

(1991) 02 BOM CK 0082

In the Bombay High Court

Case No : Writ Petition No. 1311 of 1983

Vatsalabai Ganuji Shinde

APPELLANT

Vs

Maharashtra Housing and Area Development Board and
Others

RESPONDENT

Date of Decision : 13-02-1991

Acts Referred:

Bombay Buildings Repairs and Reconstruction Board Act, 1969 — Section 33(3)
Maharashtra Housing and Area Development Act, 1976 — Section 88, 88(3)

Citation : (1991) 3 BomCR 462 : (1991) MhLj 805

Hon'ble Judges : B.N. Srikrishna, J

Bench : Single Bench

Advocate : P.M. Pradhan, for the Appellant; B.E. Patil, A.G.P., for the Respondent

Judgement

B.N. Srikrishna, J.—By this petition, the petitioner challenges the acquisition proceedings of certain property belonging to her under the provisions of the Maharashtra Housing and Area Development Act, 1976.

2. Building Nos. 145-D, 145-E, 145-F and 147-151, situated at Sane Guruji Marg, Chinchpokli, Bombay 400 011, were owned by petitioner's husband Ganuji Shinde. Shinde died in 1972 and the petitioner became the owner of the said buildings. In Building No. 145-D, there were 17 tenements, out of which 15 were let out to tenants and two were in the possession of the petitioner. In Building No. 145-E, there were 54 tenements, all of which were tenanted. In Building No. 145-F, there were 62 tenements, out of which 60 were residential and two were let out for commercial purposes. In Building Nos. 147-151, there were 27 tenements, out of which 14 were occupied by tenants and 13 by the petitioner herself.

3. On 14th June, 1976, the petitioner received a notice from the Bombay Municipal Corporation with regard to Building No. 145-D alleging that it was not fit for human habitation and was required to be demolished. The said building was actually demolished on 23rd July, 1976 by the Bombay Building Repairs and

Reconstruction Board constituted under the Bombay Building Repairs and Reconstruction Board Act, 1969 (hereinafter referred to as "Act No. 47 of 1969"). Another notice dated 2nd November, 1976 was received by the petitioner with regard to Building No. 145-E and this building was also demolished on 21st December, 1976.

4. So far as Building Nos. 147-151 are concerned, it is the case of the petitioner that the said buildings were in sound condition and did not require any structural repairs as the petitioner had expended considerable amounts of money in putting the said buildings in good order.

5. On 25th of June, 1981, the petitioner received a notice purported to be a notice u/s 92(1) of the Maharashtra Housing and Area Development Act, 1976 (hereinafter referred to as "Act No. 28 of 1977"). By this notice, it was alleged that the Board constituted under Act No. 28 of 1977 had issued a certificate u/s 88(3)(a) and that the said Board was of the opinion that the buildings referred to in the schedule to the notice were not capable of being repaired or rendered fit for habitation at reasonable expenses and, hence, were not considered for repairs under the said Act. This notice also informed the petitioner that the Board had submitted to the Government of Maharashtra a proposal u/s 92(1) of the Act to acquire the land indicated in the Schedule for the issue of clearance and compulsory acquisition order and to acquire the land and buildings in whatever condition they were in. The said notice further informed the petitioner that the Government of Maharashtra had approved the proposal u/s 93(1) initiated by the Board and had indicated its approval to the Board and that the acquisition proposal has been forwarded to the Special Land Acquisition Officer for initiating acquisition proceedings. The said notice finally called upon the petitioner to vacate the said land within 15 days from the date on which the clearance and compulsory acquisition order u/s 93(5) of the Act became operative. The notice also called upon the petitioner, the occupiers and the owners of the described land to submit their objections and suggestions to the acquisition proposal, if any, on or before 27th July, 1981. In the schedule to the said notice, inter alia, the lands on which Buildings 145-D, 145-E, 145-F and 147-151 were situated were specified. The petitioner, by her reply dated 16th August 1981, objected to the acquisition proposal by challenging the very basis of the notice. She contended that the concerned buildings were not in such a dilapidated condition as to require structural repairs, nor were they in such a condition that repairs thereto were necessary. She pointed out that there were, in fact, no buildings as Nos. 145-D and 145-E as the said buildings had been demolished in the year 1976. With regard to Building No. 145-F, the petitioner contended that it was always in good condition, save the sanitary blocks thereof which had also been repaired by the Repairs Board and that the Board had certified the building to be in sound and fit condition for human habitation. So far as the buildings Nos. 147-151 were concerned, the petitioner contended that they were in an enviably sound and perfect condition needing no repairs at all. She pointed out that she herself was residing in the said buildings and that even a cursory look at them

