

(2010) 11 BOM CK 0131
In the Bombay High Court
Case No : Writ Petition No. 531 of 2009

Shri Haji Imam Ibrahim Khan, since deceased, through his legal heir, Shri Ibrahim Khan alias Anwar Khan APPELLANT

Vs

Shri Joao Jose Nepomociano Coelho (since deceased) by his legal representatives (Mrs. Clara D"Costa e Coelho and Others) and Others RESPONDENT

Date of Decision : 18-11-2010

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (2010) 11 BOM CK 0131

Hon'ble Judges : A.P. Lavande, J

Bench : Single Bench

Advocate : S.G. Desai and Mr. S.D. Padiyar, for the Appellant; A.F. Diniz, Advocate for Respondent nos. 1(a), (c), (d) and (e), Mr. S. Vahidulla, Government Advocate for Respondent no.8, for the Respondent

Judgement

A.P. Lavande, J.—By consent of the learned counsel appearing for the parties the petition was taken up for final disposal. Hence Rule. Rule is made returnable forthwith. By this petition, the petitioner challenges judgment and order dated 19/3/1999 passed by the Collector, South Goa, Margao in Case No. 46/7/97-Rev/B-927 and judgment and order dated 20/1/2009 passed by the Administrative Tribunal, Panaji-Goa in Land Revenue Appeal No. 22/1990.

2. The case set up by the petitioner in the petition is as under:

Plot No. 991 in Mormugao Taluka was allotted to Shri Haji Imam Ibrahim Khan (since deceased) for construction of barrack who paid ground rent to the Government since 1954. The present petitioner, Ibrahim Khan and respondents No. 2 to 7 are the legal representatives of Haji Imam Ibrahim Khan who expired on 8.1.1991. On 22/3/1967 the said plot was allotted to one Joao Jose Nepomociano Coelho. On 27/11/1968 notice was issued to Haji Imam Ibrahim Khan under the provisions of the Public Premises (Eviction of Unauthorized

Occupancy) Act, 1958 for his eviction from the said plot. By order dated 21/2/1969, the Estate Officer ordered his eviction. The proceedings before the Estate Officer were ex-parte. An appeal preferred against the said order was dismissed by the District Judge by judgment and order dated 9/9/1970. Special Civil Application No. 41 of 1970 was preferred by Haji Imam Ibrahim Khan challenging the orders of eviction passed against him. On 11/2/1975, the learned Additional Judicial Commissioner dismissed the writ petition inter alia, holding that question of title could not be examined in those proceedings. It was also held that the Public Premises (Eviction of Unauthorized Occupancy) Act was validly extended to Goa. Haji Imam Ibrahim Khan filed SLP challenging the judgment passed by the Additional Judicial Commissioner dismissing the petition. In the meantime, on 17/3/1986, the said plot was granted to Haji Imam Ibrahim Khan under the Land Revenue Code 1968 ("The Code" for short). In view of the grant of the said plot, Haji Imam Ibrahim Khan withdrew the SLP and consequently the SLP stood dismissed as withdrawn. On 8/1/1991, Haji Imam Ibrahim Khan expired. Thereafter, on 24/6/1998, corrigendum was issued to the order dated 17/3/1986, re-fixing occupancy price. On 13/8/1998, certificate of grant of land to the petitioner Haji Imam Ibrahim Khan was issued.

3. In the year 1990, Joao Jose Nepomociano Coelho, the predecessor of respondents nos. 1(a) to 1 (e) filed Writ Petition No. 185 of 1990 in this Court challenging the grant of plot to the present petitioner by order dated 17/3/1986. The Division Bench of this Court by judgment and order dated 22/9/1998, allowed the writ petition and set aside order dated 17/3/1986, granting the plot in favour of the present petitioner and remanded the matter to the respondent No. 8 herein with a direction to give proper opportunity of hearing to Joao Jose Nepomociano Coelho and the legal representatives of Haji Imam Ibrahim Khan. The grant was set aside primarily on the ground that no opportunity of hearing was given to the petitioner as well as to respondent No. 3

4. Pursuant to the judgment and order dated 22/9/1998, the Collector, South Goa, respondent No. 8 herein gave an opportunity of hearing to both the parties in case No. 46/7/97-Rev./B-427 and by judgment and order dated 19/3/1999 directed the petitioner herein to hand over the vacant possession of the said plot to Joao Jose Nepomociano Coelho. The petitioner preferred Land Revenue Appeal No. 22 of 1999 to the Administrative Tribunal, Panaji-Goa against the judgment and order passed by the Collector, South Goa which was dismissed by the Administrative Tribunal by judgment and order dated 20/1/2009, upholding order passed by respondent No. 8. According to the petitioner, the impugned orders are patently unsustainable in law.

