

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 943 OF 2018

M/s.Veekaylal Investment Co. Pvt. Ltd. .. Petitioner
Vs.
State of Maharashtra
through its Principal Secretary,
Revenue and Forest Department & Ors. .. Respondents

Mr.Milind Sathe, senior advocate a/w. Mr.P.K. Dhakephalkar, senior advocate and Mr.Vishal Kanade I/b M/s.Rajeev Sharma and Mr.Satish Modi for petitioner.

Ms.Jyoti Chavan, AGP for respondent Nos.1 to 3.

Mr.Milind More for respondent Nos.4 and 5.

CORAM : B.R. GAVAI &
M.S. KARNIK, JJ.
DATE : 24TH OCTOBER 2018

P.C.

1 Rule.

2 Heard Shri Sathe, the learned senior counsel appearing on behalf of the petitioner and the learned AGP on the question of grant of interim relief.

3 By the impugned order dated 17th October 2017, the State Government has directed the Slum Rehabilitation Authority (SRA) to maintain status-quo in respect of the 'No Objection' granted to the petitioner for implementing Slum Rehabilitation Scheme in respect of

Survey No.2308. The Letter of Intent (LOI) was granted by the SRA on 26th March 2010. The impugned order came to be passed on the ground that enquiries being conducted as to whether the said land in respect of which the LOI has been granted for Slum Rehabilitation Scheme, is owned by the Government of Maharashtra.

4 The learned AGP vehemently opposed the prayer for granting any interim relief. The learned AGP submitted that on the basis of various communications, a detailed enquiry has been conducted by the Collector. In the enquiry, *prima-facie*, it is found that the land is owned by the State Government.

5 Undisputedly, the lands were originally given on tenancy to Khots. In view of the provisions of the Salsette Estate (Land Revenue Exemption Abolition) Act, 1951 (Salsette Act), the ownership of the land vested in the name of Khots. Dispute arose between the parties and therefore the land came in the administration of the Court Receiver. The Court Receiver auctioned the properties and in the said auction, the petitioner was the successful bidder.

6 It could be seen from the documents that the land was purchased by the petitioner in an auction conducted by the Court Receiver. It does not

show that the land is purchased by the petitioner in a clandestine manner. Undisputedly, respondent No.4 has granted LOI after following the procedure prescribed. The LOI was granted in the year 2010 and between the date of grant of LOI till the date of passing the impugned order, there is a time span of seven years.

7 Apart from the above fact, upon perusal of the record, it is revealed that on the basis of an issue which was raised in the Legislature, the State Government had directed an enquiry to be conducted by the Divisional Commissioner, Mumbai. It will be relevant to refer Exh.'AA' annexed to the petition, which is a communication addressed by the Secretary of the Revenue and Forest Department, dated 25th April 1979 to the Divisional Commissioner, Bombay. It will be relevant to refer the following part of the said letter which read as under :-

“.....

6. *After scrutiny of the cases on the lines indicated above, if it is found that in some cases wrong or defective orders were passed, you may also ascertain the name(s) of the officers who have passed these orders. Steps may also then be taken to fix the responsibility if prima facie it is found that the officers were at fault.*

7 *Incidentally some of the ex-khots were holding large area of land. Under the old Ceiling Act of 1961 ceiling area for paddy land was 66 acres and for warkasland 126 acres. You may therefore also ascertain and report to Government whether ceiling enquiries in respect of all these large holdings were held and if so, with what result?*

8 *As this mater is likely to come up for discussion in the Legislature during the Monsoon Session, I am to request you to please*

give this matter top priority and send your report to Government before 1st June 1979.”

8 On the basis of the directions issued by the State Government, an enquiry was conducted by the Divisional Commissioner through his Subordinate Officers. The said report which was an outcome of the enquiry, which was an outcome of the enquiry, was communicated to the State Government by the Divisional Commissioner along with his letter dated 4th July 1979. It will be relevant to refer to the concluding part of the said enquiry report signed by the Divisional Commissioner, which reads as under :-

“.....In no case was any defect found in the decisions. In one case where the Commissioner in 1964 did find defect, he set aside the order of Special Mamlatdar. But the party went upto Government and as yet nothing has been heard from Government about this case. In view of this, the question of taking up cases in suo motu revision by way of remedial action would not arise.”

9 It could, thus, be seen that a detailed enquiry has been conducted by the Divisional Commissioner and in the said enquiry, he did not find any defect in the decisions. He has further stated that in 1964, in one case, the Commissioner found defect and the order of Special Mamlatdar was set aside by the Divisional Commissioner.

10 To our specific query, as to whether report of the Divisional Commissioner dated 4th July 1979 has been considered by the Collector

while conducting an enquiry on which the learned AGP is relying, the AGP fairly stated that the said report is not available in the records of the State Government and hence the Collector could not have considered the said report.

11 It is unfortunate that the State Government stated that the Collector could not have considered the report of the Commissioner of the year 1979 since the record is not available where the petitioner, in the application under under Right to Information Act, has obtained the said record. In any case, the Divisional Commissioner is the higher authority than the Collector. In that view of the matter, we are *prima-facie* of the view that re-opening of the issue almost after about 38 years on the basis of some questions raised in the Legislature and granting stay to the No objection which was granted 7 years back, is not just and proper. In any case, on the basis of the said No Objection, substantial progress has been made. The petitioner is required to pay rent to the 97 slum dwellers who were required to vacate their premises till the availability of the permanent alternate accommodation to them.

12 In view of above, we are of the view that the petitioner has good *prima-facie* case on merits. The test of the balance of convenience and irreparable injury are also in favour of the petitioner. In the event the

Government is in a position to establish that the land is owned by it and the damages are suffered by the State Government, it can always be compensated by the petitioner in the monetary terms. However, in the event, the project is stalled, the extraordinary expenditure by the petitioner would be blocked. Apart from that, the petitioner would be required to make payments of compensation to the slum dwellers who have vacated their premises for the redevelopment project.

13 In view of above, we are inclined to grant interim relief. There shall be stay to the impugned order dated 17th October 2017.

Needless to state that there shall be stay also to the consequential order dated 24th November 2017 passed by respondent No.4.

[M.S. KARNIK, J.]

[B.R. GAVAI, J.]