would satisfy any authority that it would be ridiculous to say that the said structures were in a dilapidated condition. She challenged the notice on the ground that the conditions requisite for issuing the certificate u/s 88(3) of Act No. 28 of 1977 had not been satisfied. She also offered to get the structures on 147-151 examined by any independent architect to show that they did not require any structural repairs at all. The petitioner, therefore, called upon the Special Land Acquisition Officer to withdraw the notice.

6. The Special Land Acquisition Officer held proceedings and made an order dated 7th January, 1983. He disposed of the two contentions raised on behalf of the petitioner by holding that, while it was true that the buildings 145-D and 145-E had been demolished prior to the issue of the certificate, since the Board had issued a certificate u/s 33(3) of Act No. 47 of 1969 with regard to the said buildings, such certificate would be valid as per section 88(3) of Act No. 28 of 1977 and that, therefore, the contention had no substance. With regard to the second contention of the petitioner that the buildings Nos. 145-F and 147-151 were in sound condition, the Special Land Acquisition Officer held that, although Building No. 145-F had been once repaired, after repairs the life of the said building was not so much extended as presumed by the owner. He also upheld the validity of the certificate u/s 88(3)(b) of Act No. 28 of 1977 issued in respect of buildings 147-151 and took the view that for the purpose of implementation of the whole scheme, those properties were absolutely required to be taken along with other buildings which were in dilapidated condition.

7. By another order dated 31st January, 1983, purportedly issued u/s 93(5) of Act No. 28 of 1977, the Special Land Acquisition Officer fixed 10th February, 1983 as the date on which the acquisition proposal, as sanctioned by the State Government, shall become operative. Both the said order were sent and received together by the petitioner.

8. Mr. Pradhan, learned Counsel for the petitioner, has challenged the acquisition proposal and all subsequent proceedings culminating in the order dated 31st January, 1983 as being wholly illegal and contrary to the provisions of Act No. 28 of 1977. He contended that, under the scheme of this Act, when a building becomes so old as to need structural repairs, the Board constituted u/s 18 is required to undertake such structural repairs to the building unless the Board is of the opinion, (a) that the cost of structural repairs to the building will exceed five hundred rupees per square metre or, (b) that the cost of structural repairs will exceed five hundred rupees per square metre, but the size of the land on which the said building stands is such that, for some reason or the other, it would not be possible or economical to erect any new building thereon and there is an adjoining building and the cost of the structural repairs of such building does not exceed five hundred rupees per square metre. If the Board comes to such an opinion, then the Board can issue a certificate u/s 88(3) of Act No. 28 of 1977 and make a submission of proposal for acquisition to the State Government u/s 92. He, however, contends that, in any event, a certificate as contemplated u/s

88(3) is a condition precedent for submission of the proposal for acquisition u/s 92. It is only thereafter that the proposal is approved by the State Government and the land, with or without the structures thereupon, is acquired by resort to acquisition proceedings. Mr. Pradhan, further contended that, considering the serious consequences entailed in the issuing of the certificate, before forming an opinion as contemplated under sub-section (3) of section 88, the owner of the building or other person affected should be given an opportunity to be heard in the matter as otherwise it would be open to the Board to issue such a certificate even in respect of buildings which are in perfectly sound condition and thereafter proceed to acquire them. The petitioner was neither heard nor given an opportunity to make representation before the certificate dated 8th June, 1979 was issued u/s 88(3)(b) of Act No. 28 of 1977.

9. It is further contended by the petitioner that there was no application of mind by the Board to the germane facts prior to issuing the certificate u/s 88(3)(b) of the Act. There is substance in this contention. The certificate in terms states that the Board was of the opinion that the cost of structural repairs, inter alia, to buildings 145-D and 145-E exceeds one hundred and twenty rupees per square meter. It is an admitted position that both these buildings were demolished in the year 1976. That a certificate issued on 8th June, 1970 should contain a recital that the cost of structural repairs to the buildings 145-D and 145-E, in the opinion of the Board, exceeds one hundred and twenty rupees per square meter, clearly shows that there is no application of mind to the material facts before the said certificate was issued. This certificate does not refer to building No. 145-F at all. With reference to buildings 147-151, the certificate states :

"...the cost of structural repairs to such buildings does not exceed one hundred twenty rupees per square metre."