5. Respondent No. 1(d) Ms. Cristine Coelho Peros has filed return. It is the case of respondent No. 1(d) that the petitioner does not reside at Barrack No. 427 as claimed by him in the petition, which is apparent from the cause title of the petition in which the petitioner has been shown to be residing at Mangor Hill at Vasco-da-Gama. It is further the case of respondent No. 1(d) that the possession

of the petitioner is totally unauthorized and illegal and the grant of land in the year 1967 to her late father was not arbitrary. It is further the case of respondent No. 1(d) that the claim of the petitioner that order dated 1/9/1983 issued pursuant to the policy decision taken by the Government cannot be taken advantage of by the petitioner since such a ground ought to have been taken in the Writ Petition No. 185 of 1990 and the petitioner having not taken such a ground in the writ petition, the petitioner is not entitled to urge in the present writ petition in terms of the principle of constructive res judicata. It is further the case of respondent No. 1(d) that the grant of the plot in favour of Haji Imam Ibrahim Khan having been set aside by this Court in Writ Petition No. 185 of 1990, the petitioner cannot place reliance on the same.

6. Mr. Desai, learned Senior counsel appearing on behalf for the petitioner assailed the judgment and orders passed by the Administrative Tribunal and the Collector, South Goa, Margao on the following grounds:

i) Grant of the plot in question in favour of the Joao Jose Nepomociano Coelho stood superseded by the policy decision taken by the Government of Goa pursuant to which the plot was allotted to the petitioner by order dated 17/3/1986.

ii) The orders under the Public Premises (Eviction of unauthorized occupancy) Act, against Haji Imam Ibrahim Khan would not have any adverse effect on the petitioner's case since the lis between Haji Imam and the Government was not over till the SLP before the Apex Court was withdrawn on 6/1/1989.

iii) The Collector ought to have taken into consideration that grant of plot in favour of Haji Imam Ibrahim Khan was made pursuant to the policy decision taken by the Cabinet and as such, the same prevailed over the grant in favour of Joao Jose Nepomociano Coelho. The Collector, South Goa as well as the Administrative Tribunal erred in not considering that the petitioner was entitled to the grant of plot in terms of the policy decision taken by the cabinet.

iv) The grant of the plot in favour of the petitioner pursuant to the policy decision superseded eviction orders passed under the Public Premises (Eviction of unauthorized occupancy) Act.

v) The allotment of the plot in favour of Joao Jose Coelho was without any authority of law and was mala fide.

vi) The Collector failed to take into consideration that the plot was granted in favour of Haji Imam Ibrahim Khan in the year 1954 and as such, the grant in favour of Joao Jose Coelho in the year 1967 could not have been made.

vii) The grant in favor of Coelho made in the year 1967 stood terminated in view of the grant of the said plot in favour of the petitioner in the year 1986.

viii) This Court would not normally interfere with the policy decision taken by the Government while exercising writ jurisdiction. In support of his submissions, Mr.

Desai relied upon the following judgments:

- i) BALCO Employees Union (Regd.) Vs. Union of India and Others, .
- ii) State of Orissa Vs. Dr. (Miss) Binapani Dei and Others, .
- iii) Gulabhai Vallabhbhai Desai etc. Vs. Union of India (UOI)and Others, .
- iv) Nawabkhan Abbaskhan Vs. The State of Gujarat, .

