 5 before the State Government. The Respondent No. 5 has once again approached the State Government purportedly on the ground that the Revision Application filed by him is pending. As indicated above, it is in the said application that an order of maintaining status-quo qua the Respondent No. 5's structure has been passed till the final disposal of the Revision Application. It is also directed by the order that the MCGM and all other concerned should be joined as parties to the said proceedings. As indicated above, it is the said order dated 25-2-2016 which is taken exception to by way of the above Petition.

6. Heard the Learned Counsel for the parties.

7. The principal contention of the Learned Senior Counsel Mr. V.A. Thorat appearing on behalf of the Petitioner is that the impugned order has been passed by the Hon"ble Minister for Revenue without jurisdiction. It was the submission of the Learned Senior Counsel that in passing the impugned order and directing the status-quo to be maintained in respect of the structure of the Respondent No. 5, what has virtually been done is to nullify the orders passed by the Competent Authority, Appellate Authority and this Court in the proceedings initiated under Sections 33 and 38 of the Slum Act. The Learned Senior Counsel drew this courts attention to the antecedent facts namely the orders passed by the Competent Authority and the Appellate Authority being upheld by this Court as also the attempt of the Respondent No. 5 to file proceedings and obtain orders from the State Government being turned unsuccessful.

8. Per contra, the Learned Counsel appearing for the Respondent No. 5 Mr. G.S. Godbole would submit that the Respondent No. 5 is a tribal and has approached the State Government for the allotment of the land in question. It was the

submission of the Learned Counsel that in the order passed in Writ Petition (L) No. 2952 of 2012 a statement was made on behalf of the Respondent No. 5 who was the Respondent No. 7 in the said Writ Petition that he would adopt appropriate remedy and it is in the terms of the said statement the proceedings were filed by him before the State Government as also under the order dated 11-1-2013.

9. Having heard the Learned Counsel for the parties I have considered the rival contentions. The background facts in the instant matter unequivocally point out the attempt made by the Respondent No. 5 to see to it that the orders passed by the authorities exercising powers under the Slum Act which have been upheld by this Court are nullified. The present application can be said to be the second attempt on the part of the Respondent No. 5 to seek orders from the State Government against the orders of eviction passed under the Slum Act. This is in the teeth of the fact that the Respondent No. 5's challenge to the orders passed under Sections 33 and 38 of the Slum Act, have failed. In fact in the earlier round being Writ Petition (L) No. 2952 of 2012, the Learned Counsel appearing for the Respondent No. 5 had fairly conceded that the Revision Application filed by the Respondent No. 5 before the State Government was not maintainable and in spite of the same has once again chosen to approach the State Government. It is required to be noted that the order passed by the Hon'ble Minister though purportedly in exercise of his powers as Revenue Minister have the effect of nullifying the orders passed under Sections 33 and 38 by the Competent Authority and the Appellate Authority under the Slum Act which orders have been upheld by this court in Writ Petition (L) No. 3043 of 2012 which Writ Petition was filed by the Respondent No. 5 and as indicated above has been dismissed by this Court.

10. It is also required to be noted that the Respondent No. 5 had filed a Writ Petition in this Court claiming the said land on which his structure is situated on the ground that he is a tribal. The said Writ Petition came to be dismissed by a Division Bench of this Court by observing that having regard to the contentions of the Respondent No. 5 various disputed questions of fact arise which could not be dealt with by a Writ Court in its jurisdiction under Article 226 of the Constitution of India. The said Writ Petition as indicated above was accordingly dismissed. The excerpt from the order for the purposes of the present Petition has been already reproduced hereinabove for the sake of ready reference. It is after the said Writ Petition came to be dismissed that the Respondent No. 5 it seems had filed L.C. Suit No. 2476 of 2010 challenging the notices issued under the Slum Act. It seems that in the said Suit, the very same contentions as are now sought to be raised in the present Petition by way of the affidavit in reply were sought to be raised. It is significant to note that the Respondent No. 5 at the hearing of the Notice of Motion filed in the said Suit i.e. MCGM to submit his representation against the impugned notice issued under the Slum Act and had also sought directions that the concerned authority of the MCGM be directed to

decide the same within 4 weeks from the receipt of it. The said Suit came to be disposed of by issuing directions in that regard namely the consideration of the representation of the Respondent No. 5 by the Competent Authority of the MCGM. The Competent Authority has accordingly decided the said representation and submitted its report dated 29-5-2012 to the Divisional Commissioner Konkan Division, as at the relevant time it seems that the Appeal filed by the Respondent No. 5 against the order passed by the Competent Authority was pending before the Divisional Commissioner. Hence though subsequently a Suit was filed on behalf of the Respondent No. 5 the only relief sought by the Respondent No. 5 in the said Suit was that his representation should be considered by the Competent Authority of the MCGM.

11. In so far as the Slum Act is concerned, the mechanism for redressal of the grievance of any person who is aggrieved by the notice issued thereunder or an order passed is provided in the Act itself. Against an order passed under Sections 33 and 38 directing the eviction of a slum dweller who is reluctant to vacate, an Appeal lies to the Appellate Authority which at the relevant time was the Divisional Commissioner and which at present is the Additional Collector (Encroachment and Removal). The role of the State Government does not come in, however in the instant case in view of the impugned order, the Hon''ble Minister for Revenue has virtually nullified the orders passed by the authorities exercising powers under the Slum Act and confirmed by this Court. The Hon''ble Minister ought to have been alive to the consideration of the fact that a slum redevelopment scheme is being implemented and that the Respondent No. 5's structure has already been demolished but only as and by way of a humanitarian gesture the Petitioner has kept the belongings of the Respondent No. 5 in a structure which was not immediately required to be demolished for the purposes of implementing the scheme. The structure wherein the belongings of the Respondent No. 5 are kept is now impeding the construction of building No. 3 which is the sale component in the said slum redevelopment scheme. Hence the impugned order has the effect of directly impeding the implementation of the slum redevelopment scheme that to when no such jurisdiction is vested with the State Government under the Slum Act. Hence what could not have been done directly has been got done indirectly by the Respondent No. 5 by filing an application before the State Government. It is also required to be noted that the Respondent No. 5 has been allotted a flat in the rehab building No. 1 which is already completed and which is flat No. 604 and hence his rehabilitation has also been taken care of.

12. In my view, therefore, the order passed by the Hon''ble Minister for Revenue by exercising jurisdiction when none was vested with him under the Slum Act, is therefore required to be quashed and set aside and is accordingly quashed and set aside. The Petition is allowed to the aforesaid extent. Rule is accordingly made absolute with parties to bear their respective costs of the Petition.