

(2015) 04 BOM CK 0247

In the Bombay High Court

Case No : Misc. Civil Application No. 128/2015 in Writ Petition No. 4510/2010 and Misc. Civil Application No. 281/2013 in L.P.A. No. 422/2011 in W.P. No. 1658 of 2011

Trilok Bothra and Others

APPELLANT

Vs

Chandrashekhar Govindgir Giri and Others

RESPONDENT

Date of Decision : 10-04-2015

Acts Referred:

Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947 —
Section 10, 21[4], 24[1], 31, 31[1]
Civil Procedure Code, 1908 (CPC) — Order 7 Rule 11

Citation : (2015) 04 BOM CK 0247

Hon'ble Judges : B.P. Dharmadhikari, J;P.B. Varale, J

Bench : Division Bench

Advocate : J.T. Gilda, for the Appellant; Vishal Anand, Advocates for the Respondent

Judgement

B.P. Dharmadhikari, J.—The proceedings arise out of earlier litigation between the review applicants in Misc. Civil Application No. 128/2015 and review applicants in Misc. Civil Application No. 281/2013. The review applicants in Misc. Civil Application No. 128/2015 are respondent Nos. 4 and 5 in Misc. Civil Application No. 281/2013.

2. Brief history needs to be mentioned before narrating the exact nature of controversy.

The review applicants in Misc. Civil Application No. 128/2015 who are members of Bothra Family, urge that after the controversy reached the Hon'ble Supreme Court and attained finality against review applicants in Misc. Civil Application No. 281/2013 i.e. members of Giri Family, husband of Pratibha Giri by name Chandrashekhar Giri with oblique motive filed Writ Petition No. 4510/2012, and has made an attempt to unsettle that finality.

3. Agricultural lands ad-measuring 0.51 Hectors of survey No. 203/1/A of Mouza

Badnera, Tahsil and District Amravati form subject matter of the dispute. These lands were purchased by one Dhadomal Bashimal from Govind Harne and on that date, purchaser Dhadomal was not an agriculturist. This purchase of 0.51 Hectors was declared to be a fragment and recorded accordingly in the revenue records. On 29.02.1996 Dhadomal sold said land to Smt. Aruna Ambalkar, Rajni Chimurkar, Vaishali Paratpwar and Smt. Smita Ratnaparkhi. One Smt. Chitra Watwe, being adjacent owner of survey Nos. 205/3 and 205/2 filed an application on 30.06.1997, which came to be registered as Revenue Case No. 40/Badnera 1/97-98 before the Sub Divisional officer, Amravati against Dhadomal and purchasers from him. This application was under Sections 7, 9 and 10 of the Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947 (hereinafter referred to as "the Fragmentation Act" for short). She claimed fragment survey No. 203/1/A. On 22.09.1997. Sub Divisional Officer, Amravati rejected that application of Smt. Chitra on the ground that Section 31 of the Fragmentation Act does not apply to lands situated in Municipal Council/Municipal Corporation area. As per revenue notification dated 11.01.1963 in limits of Amravati Municipal Corporation, standard area for irrigated land is declared as 0.60 Ares and for dry crop area 2 Acres. Land survey No. 203/1/A is, within the Municipal Corporation area and has one well. Thus, as standard area was fixed at 0.10 Ares or 10 Gunthas, the application moved by Smt. Chitra was misconceived. Smt. Chitra then filed Appeal No. 14/PFG/1997-98 before the Additional Commissioner at Amravati. During pendency of those proceedings owners Smt. Aruna, Rajni, Vaishali and Smita sold subject land to Vijay Sahu on 22.12.1997. On 30.04.1998 the Additional Commissioner remanded the matter back to the Sub Divisional Officer, after noticing that in revenue records, land was mentioned as fragment, as per sanctioned development plan of Amravati Corporation it was meant for agricultural use and purchasers had not purchased it for cultivation. The land being fragment, adjacent owner has a right to purchase it. Section 31[2] of the Fragmentation Act was held not applicable in Amravati Corporation Area. On 21.08.1998, Aruna and Pratibha Giri i.e. the review applicants in Misc. Civil Application No. 281/2013, published a notice in newspaper declaring their intention to purchase subject land from Vijay Sahu. Accordingly on 24.09.1998, they purchased this land from Vijay Sahu. In sale deed this land is shown as non-irrigated land.