7. Per contra, Mr. Diniz, learned counsel appearing for respondent nos.1(a),(c), (d) and (e) submitted that once the lease deed was executed in favour of Joao Jose Coelho, the Government was denuded of power to execute lease deed in respect of the same plot in favour of Haji Imam Ibrahim Khan. Mr. Diniz further submitted that lease in favour of Mr. Joao Jose Coelho was executed in terms of Decree No. 3602 which was in force and in terms of Section 201 of the Land Revenue Code all the actions taken under the Decree No. 3602 are saved. Mr. Diniz further submitted that the Collector has considered all the contentions raised before him by the petitioner and has arrived at correct findings on the basis of the materials placed before him. Learned counsel further submitted that the petitioner did not challenge the findings of the Collector before the Administrative Tribunal as is evident from the memo of appeal filed before the Tribunal. Learned counsel further submitted that the petitioner did not challenge the grant in favour of Mr. Joao Jose Coelho either before the Collector or before the administrative Tribunal and as such, he is not entitled to challenge the same for the first time before this Court. According to Mr. Diniz, the petitioner is not entitled to place reliance upon the policy decision of the Government taken by the Cabinet to allot the plots in favour of several persons including the petitioner in as much as no such ground was urged before the learned Division Bench of this Court in Writ Petition No. 185 of 1990 filed by Mr. Joao Jose Coelho and as such, on the principle of constructive res judicata, the petitioner is not entitled to place reliance upon the policy decision taken by the Government. In any event, Mr. Diniz submitted that the policy decision relied upon by the petitioner does not advance the case of the petitioner in as much as, in terms of the communication dated 1/9/1983 addressed by the Under Secretary (Revenue) to the Collector of Goa, the policy decision of the cabinet is applicable in respect of only those persons who actually were given the land during the pre-liberation period and who were paying the ground rent since then. According to Mr. Diniz, the petitioner has not placed any material to establish that till 1983 the petitioner was paying the ground rent in order to avail benefit of the said policy decision. Mr. Diniz further submitted that the lease in favour of Joao Jose Coelho granted in the year 1967 could have been only terminated for breach of the conditions mentioned in the lease deed dated 19/3/1967 and as such, in the absence of any breach of the conditions, lease in favour of Mr. Joao Jose Coelho is valid till date. Mr. Diniz further submitted that in view of the order of eviction passed by the Estate Officer which was maintained in the appeal by the District Court and by the Judicial Commissioner's Court and in view of the withdrawal of the SLP

before the Apex Court by the petitioner, the petitioner ceases to have any right to the plot. He further submitted that the petitioner though claims to be residing with his family in the barrack No. 427 situated in plot No. 991, the address given by the petitioner in the cause title clearly falsifies the said claim and therefore the petitioner is not entitled to discretionary relief from this Court under Articles 226 and/or 227 of the Constitution of India.

8. In support of his submissions, Mr. Diniz relied upon the following judgment :

1. Maharashtra Vikrikar Karamchari Sangathan Vs. State of Maharashtra and anr: AIR 2000 Supreme Court 662

2. Nawabkhan Abbaskhan Vs. The State of Gujarat,

9. I have carefully considered the rival submissions, perused the record and the judgments relied upon by both sides.

10. The Division Bench of this Court by judgment and order dated 22/9/1998 passed in Writ Petition No. 185 of 1990 filed by Joao Jose Coelho against the petitioner and others held that though the plot in question was allotted to Mr. Joao Jose Coelho in the year 1967, the possession was not handed over to him since it was in occupancy of Haji Imam Ibrahim Khan. The Division Bench further held that the respondent nos.1 and 2 in the said petition could not have granted the plot to respondent No. 3 by order dated 17/3/1986 without giving notice to the petitioner and without giving him an opportunity of being heard. The Division Bench further held that there was breach of principles of natural justice and consequently quashed and set aside the order dated 17/3/1986 by which the plot was granted in favour of respondent No. 3 and remanded the matter to the Collector, South Goa with a direction to give proper opportunity of hearing to the petitioner and respondent No. 3 and thereafter pass appropriate order regarding grant of the said plot.

11. Before the Collector, opportunity of being heard was given to both sides. The Collector after observing the factual position observed that on 17/3/1986 the Collector of South Goa had granted the plot to Haji Imam Ibrahim Khan without scrutinizing all the records properly and neither the then Mamlatdar of Mormugao nor the Collector of Goa was aware of the case pending before the Supreme Court in respect of the disputed plot. The plot was allotted to Haji Imam Ibrahim Khan on the basis of an affidavit dated 20/12/1985 filed by him which stated that the said plot was allotted to him during pre-liberation period for temporary occupation for construction of barrack. However, in the affidavit he did not state anything about pending Court cases. The Collector further held that Haji Imam Ibrahim Khan had not challenged the grant of lease in respect of the plot in favour of Joao Jose Coelho and the same could not have been done by filing written arguments in the proceedings. The Collector further held that possession of Mr. Haji Imam Ibrahim Khan from the time Mr. Joao Jose Coelho was granted lease was illegal. The Collector also noted that there was nothing on record to show that Mr. Haji Imam Ibrahim Khan was paying ground rent or that he had

spent considerable amount on erection of barrack. It was further held that in terms of lease deed dated 22/3/1967, the same could be only terminated when conditions of lease were breached. The Collector further held that sanad dated 17/3/1986 was granted to Mr. Imam Ibrahim Khan without scrutinizing the record properly and without giving opportunity to Mr. Joao Jose Coelho and Mr. Imam Ibrahim Khan had sworn an affidavit for obtaining sanad without disclosing the relevant facts to the authorities. The Collector consequently directed Mr. Khan to hand over possession of the plot to Mr. Joao Jose Coelho. The Administrative Tribunal in an appeal preferred by the petitioner herein concurred with the findings given by the Collector.