A bare perusal of section 88(3) of Act No. 28 of 1977 would show that the certificate fails to comply with the provision thereof. So far as buildings 145-D and 145-E are concerned, the certificate is issued almost three years after the buildings were demolished. As regards Buildings 147-151, the certificate does not state what is required to be stated u/s 88(3). In either case, the certificate does not comply with the provision of section 88(3).

10. It is true that section 88 of Act No. 28 of 1977 does not, in terms, require an opportunity for a hearing or representation to be given to the affected person before the issuance of certificate. At the same time, it is well established law that the principles of natural justice have to be read into all provisions of law unless they have been expressly excluded in their application. This is all the more so when serious civil consequences follow and affect the citizen. In my view, considering the serious consequence which follows the issuance of such certificate u/s 88(3), the requirement of complying with principles of natural justice must be read into the section. It is essential that the person affected is made aware of the proposal to issue such a certificate and his/her objections thereof, if any, elicited before such a certificate is issued. If such a hearing had

been given to the petitioner, the petitioner could have pointed out that the buildings 145-D and 145-E had been demolished way back in 1976 and that buildings 147-151 were structurally sound and did not require any structural repairs at all.

11. Mr. Pradhan, also pointed out that, although in the acquisition proceedings and the final order dated 31st January, 1983, building 145-F has been included, no certificate u/s 88(3) of the Act No. 28 of 1977 was issued in respect of building 145-F. This seems to be correct. There is no reference to building 145-F in the certificate dated 8th June, 1979.

12. On behalf of the respondents, Mr. Patil, learned Assistant Government Pleader, tried to defend the acquisition proceedings and certificate issued u/s 88(3)(b) of Act No. 28 of 1977 by contending that, though the record of the writ petition does not show it, probably, hearing might have been given to the petitioner before the issuance of such certificate. Alternatively, he contended that the section does not require a hearing to be given to the affected person before issuing a certificate thereunder. Next, he submitted that the recitals in the body of the order of the Special Land Acquisition Officer show that a certificate had been issued previously in 1969 under Act No. 47 of 1969 in respect of buildings 145-D and 145-E and that, by virtue of the provisions of section 188 of Act No. 28 of 1977, the earlier certificate of 1969 must enure to the benefit of the proceedings taken out under Act No. 28 of 1977.

13. I am unable to accept any of the contentions put forward by Mr. Patil. In the first place, taking into consideration the seriousness of the consequence which follows upon the issuance of certificate u/s 88(3)(b), it is not possible to hold that the affected person need not be given a hearing or at least an opportunity to make a representation against the issuance of the certificate. I am also unable to accept the second contention of Mr. Patil, that the certificate issued under Act No. 47 of 1969 can be said to enure to the benefit of the proceedings taken out under Act No. 28 of 1977. In the first place, the earlier certificate is not on record. Next, the conditions under which the certificate could have been issued u/s 33(3) of Act No. 47 of 1969 are not identical with the conditions under which the certificate could be issued u/s 88(3) of Act No. 28 of 1977. The first proviso to section 88(1) would operate to save any action under the provisions of the repealed Act No. 47 of 1969, in so far it is not inconsistent with provisions of Act No. 28 of 1977. In my view, the conditions under which the certificate could be issued u/s 88(3) of Act No. 28 of 1977 are not identical with the conditions for issuance of certificate u/s 33(3) of Act No. 47 of 1969. Consequently, the certificate, if any, granted under the previous Act does not entitle the authorities to resort to proceedings u/s 92 of Act No. 28 of 1977.

14. I am, therefore, of the view that the certificate issued u/s 88(3) of Act No. 28 of 1977 on which the acquisition proposals were submitted to the State Government is itself illegal and does not comply with the provisions of section 88(3). Consequently, the further proceedings taken under sections 92 and 93 of

Act No. 28 of 1977 are also illegal and of no consequence.

15. In the result, rule is made absolute in terms of prayers (a) and (b) with costs.