

(2015) 10 BOM CK 0102
In the Bombay High Court
Case No : Writ Petition No. 3960 of 2004

Subhash

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 01-10-2015

Acts Referred:

Constitution of India, 1950 — Article 14
Maharashtra Land Revenue Code, 1966 — Section 247, 257, 258, 37

Citation : (2015) 10 BOM CK 0102

Hon'ble Judges : Z.A. Haq, J.

Bench : Single Bench

Advocate : S.V. Purohit, Advocate, for the Appellant; S.M. Bhagde, A.G.P., for the Respondent

Final Decision : Dismissed

Judgement

Z.A. Haq, J.—Heard learned advocates for the petitioner, respondent No. 1 and respondent No. 3. None appeared for respondent No. 2.

2. The petitioner is claiming to be the owner of Plot No. 116, Sheet No. 10-B along with the house constructed over it, applied for allotment of a small strip of land bearing Plot No. 119/1, Sheet No. 10-B, admeasuring 30.8 sq.mtrs., which according to him is the government land lying vacant and adjacent to Plot No. 116. The Sub-Divisional Officer issued proclamation on or about 2nd June, 1994 and as nobody objected, the Sub-Divisional Officer, after calling the report and after receiving no objection from the Municipal Council, Pandharkawada issued the order dated 10th October, 1997 allotting the strip of land to the petitioner as per the valuation made by the Assistant Director of Town Planning. According to the petitioner, the occupancy price of Rs. 10,870/- was deposited and agreement was executed on 10th October, 1997 and possession of Plot No. 119/1 was handed over to the petitioner. According to the petitioner, the mutation entries were taken on 19th November, 1997.

The respondent No. 2 Shri Jawarimal Motilalji Bogawat and the respondent No. 3

challenged the order issued by the Sub-Divisional Officer by filing appeal before the Collector which came to be allowed on 24th February, 1999. The petitioner challenged the order passed by the Additional Collector. The proceedings came to be registered as Revision and the learned Additional Commissioner by the order dated 5th October, 2002 dismissed the revision filed by the petitioner. The petitioner filed proceedings under Section 258 of the Maharashtra Land Revenue Code, 1966 before the State Government. These proceedings are decided by the impugned order and the claim made by the petitioner is dismissed. The petitioner, being aggrieved in the matter, has filed this writ petition.

3. It is not clear as to whether the petitioner had filed appeal or revision before the Commissioner. Shri S.V. Purohit, learned advocate has submitted that the petitioner had filed appeal under Section 247 of the Maharashtra Land Revenue Code, 1966, however, copy of the memo of appeal has not been filed along with the writ petition and inspite of the observations made in the order passed by the State Government that the revision filed by the petitioner before the State Government is not maintainable as the petitioner had already exhausted the remedy of revision before the Additional Commissioner, I find that the petitioner has not raised any ground in this regards in the petition. In the order passed by the State Government, it is recorded that second revision under Section 257 of the Maharashtra Land Revenue Code is not maintainable. It is further recorded that the application under Section 258 of the Maharashtra Land Revenue Code seeking review will not be maintainable before the State Government as the revisional order was passed by the Additional Commissioner and not by the State Government.

4. Be that as it may, the State Government has delved into the merits of the matter and has found that the petitioner is not entitled for the allotment of Plot No. 119/1.

5. The learned advocate for the petitioner has submitted that the appeal filed by the respondent Nos. 2 and 3 was not maintainable as it was beyond the prescribed period of limitation and there was no application praying for condonation of delay. It is further submitted that the respondent Nos. 2 and 3 had no locus to file the appeal and therefore, the appeal filed on their behalf could not have been entertained and allowed.

6. After hearing the learned advocates for the respective parties and after examining the documents filed on the record of the writ petition, I find that it is undisputed fact that a strip of land i.e. Plot No. 119/1 is not adjacent to Plot No. 116 as there is a strip of land between Plot No. 116 and strip of land i.e. Plot No. 119/1, bearing Plot No. 117. In these facts, the petitioner will not be entitled to claim the strip of land i.e. Plot No. 119/1 relying on the provisions of Rule 37 of the Maharashtra Land Revenue Code (Disposal of Government Lands) Rules, 1971 (hereinafter referred to as "the Rules of 1971").

7. Furthermore, I find that the claim made by the petitioner for allotment of strip

of land i.e. Plot No. 119/1 cannot be considered under Rule 37 of the Rules of 1971.

Rule 37 of the Rules of 1971 reads as follows :

"37. Disposal of small strips of land :-When any small strip of land vesting in the State Government adjacent to an occupied unalienated building site cannot reasonably be disposed of as a separate site, the Collector may notwithstanding anything to the contrary contained in any of these rules, grant such strip to the holder of such site on the same tenure on which he holds that site, if he agrees to pay.

(a) assessment or rent, as the case may be for such strip of land at the same rate, if any, at which he pays assessment or rent for such site, and

(b) such price or premium as the Collector deems adequate having regard to the situation of such strip and many other advantages which are likely to accrue to the holder on account of its grant to him."