4. Sub Divisional Officer after fresh enquiry passed order on 15.04.1999, holding that Survey No. 203/1/A, area 0.51 Ares of Badnera is fragment and an agricultural land not under irrigation. The applicant Smt. Chitra was therefore found to having right to purchase it. He declared sale deed by Dhadomal in favour of Aruna Ambalkar, Rajni Chimurkar, Vaishali Pratapwar and Smt. Smita Ratnaparkhi illegal and void and ordered transfer of said land to Chitra on payment of compensation.

5. This order was questioned by Aruna and Pratibha Giri in appeal before the Commissioner and on 24.05.2002 the Additional Commissioner dismissed that appeal. Additional Commissioner found that sale deed dated 29.02.1996 and

24.09.1998 were void, as the purchasers were not adjacent owners and have not taken permission from the Collector. Aruna and Pratibha Giri had no locus standi to assail the same, however, the Additional Commissioner directed that claim of other adjacent owners will have to be considered as per law.

6. Against this adjudication, Aruna and Pratibha Giri filed Writ Petition No. 3654/2002, which came to be dismissed on 04.04.2003. Letters Patent Appeal No. 136/2003 filed by Aruna and Pratibha was also dismissed on 10.09.2003. Against this dismissal they filed Special Leave Petition No. 1375/2004. Hon''ble Apex Court on 16.02.2004 condoned the delay and dismissed the Special Leave Petition. Aruna and Pratibha then filed Review Petition No. 628/2004 before the Hon''ble Apex Court and it was dismissed on 06.04.2004.

7. Smt. Chitra Watwe filed an application under Section 10 of the Fragmentation Act for determination of compensation, for transfer of subject land in her favour. The said application was allowed by the Sub Divisional Officer, Amravati on 31.12.2003. Smt. Chitra, then filed application on 12.01.2004 for correcting revenue records, and for restoring name of Dhadomal Bashimal therein. On 01.03.2004, the Sub Divisional Officer, Amravati issued notice to Aruna and Pratibhai Giri and called upon them to deliver possession of subject land to Chitra. On 14.10.2005 the Sub Divisional Officer as a Consolidation Officer issued notices of eviction to Aruna and Pratibha Giri and asked them to vacate the land within 7 days. Aruna and Pratibha objected to that notice and submitted that the order of Additional Commissioner dated 24.05.2002 must be complied with and opportunity needed to be given to other adjacent owners. This objection was rejected by the Sub Divisional Officer on 17.03.2005, holding that other adjacent owners had knowledge of order, but, did not raise any objection. On 20.03.2005, the Sub Divisional Officer fixed the purchase price of subject land including trees therein at Rs. 3,26,020/-. He directed Mandal Adhikari to hand over possession of survey No. 203/1/A to Smt. Chitra.

8. Against that order of Sub Divisional Officer dated 17.03.2005, Aruna and Pratibha Giri filed Revision No. 29/PFG/2004-05 before the Additional Commissioner, who rejected it on 11.09.2006. Aruna and Pratibha, then filed Writ Petition No. 1658/2011 which was dismissed on 25.07.2011 by the High Court.

9. In the meanwhile, Aruna Giri and Pratibha Chandrashekhar Giri filed Special Civil Suit No. 201/2005, against the State of Maharashtra, through Sub Divisional Officer, Amravati; Smt. Chitra Watwe and Dhadomal Basomal for possession, declaration and for injunction. Defendant No. 2 in that suit (Smt. Chitra) filed an application under Order VII Rule 11 of the Code of Civil Procedure vide Exh.23. 2nd Joint Civil Judge, Senior Division, Amravati on 27.07.2009 allowed that application and rejected the plaint. As Smt. Chitra had already deposited the amount of purchase price, on 08.08.2008, the Sub Divisional Officer, Amravati issued a certificate of transfer in terms of Section 24[1] read with Section 21[4] of the Fragmentation Act, in favour of Smt. Chitra. Smt. Chitra thereafter sold the subject land to Trilok Bothra and Kanchanbai Bothra, who are applicants in

Misc. Civil Application No. 128/2015.

