

(2002) 06 BOM CK 0062

In the Bombay High Court

Case No : Writ Petition No. 2161 of 1999

Slum Rehabilitation Authority and Another

APPELLANT

Vs

Smt. Laxmi Mohan Ghone and Others

RESPONDENT

Date of Decision : 04-06-2002

Acts Referred:

Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971 —
Section 33, 35, 38

Citation : (2002) 3 ALLMR 741 : (2002) 5 BomCR 477 : (2002) 4 BOMLR 302 :
(2002) 3 MhLj 699

Hon'ble Judges : R.J. Kochar, J

Bench : Single Bench

Advocate : S.G. Surana, for the Appellant; None, for the Respondent

Final Decision : Allowed

Judgement

R.J. Kochar, J.—The petitioners are the slum rehabilitation authority and the Additional Collector, Slum Rehabilitation Authority, established under the Maharashtra Slum Areas (I C and R) Act, 1971. The respondents Nos. 1 to 13 are the slum dwellers and respondent No. 14 appears to be the developer. The nub of the grievance of the petitioners is that the respondent No. 15 who is the President, Maharashtra Slum Areas (1 C and R) Special Tribunal had passed the impugned order directing the petitioners to provide transit accommodation to the respondents 1 to 13, which he ought not to have passed.

2. The facts are in a very narrow compass. On 15th March, 1999, the petitioner No. 2 had issued a show cause notice to respondent Nos. 1 to 13 calling upon them as to why their structures should not be demolished. It appears that the said respondents were heard in the matter and finally, the petitioner No. 1 had passed the order on 22nd April 1999, exercising its powers under Sections 33 and 38 of the Act. By the said order the respondents Nos. 1 to 13 were directed to hand over peaceful possession of the huts to the developer for developing the said slums under the Act and move to transit camp failing which, they were

warned, the B.M.C. would demolish their structures. It appears that the respondent Nos. 1 to 13 had challenged the said order passed by the petitioners specifically u/s 33 and Section 38 of the Act before the respondent No. 15, President of Special Tribunal constituted under the Act to hear only certain types of appeals. It appears that while exercising his powers as an appellate authority, the Tribunal directed the petitioners to hand over alternate accommodation as offered to the applicants subject to the same terms and conditions as agreed between the similarly situated eligible appellants.

3. Curiously enough, though the appellate tribunal has purportedly allowed the appeal filed by the respondent Nos. 1 to 13, the net result or outcome of his order is the same which was passed by the petitioners in their order dated 22nd April, 1999. The special tribunal has passed the same order and has virtually put his rubber stamp on the same, though he has erroneously mentioned that appeal was allowed.

4. Shri Surana, the learned counsel appearing for the petitioners has in all fairness stated that all the respondent Nos. 1 to 13 have already been granted transit accommodation and there is no difficulty about the same. The learned Counsel, however, has serious quarrel with the fact that the Tribunal had no power and jurisdiction to entertain such appeals against the orders which were passed by the petitioners under Sections 33 and 38 of the Act. Shri Surana pointed out that the orders passed by the petitioners were under Sections 33 and 38 of the Act and the same were no doubt appealable but the appeal would lie before the Additional Commissioner and Administrator, Konkan Division, as provided u/s 35 of the Act. He vehemently submitted that no appeal could be filed and no appeal could be entertained by the Tribunal which was restricted to entertain appeals against the orders u/s 3(C)(1) and 12(1) as provided u/s 3(C)(2) and Section 12(4) of the Act respectively. Shri Surana was very clear in his mind that the impugned order against which the Tribunal had entertained the appeal was specifically under Sections 33 and 38 of the Act and, therefore, the Tribunal had no power and jurisdiction to entertain and decide such appeals. He further pointed out that the Tribunal has been entertaining such appeals and, therefore, the petitioners are constrained to take appropriate orders in this matter as a test case.

5. In my opinion, the contention of Shri Surana is right and deserve to be accepted. The orders passed u/s 3(C)(1) are appealable u/s 3(C)(2) and orders passed u/s 12(1) are appealable u/s 12(4) of the Act. These appeal provisions are specifically provided and there is absolutely no ambiguity about the powers and jurisdiction of the appellate authority. As far as the orders passed under Sections 33 and 38 are concerned, the appeal is provided u/s 35 of the Act and the appellate authority is also specifically identified as the Additional Commissioner and Administrator Konkan Division. There is absolutely no doubt and no ambiguity about the appellate authority and the appeal provisions. I agree with Shri Surana that the Tribunal had committed a serious error of

jurisdiction and had wrongly usurped the appellate jurisdiction of entertaining and deciding an appeal which he said tribunal was not conferred with at all. In fact, the tribunal had hijacked the appellate powers which are specifically vested in the Additional Commissioner and Administrator, Konkan division by entertaining and deciding the appeal filed by the respondent Nos. 1 to 13 against the orders passed under Sections 33 and 38 of the Act.

6. In the aforesaid circumstances, the impugned order passed by the Tribunal is without any jurisdiction and without any authority of law and the same therefore deserves to be quashed and set aside. The petition, therefore, succeeds, The impugned judgment and order passed by the respondent No. 15 is hereby quashed and set aside. Rule is made absolute with no orders as to costs.