12. Perusal of the judgment dated 22/9/1998 in Writ Petition No. 185 of 1990 discloses that order dated 17/3/1986 granting the plot in favour of Mr. Haji Imam Ibrahim Khan was set aside; however, the grant in favour of Mr. Joao Jose Coelho was not specifically set aside. As stated above, the Collector, South Goa recorded the finding that the petitioner herein had never challenged the lease in favour of Mr. Joao Jose Coelho and he had not disclosed all the relevant facts in the affidavit filed for the purpose of getting the plot, in terms of policy decision taken by the Government. Moreover, Mr. Imam Ibrahim Khan had not produced any material before the Collector to establish that he had paid ground rent to the Government from 1954 onwards till 1983. This being the position, I find merit in the submission of Mr. Diniz that the petitioner cannot avail benefit of the policy decision taken by the Cabinet conveyed by communication dated 1/9/1983 of the Under Secretary (Revenue) which prescribed that the benefit of the policy decision was available only to those in occupation of barracks who were given the land during pre-liberation period and were paying ground rent since then. In the absence of any material before the Collector having been placed by the petitioner herein that he had paid the ground rent till 1983, the petitioner was not entitled to the benefit of the policy decision taken by the cabinet. In any event, the petitioner ought to have raised the ground that the plot was granted to him in terms of the policy decision of the Government. In so far as the grant of plot in favour of Mr. Joao Jose Coelho in terms of the lease deed dated 22/3/1967 is concerned, the same has been challenged by the petitioner in this petition on the ground that no proper procedure was followed before granting the lease. In my considered opinion, the challenge deserves to be rejected, on the ground that neither before this Court in Writ Petition No. 185 of 1990 nor before the Collector nor before the Administrative Tribunal the petitioner challenged the lease in favour of Mr. Joao Jose Coelho. In addition, perusal of the lease deed discloses that the same was executed by Shri Hardayal Chaudhri, the then Secretary of the Government on behalf of the President of India. This being the position, the presumption u/s 114 of the Evidence Act would be attracted and therefore it is too late for the petitioner to contend that the leave in favour of Mr. Joao Jose Coelho was granted without following the proper procedure.

13. In my considered opinion, in view of the orders passed under the public Premises (Eviction of Unauthorized Occupants) Act 1958 against Mr. Haji Imam

Ibrahim Khan which were upheld by the learned Judicial Commissioner's Court and in view of the withdrawal of the SLP preferred by Mr. Imam Ibrahim Khan before the Apex Court, the petitioner ceases to have any right in respect of the said plot. No doubt, the petitioner has been in possession of the said plot from 1954 or thereabout but mere possession without any title would not confer any right on the petitioner to get grant of said plot in his favour, more particularly having regard to the fact that the Government of Goa had executed the lease deed in favour of Mr. Joao Jose Coelho in respect of the said plot in the year 1967.

14. I also found merit in the submission of Mr. Diniz that the petitioner though in the writ petition has claimed that he has been residing in the barack existing in the said plot, this claim cannot be accepted in view of the address shown in the cause title which discloses that he is residing in House No. 183-A1-Haaji, behind Chowgule's Temple, Mangor hill, Vasco-da-Gama. This is an additional ground which clearly dis-entitles the petitioner from seeking extraordinary remedy under Articles 226 and/or 227 of the Constitution of India.

15. I do not deem it necessary to deal with all the authorities cited by both sides since I have taken into consideration the principles laid down therein. In view of the above discussion, I am of the opinion that no interference is warranted with the impugned orders passed by the Collector, South Goa and the Administrative Tribunal, Panaji. Hence, Rule is discharged. Needless to mention that interim relief granted by this Court stands vacated.

Having regard to the facts and circumstances of the case parties are directed to bear their own costs.

16. At this stage Mr. Dessai, learned Senior Counsel for the petitioner submits that since the petitioner is admittedly in possession of the plot status quo order be granted for a period of eight weeks. Mr. Diniz, learned counsel for respondents nos. 1(a), (c), (d) and (e) opposes the prayer.

17. Considering the facts and circumstances of the case, status quo for a period of four weeks is granted. At the end of four weeks, the status quo order shall stand vacated.