10. Against that order of Single Judge dated 25.07.2011 dismissing Writ Petition No. 1658/2011, Aruna and Pratibha filed Letters Patent Appeal No. 422/2011, and the said Letters Patent Appeal was rejected on 30.01.2012, holding that it was a frivolous challenge. In so far as the objection by Aruna and Pratibha, that provisions of Fragmentation Act were not at all attracted, this Court in Letters Patent Appeal noted that the said objection was raised in execution and it was also taken in Civil Suit. This Court noted the objection of land owners that such contentions were being raised in a roving effort to continue in possession and amounted to abuse of process of law. After noticing that order denying possession to Aruna and Pratibha had already attained finality, all subsequent challenges were held unsustainable, and therefore, the Letters Patent Appeal was dismissed.

11. It is in this background but without disclosing it, that Chandrashekhar Giri, husband of Pratibha Giri filed Writ Petition No. 1859/2012 before this Court in his personal capacity against State of Maharashtra. In it, he did not join Smt. Chitra Watwe or then Trilok Bothra or Kanchanbai Bothra as parties. He stated that on 12.10.2011, he made a representation to respondent Nos. 2,3 and 5 in that writ petition pointing out that the provisions of Fragmentation Act are not applicable in Municipal area of Amravati and Badnera Municipal Council. The notification dated 06.08.1983 was not implemented in area of Amravati Municipal Corporation, which included the area earlier comprised within the limits of both the Municipal Councils. On 18.04.2012 the Division Bench of this Court comprising of B.P. Dharmadhikari and A.P. Bhangale, JJ, observed that the petitioner Chandrashekhar can raise that challenge before the competent Forum under the provisions of Fragmentation Act, and that Authority could have considered the same in accordance with law. Writ Petition was accordingly disposed of with that liberty to petitioner. Chandrashekhar Giri in his personal capacity filed another Writ Petition No. 4510/2012, without joining Smt. Chitra Watwe or Bothers" as respondents. The grievance was inspire of notification dated 06.08.1983, the respondent Government authorities did not issue Gazette Notification as required by Section 5[3] of the Fragmentation Act. On 16.01.2013, Division Bench of this Court comprising of B.P. Dharmadhikari and P.B. Varale, JJ, observed that as per Section 31[2], the provisions of Section 31[1] do not apply to lands situated in area of Municipal Corporation or Municipal Council. The Court observed that as lands were situated within the area of Amravati Municipal Corporation, the Fragmentation Act could not have been applied to it. This court also noted its earlier order dated 18.04.2012 in Writ Petition No. 1859/2012. The Court found that as said provisions of Section 5[3] were not attracted and prayer [a] of Writ Petition was found misconceived. The petition was, therefore, rejected.

12. It is thereafter, that Aruna Giri and Pratibha Chandrashekhar Giri filed review application and that is registered as Misc. Civil Application No. 281/2013, along

with a prayer to condone delay of 357 days, for review of order dated 30.01.2012 in Letters Patent Appeal No. 422/2011. This Court found that the findings recorded by it can be used by the petitioners even otherwise, hence, with said liberty Civil Application and Misc. Civil Application were disposed of. This order came to be passed without issuing notice to respondent No. 2 in those proceedings namely Smt. Chitra Watwe, respondent No. 3[a] Tushar Watwe, respondent No. 4 Trilok Bothra and respondent No. 5 Kanchanbai Bothra. After this order, Aruna Giri and Pratibha Chandrashekhar Giri filed an application before the Sub Divisional officer for reopening the issue pertaining to land survey No. 203/1/A, contending that provisions of Fragmentation Act were not applicable and no action could have been taken in relation to said survey No. 203/1/A under the said Act.

13. After getting knowledge of said proceedings, Trilok Bothra and Kanchenjunga Bothra filed Misc. Civil Application No. 128/2015. As there was delay in moving it, Civil Application was filed seeking its con donation and as review of orders passed by this Court in Writ Petition to which they were not parties was sought, an application was moved seeking leave to file such application. By order dated 16.01.2015, after hearing all concerned, this Court condoned the delay. It noted that the orders of this Court in review proceedings in Letters Patent Appeal were attempted to be questioned before the Hon''ble Supreme Court and Hon''ble Supreme Court on 03.02.2014 allowed Bothra to withdraw that S.L.P. and granted them liberty to move this Court. Hence, while condoning delay, leave was given to Bothra to move application seeking recalling of orders passed in Writ Petition No. 4510/2012, and said application was directed to be placed along with Misc. Civil Application No. 281/2013. It is in this background, that we have heard the respective counsel Shri J.T. Gilda, learned Counsel for Bothra, Shri Vishal Anand learned Counsel for Chandrashekhar Giri, Shri Kalmegh, learned Counsel for Municipal Commissioner, Amravati Corporation and Shri N.R. Rode, learned A.G.P. for State Government. Rule is issued in these matters and are being heard and disposed of finally by consent of all by this common judgment and order.