As per the provisions of Rule 37 of the Rules of 1971, a small strip of land can be allotted to a person who occupies the adjacent unalienated building site and the allotment of small strip of land has to be on the same tenure on which the unalienated building site is held by the person. The assessment or rent of the small strip of land is also required to be fixed at the same rate at which the unalienated building site has been assessed. It being an admitted fact that Plot No. 116 is owned by the petitioner, it cannot be said that Plot No. 116 is an unoccupied alienated building site as contemplated under Section 37 of the Rules, 1971. Therefore, it cannot be said that the strip of land, that is, Plot No. 119/01 can be allotted to the petitioner under rule 37 of the Rules of 1971.

8. Apart from this, another relevant issue regarding allotment of vacant government lands is required to be considered. The Hon''ble Supreme Court and this Court has dealt with the issue of allotment of vacant government lands. The following judgments are relevant :

1) Judgment given by the Hon''ble Supreme Court in the case of Saroj Screens Pvt. Ltd. Vs. Ghanshyam and Others, .

2) Judgment given by the Division Bench of this Court in the case of M.W. Society Vs. State of Mah., reported in 2012(5) Mh.L.J.644.

3) Judgment given by the Division Bench of this Court in PIL No. 23 of 2013 (Dr. Balchandra Jageshwar Subhedar Vs. State of Maharashtra & 6 others.)

In the case of Saroj Screens Pvt. Ltd. (supra) the Hon''ble Supreme Court has recorded in paragraph No. 38 as follows :

"38.The question whether the State and / or its agency / instrumentality can transfer the public property or interest in public property in favour of a private person by negotiations or in a like manner has been considered and answered in

negative in several cases. In *Akhil Bhartiya Upbhokta Congress Vs. State of Madhya Pradesh and Others*, , this Court was called upon to examine whether the Government of Madhya Pradesh could have allotted 20 acres land to Shri Kushabhau Thakre Memorial Trust under the M.P. Nagar Tatha Gram Nivesh Adhiniyam, 1973 read with M.P. Nagar Tatha Gram Nivesh Vikasit Bhoomiyo, Griho, Bhavano Tatha Anya Sanrachanao Ka Vyayan Niyam, 1975. After noticing the provision of the Act and the Rules, as also those contained in M.P. Revenue Book Circular and the judgments of this Court in *S.G. Jaisinghani v. Union of India* *Ramana Dayaram Sheety V. International Airport Authority of India*, *Erusian Equipment and Chemicals Ltd. v. State of W.B.*, *Kasturi Lal Lakshmi Reddy v. State of J&K*, *Common Cause v. Union of India*, *Shrilekha Vidyarthi v. State of U. P.*, *LIC v. Consumer Education & Research Centre*, *New India Public School v. HUDA*, the Court culled out the following propositions: (*Akhil Bhartiya Upbhokta case*, SCC p. 60, paras 65-66)

"65.What needs to be emphasised is that the State and/or its agencies/instrumentalities cannot give largesse to any person according to the sweet will and whims of the political entities and/or officers of the State. Every action/decision of the State and/or its agencies/instrumentalities to give largesse or confer benefit must be founded on a sound, transparent, discernible and well-defined policy, which shall be made known to the public by publication in the Official Gazette and other recognised modes of publicity and such policy must be implemented/executed by adopting a non-discriminatory and non- arbitrary method irrespective of the class or category of persons proposed to be benefited by the policy. The distribution of largesse like allotment of land, grant of quota, permit licence, etc. by the State and its agencies/instrumentalities should always be done in a fair and equitable manner and the element of favouritism or nepotism shall not influence the exercise of discretion, if any, conferred upon the particular functionary or officer of the State.

66. We may add that there cannot be any policy, much less, a rational policy of allotting land on the basis of applications made by individuals, bodies, organisations or institutions dehors an invitation or advertisement by the State or its agency/instrumentality. By entertaining applications made by individuals, organisations or institutions for allotment of land or for grant of any other type of largesse the State cannot exclude other eligible persons from lodging competing claim. Any allotment of land or grant of other form of largesse by the State or its agencies/instrumentalities by treating the exercise as a private venture is liable to be treated as arbitrary, discriminatory and an act of favouritism and/or nepotism violating the soul of the equality clause embodied in Article 14 of the Constitution."

The claim made by the petitioner for allotment of the strip of land and the order passed by the Sub-Divisional Officer allotting the strip of land to the petitioner without putting it to auction is unsustainable in view of the proposition of law laid down in the above judgments.

9. In view of the above, I find that the claim made by the petitioner for allotment of small strip of land i.e. Plot No. 119/1 under Rule 37 of the Rules of 1971 cannot be accepted. I see no reason to interfere with the impugned order rejecting the claim of the petitioner for allotment of the small strip of land.

The petition is dismissed. In the circumstances, the parties to bear their own costs.

10. At this stage, the learned advocate for the petitioner has submitted that the petitioner is in possession of the strip of land i.e. Plot No. 119/1 since 1997 and prays that the judgment be kept in abeyance for eight weeks to enable the petitioner to take appropriate steps in the matter. Though the request made on behalf of the petitioner is opposed by the learned advocate for the respondent No. 3 and the learned A.G.P., considering the fact that the petitioner is in possession of the small strip of land since 1997 and his possession was protected by this Court during the pendency of this petition, the judgment is kept in abeyance for eight weeks.