

(2003) 04 BOM CK 0100
In the Bombay High Court
Case No : Writ Petition No. 89 of 2000

Smt. Kuwarben Chhabildas Patel through her C.A. APPELLANT
Pratapsingh Chhabildas Patel

Vs

The State of Maharashtra, The President, Maharashtra Slum
Areas (I.C. and R) Tribunal, Deputy Collector (En(sic)) and
Competent Authority, appointed under the Maharashtra Slum
Areas (I.C. and R.) Act, 1971 and Patel Chawl Residents
Association an association of tenants of Patel Chawl RESPONDENT

Date of Decision : 29-04-2003

Acts Referred:

Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971 —
Section 4

Citation : (2003) 4 ALLMR 662 : (2003) 5 BomCR 44 : (2003) 3 MhLj 948

Hon'ble Judges : Nishita Mhatre, J

Bench : Single Bench

Advocate : Divesh Chamboowala, for the Appellant; Geeta Shastri, A.G.P. for
Respondent Nos. 1 to 3, for the Respondent

Final Decision : Allowed

Judgement

Nishita Mhatre, J.—The issue involved in the present Writ Petition is whether the Slum Tribunal can review its own order when there are no specific powers of review conferred upon it. The Tribunal has reviewed its earlier order which set aside the order of the Competent Authority declaring the area a slum. As a result of the order being reviewed, it was declared that Notification dated 30th October 1996 pertaining to the property bearing C.T.S. No. 719, 719/1 to 7 and 720, 720/1 to 16 of Village Andheri, Taluka Andheri M.S.D. Mumbai declaring it a slum was valid.

2. The facts giving rise to the present Petition are as follows:

The Petitioner's husband was the lessee of land bearing C.T.S. No. 719, 719/1 to 7, 720 and 720/1 to 16 situate at Village Andheri, Taluka Andheri, B.S.D.,

Mumbai and was the owner of the chawl constructed by him thereon. This chawl was occupied by tenants who, according to the Petitioner, had not paid rent for a long period of time. Suit were, therefore, instituted in the Small Causes Court. On 31st January 1995, the Petitioner's tenants applied to Respondent No. 3 i.e. Deputy Collector and Competent Authority for declaring the property as a slum area. On 28th August, 1996, Respondent No. 3 issued a preliminary notice to the Petitioner calling upon her to show cause why the property should not be declared as a slum under the provisions of the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971, hereinafter referred to as "the Act". A reply was filed by the Petitioner stating that all basic amenities were available to the residents of the tenants and details with respect to the amenities were given in the reply. The Petitioner also claimed that it was only in order to defeat the suits for eviction that were filed against the tenants that they had approached Respondent No. 3 to declare the property as a slum. On 30th August 1996, the Petitioner's property was declared a slum area by Respondent No. 3. An appeal was filed by the Petitioner on 10th December 1996 before the Slum Tribunal against the declaration of her property as a slum. The Petitioner contended therein that the provisions of Section 4 of the Act were not attracted as all the basic amenities had been provided by him to the tenants. Some of the tenants were represented before the Tribunal through an Advocate. An affidavit was filed by the Petitioner describing the condition of the property and the amenities made available by her to the tenants/residents of the property. The appeal was allowed by Respondent No. 2 on 13th February 1998 and the order passed by Respondent No. 3 was set aside.

3. A review Application was filed at the instance of the President/Secretary and Treasurer of Respondent No. 4 Association. It was claimed that no site inspection had been carried out on the property prior to the order being passed on 13th February 1998. The Petitioner filed her reply to the Review Application contending that the Review was not maintainable and that the person appearing on behalf of Respondent No. 4 had no authority to do so. On 20th July 1998, Respondent No. 2 i.e. the Slum Tribunal, allowed the Review Application holding that it was maintainable. On 11th August 1998, the Petitioner filed Writ Petition No. 1697 of 1998 challenging the order of review dated 20th July 1998 on the ground that Respondent No. 2 had no power to review its own order. The Writ Petition was disposed of on 9th September 1998 in terms of the Minutes of Order signed by the parties. By these Minutes, it was agreed that the order passed by the Slum Tribunal in Review would be set aside and the Slum Tribunal would hear the application on merits afresh and that he would decide the Review Application in accordance with law. On 15th March 1999, the Review Application was allowed and it was directed that the Appeal would be heard. Respondent No. 4 made an application that he may be joined as party to the Appeal which was allowed. This Writ Petition has been filed against the order permitting the Review and the order passed by Respondent No. 2 dismissing the Appeal filed by the Petitioner in 1997.

4. The main submission made by the learned Counsel on behalf of the Petitioner

is that the Tribunal being a creature of the Statute i.e. the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971, had no power to review its own order when no specific power was conferred upon it under the Act. The learned Counsel for the Petitioner submits that the Tribunal having reviewed its own order, has exceeded its jurisdiction and, therefore, both the order allowing the Review Application as well as the order rejecting the Appeal filed by the Petitioner are required to be set aside. He relies on the judgments of the Apex Court in Harbhajan Singh Vs. Karam Singh and Others, and Patel Narshi Thakershi and Others Vs. Shri Pradyumansinghji Arjunsinghji, .

5. In Harbhajan Singh's case (supra), the Apex Court was concerned with an order under the Fast Punjab Holdings (Consolidation and Prevention of Fragmentation) Act and the order passed under that Act was reviewed by the Director, Consolidation of Holdings. The Apex Court held that since there was no express power granted to the State Government to review an order made u/s 47 of the said Act, the Director could not review his previous order. In the case of Patel (supra), the Apex Court was concerned with the Saurashtra Land Reforms Act and an order passed by the Deputy Collector was sought to be reviewed. The Apex Court held that it was well settled that the power to review is not an inherent power. It must be conferred by law either specifically or by necessary implication.

6. The learned Counsel for Respondent Nos. 1 and 3 submitted that in view of the Minutes of the Order signed on 9th September 1998 in this Court, the Slum Tribunal was permitted to review his own order. She submits that since the Misc. Application was to be decided afresh, the Slum Tribunal could consider the Review Application and pass orders on merits.

7. This submission of the learned Counsel for Respondent Nos. 1 and 3 cannot be accepted for more than one reason. The Minutes of the Order signed by both the parties do not indicate in any manner that the power of review was available to the Slum Tribunal. All that the Slum Tribunal was required to do was to hear Misc. Application filed allegedly on behalf of Respondent No. 4 afresh and to decide the application after hearing both the sides, in accordance with law. Deciding the application in accordance with law would not confer the power of review on the Tribunal. As held by the Apex Court, unless the power of review is specifically conferred under the Act itself on the Tribunal, the Tribunal would not have any jurisdiction to review its own order. The Slum Tribunal is constituted under the Maharashtra Slum Areas (Improvement Clearance and Redevelopment) Act, 1971. The powers and jurisdiction of the Slum Tribunal are circumscribed by the provisions of the Act. The Slum Tribunal being a creature of the statute cannot overstep its jurisdiction which it enjoys under the purview of the Act. There is no inherent power to review and, therefore, unless the power, was conferred either expressly or by necessary implication under the Act, there is no power to review.

8. In view of this, the order passed on 15th March 1999 by the Slum Tribunal

reviewing its own order and the order dated 16th July 1999 dismissing the Appeal are set aside. Writ Petition allowed. Rule made absolute. No order as to costs.