14. Shri Gilda, learned counsel submits that husband of Pratibha namely Chandrashekhar Giri did not place before this Court the background in which he filed writ petition and wanted orders in it. Writ Petition No. 1859/2012 filed by him therefore, suffers from suppression of material facts and this court was misled, and orders dated 18.04.2012 have been obtained from it only to help Aruna and Pratibha in proceedings in which only possession is to be handed over to the applicants i.e. Trilok Bothra and Kanchanbai Bothra. The other Writ Petition No. 4510/2012 in which this Court has passed order on 16.01.2013 again suffers from same mischief. Chandrashekhar nowhere disclosed why he was aggrieved and as such the petitions were obviously filed to help his wife Pratibha and relative Aruna. Orders obtained by Aruna and Pratibha in review application st. No. 3345/2013, which later on came to be registered as Misc. Civil Application No. 281/2013, show the real motive prompting Chandrashekhar to approach this

court. It is submitted that on review application No. 281/2013, this court passed orders without notice to land owners respondent No. 3 Chitra therein or legal heir of land owner respondent No. 3[a] Tushar. Even the present applicants Trilok and Kanchanbai were not served with the notice. It is contended that thus, Aruna, Pratibha and Chandrashekhar came together and by suppressing correct facts from this court, they obtained an order in review which in effect helped them to unsettle the controversy, which has attained finality between the parties. He relies upon a judgment reported at Supreme Court Employees' Welfare Association and Others Vs. Union of India (UOI) and Another, AIR 1990 SC 334 : (1989) 3 JT 188 : (1989) 2 LLJ 506 : (1989) 2 SCALE 107 : (1989) 4 SCC 187 : (1989) 3 SCR 488 : (1990) 1 UJ 40), particularly paragraph No. 24 to show how principles of res-judicata operate in such circumstances. Even a wrong decision on facts or on law has to operate as res-judicata and finality reached cannot be disturbed in such mode and manner. He relies upon a judgment reported at Kalinga Mining Corporation Vs. Union of India (UOI) and Others, (2013) 3 AD 580 : (2013) 2 SCALE 286 : (2013) 5 SCC 252 : (2013) AIRSCW 1427 .) paragraph Nos. 39 and 45 and Dr. Subramanian Swamy Vs. State of Tamil Nadu and Others, AIR 2015 SC 460 : (2014) AIRSCW 6893 : (2014) 1 JT 590 : (2014) 1 SCALE 79 : (2014) 5 SCC 75) paragraph Nos. 39 and 40, to buttress his submissions.

15. Shri Rode, learned A.G.P. and Shri Kalmegh, learned counsel submits that the controversy is between private parties and hence, neither the State Government nor the Municipal Corporation has any stake in the matter.

16. Shri Vishal Anand, learned counsel on behalf of members of Giri Family submits that orders of this court in Writ Petition are in consonance with the provisions of Section 31[2] of the Fragmentation Act and there is no jurisdictional error or perversity, as such the same cannot be recalled.

17. Amravati Municipal Corporation was constituted on 06.08.1983 and subject land is situated within its area. Thus, he urges that on facts also this court has taken note of only correct legal position and explained it. He further submits that Chandrashekhar is not party to Fragmentation proceedings and this court is not concerned with the mode and manner in which this order is used. Whether orders of this court can be made use of by Aruna and Pratibha Giri or because of alleged finality, the said orders cease to be irrelevant; are all questions which can be come into by quasi judicial authorities, before whom Fragmentation proceedings are pending. The principles of res-judicata and other aspects can be pressed before that authority and are relevant before that authority. This court cannot eclipse the application of mind by the said authority in any manner. He concludes by submitting that prayers for review or recall are misconceived and erroneous.

