
(2013) 09 BOM CK 0123
In the Bombay High Court
Case No : W.P. No. 3640 of 2003

Tulsabai Deokaran Agrawal

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 26-09-2013

Acts Referred:

Citation : (2014) 1 MhLj 921

Hon'ble Judges : A.B. Chaudhari, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

A.B. Chaudhari, J.—Heard. By the present petition the petitioner has put to challenge a common revisional order dated 13th May, 2003 passed by Additional Commissioner, Amravati Division, Amravati in Revision Petition Nos. 31/PFG/2000-2001 and 32/PFG/2000-2001 of Sonari, Tq. Murtizapur, Distt. Akola by which the revisional authority set aside orders dated 19-2-1996 and 30-9-2000 in the matter of declaration of fragment and subsequent permission u/s 9 for purchase of the fragment.

2. In support of the writ petition Ms. Sukhada Tatwawadi, the learned counsel for the petitioner contended that the first order was passed on 19-2-1996 by the Sub Divisional Officer holding that the respondent trust purchased a fragment without permission and in violation of the provisions of the Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947 (hereinafter referred to as the "Fragmentation Act" for brevity) and the said order was not put to challenge in the revision. She further argued that the revision was filed in the year 2000 and still there was no prayer to quash the said order dated 19-2-1996 in the revision but prayer clause (b) related only to the order dated 30th September, 2000 which was made u/s 9 of the Act. The order dated 19-2-1996 was not specifically challenged in the prayer clause though there is a reference in prayer clause (a) to call for the record in respect of the said order also. She, however, submitted that the order made in the year 1996 could not be put to

challenge in the year 2000 and was beyond limitation. The learned counsel for the petitioner then contended that there was no issue raised about want of notice u/s 6(2) of the Fragmentation Act and therefore, the revisional authority could not have interfered with the orders which have been set aside.

3. Per contra, the learned counsel for the respondent opposed the writ petition and supported the impugned order passed by the revisional authority as legal, correct and proper.

4. I have perused the impugned orders, so also the record and proceedings. The prayers in the revision read thus:

a) call for the record in R.C. No. PFG-31/Sonori/1/93-96 from the file of the respondent No. 1 decided on 19-2-1996 and 30-9-2000;

b) quash and set aside the impugned order passed on 30-9-2000 in R.C. No. PFG 31/Sonori/1, 95-96, being illegal, invalid and improper;

c) grant any other consequential relief which this Hon"ble Authority deems fit and appropriate in the circumstances of the matter and also in the interest of justice.

5. It is not in dispute that order dated 19-2-1996 was passed by the Sub Divisional Officer in the proceedings which were registered on a complaint made by the villagers of village Sonori for cancellation of the sale deed of the alleged fragment and not for permission to purchase u/s 9(2) of the Fragmentation Act at the behest of the petitioner. The petitioner thereafter filed an application u/s 9(3) Of the Fragmentation Act for purchase of the said alleged fragment and it is on that application order dated 30-9-2000 was passed granting permission to the petitioner. Thus, the second order i.e. dated 30-9-2000 was the effective order to deprive the purchaser of the suit property since there is a direction to the purchaser of the suit property and the original owner to effect sale deed in favour of the petitioner. Thus, it is clear that the effective order was order dated 30-9-2000 which was immediately challenged in the revisional jurisdiction. Even otherwise, order dated 30-9-2000 was fully dependent on the earlier order dated 19-2-1996. The said order dated 19-2-1996 could be examined by the revisional authority though there is no prayer clause for setting aside order dated 19-2-1996, looking to the language of section 35 of the Fragmentation Act. Section 35 of the Fragmentation Act is reproduced below:

35. Power of State Government or Commissioner to call for proceedings.

The State Government or the Commissioner in respect of such matters as the State Government may by general or special order specify in this behalf may at any time for the purpose of satisfying itself or himself as the case may be, as to the legality or propriety of any order passed by any officer under this Act call for and examine the record of any case pending before or disposed of by such officer and may pass such order in reference thereto as it or he, as the case may be, thinks fit.