18. Shri Gilda, learned counsel in reply arguments submits that Chandrashekhar has filed proceedings to unsettle the orders which had received finality. He and his wife colluded together and misled this Court.

19. Thus, in instant proceedings before this Court, the facts are not much in dispute. It is Writ Petition No. 4510/2012 filed by Chandrashekhar and his earlier Writ Petition No. 1859/2012 which are being objected to. Their neither Trilok Bothra or Kanchanbai Bothra or then their vendor Smt. Chitra Watwe were parties. Similarly Aruna Giri or Pratibha Giri are also not parties. This Court on 18.04.2012 did not make any observation which can eclipse right of these persons who were not parties to the petition. In order in Writ Petition No. 1859/2012 on 18.04.2012, petitioner Chandrashekhar was found free to challenge before the competent Authority the issue regarding implementation of the provisions of Fragmentation Act, and that Authority was left free to consider all facts and law on the point. In Chandrashekhar's other writ petition, again all these persons were not arrayed as parties. This court has found that lands of Chandrashekhar were not situated within the area of Amravati Municipal Council and it were in area of Amravati Municipal Corporation. We have found that in the light of the provisions of Section 31[2][a][i], provisions of the Fragmentation Act, cannot be made applicable to the lands of the petitioner. Thus, again no observation has been made about lands purchased by Chitra Watwe or then sold by her to Trilok Bothra and Kanchanbai Bothra. However, Chandrashekhar has not pointed out or described any particular land as his with necessary land revenue records.

20. Taking advantage of these orders in matters of Chandrashekhar, it appears that Aruna Giri and Pratibha Chandrashekhar Giri then filed review application (MCA St. No. 3345/2013). It was delayed by about 357 days. The application for condonation of delay and misc. civil application for review were disposed of together. This court has then observed that observations by this court in Writ Petition No. 4510/2012, can be used by the petitioners "even otherwise". With this liberty, the proceedings were disposed of. Again the use expected by this court is in accordance with law and any finding or observation of this court cannot be used to unsettle the finality, if it is already reached. This court has not made any observations to the prejudice of either Chitra Watwe or Tushar Watwe or Trilok Bothra or Kanchanbai Bothra. The observations in Writ Petition No. 4510/2012 and 1859/2012 pertain to petitioner therein namely Chandrashekhar and lands if any, held by him, if any. Those observations are not meant to apply to any other land which do not form part of the said writ petitions. Similarly the said observations cannot reopen any controversy which is finally settled as per law. This Court can not do and can not be presumed to have done anything which will prejudice the settled rights of persons not parties before it, that too, when such possibility was not even remotely placed before it.

21. Effort of Chandrashekhar Giri was obviously to assist the case of his wife Pratibha and other relative Aruna. He has not disclosed any other object behind his move even in this case. He ought to have pointed out entire previous history to this court. With intention to assist those relatives, and therefore, to suppress finality achieved [if any], he filed proceedings. He was aware that had he disclosed earlier history and round of litigations, perhaps this court would have

looked into more details and may have rejected his petitions. We therefore, find substance in the contentions of learned counsel Shri Gilda that Chandrashekhar did not approach this court with clean hands.

22. It is in this situation that we recall order dated 16.01.2013 in Writ Petition No. 4510/2012. That Writ Petition is accordingly dismissed. Misc. Civil Application No. 128/2015 is accordingly allowed.

23. Misc. Civil Application No. 281/2013 has been filed by Aruna and Pratibha Giri only after orders of this court dated 16.01.2013. This court dismissed the Letters Patent Appeal No. 422/2011 filed by them after noticing finality achieved. Review was also disposed of along with C.A.O. on 22.03.2013. The observations that finding recorded by this court can be used by the petitioners even otherwise, have been made behind the back of contesting respondents. Obviously, the same can not be used to the detriment of respondents therein and hence, are of no use to Aruna and Pratibha Giri. We therefore, recall the same. Accordingly C.A.O. No. 397/2013 and Misc. Civil Application St. No. 3345/2013 are also rejected and disposed of.

24. Misc. Civil Application No. 128/2015 is allowed and Misc. Civil Application No. 281/2013 is rejected. No costs.