6. In the case of Everest Apartments Co-operative Housing Society Ltd. Vs. State of Maharashtra and Others, the Supreme Court observed thus in paras 5 and 6:

5. There is no doubt that section 154 is potential but not compulsive. Power is reposed in Government to intervene to do justice when occasion demands it and of the occasion for its exercise, Government is made the sole Judge. This power can be exercised in all cases except in a case in which a similar power has already been exercised by the Tribunal u/s 149(9) of the Act. The exception was considered necessary because the legality or the propriety of an order having once been considered, it would be an act of supererogation to consider the matter twice. It follows, therefore, that Government can exercise its powers u/s 154 in all cases with one exception only and that the finality of the order u/s 23(3) does not restrict the exercise of the power. The word "final" in this context means that the order is not subject to an ordinary appeal or revision, but it does not touch the special power legislatively conferred on Government. The Government was in error in considering that it had no jurisdiction in this case for it obviously had.

6..... As Government is not compelled to take action, unless it thinks fit, the party who moves Government cannot claim that he has a right of appeal or revision. On the other hand, Government should welcome such applications because they draw the attention of Government to cases in some of which, Government may be interested to intervene. In many statutes, as for example the two major procedural Codes, such language has not only not inhibited the making of applications to the High Court, but has been considered to give a right to obtain intervention, although the mere making of the application has not clothed a party with any rights beyond bringing a matter to the notice of the Court. After this is done, it is for the Court to consider whether to act or not. The extreme position does not obtain here because there is no right to interference in the same way as in a judicial proceeding. Government may act or may not act; the choice is of Government. There is no right to relief as in an appeal or revision under the two Codes. But to say that Government has no jurisdiction at all in the matter is to err and that is what Government did in this case.

The language of section 35, quoted above, is similar and I have no hesitation to take a view, in the light of the said decision of the Supreme Court that there is power in the revisional authority to examine the validity of the relevant orders when it has called for the record as per prayer (a) of the revision application. The submission made by the learned counsel for the petitioner, therefore, cannot be accepted. In the instant case, the revisional authority has found a major legal defect in the order made by the subordinate officer for which he has given reasons. I quote those reasons hereunder:

In the instant case there is nothing on record which shows that Survey No. 55/1 was declared as a fragment and was recorded as a fragment in record of rights. In the instant case, provisions of section 7 are not attracted because no notice has been given u/s 6(2) in respect of Survey No. 55/1. Since section 7 is not

attracted, question of taking action u/s 9 does not arise. Hayatual Uloom Welfare Education Society had purchased Survey No. 55/1 relying on record of rights.

I have perused the copies of record of rights available on case record. Record of rights nowhere shows that Survey No. 55/1 has been declared as a fragment. On this count, the order passed by SDO on 19-2-1996 is extra legal.

I have seen those reasons and I am fully satisfied with the above reasons furnished by the revisional authority in the order dated 19-2-1996. In fact, the revisional authority has corrected the mistakes made by the Sub Divisional Officer by recording finding that there was violation of mandatory provision of section 7 and section 6(2) of the Fragmentation Act, inasmuch as the alleged fragment was never recorded in the record of rights so that the public in general can have notice of such fragment before endeavouring to purchase such alleged fragment. In other words unless the fragment is recorded to the knowledge of one and all the "fragment" cannot be treated as one under law. The said reasons are supported by the said decision of this Court in the case of Putalabai Lakhu Pawar and Others Vs. Shiva Dhondi Pawar and Others, . Even otherwise the language of sections 6 and 7 spells out mandatory nature thereof and the purpose is obvious as stated by me hereinbefore.

Section 35 or any other ancillary provisions do not provide for any limitation. It is true that in the absence of any provision for limitation the revision should be entertained only if it is within reasonable period. The reasonable period must depend on the facts of each case and there cannot be any straightjacket formula to find out what is the reasonable period. In the instant case, as earlier held by me, the first order dated 19-2-1996 was in the nature of mere declaration and next order made in the year 2000 was the effective order granting permission to purchase thereby disturbing rights of original owner as well as the earlier purchaser of the alleged fragment. It is in that context, I am inclined to hold that the revision was filed within reasonable period. In the result, I find no merit in the writ petition. Hence, I pass the following order.

ORDER

Writ Petition No. 3640 of 2003 is dismissed. No order as to costs.