

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1448 OF 2013

Shree Omkareshwar Sahakari Griharachana
Sanstha Maryadit through its office bearers
Chandrashekhar M. Dabak and anr. .. Petitioner

vs.

The Additional Commissioner,
Pune Division, Pune and ors. .. Respondents

Dr. V.V. Tulzapurkar, Senior Advocate a/w. Mr. Mandar Soman for the
Petitioner.

Ms Aparna Vhatkar, AGP for Respondent Nos.1,2 and 5.

Mr. Ram Apte, Senior Advocate a/w. Mr. S.N. Chandrachud for
Respondent Nos.3 and 4.

CORAM : M. S. SONAK, J.

Date of Reserving the Judgment : 11 March 2015.

Date of Pronouncing the Judgment : 18 March 2015.

JUDGMENT :-

1] Rule. With the consent of and at the request of learned
counsel for the parties, Rule is made returnable forthwith.

2] By this petition, the petitioner challenges the following three
orders:

- (a) Order dated 2 May 2009 made by the Collector, Pune;
- (b) Order dated 7 December 2010 made by the Additional
Commissioner, Pune; and
- (c) Order dated 6 August 2012 made by the Minister
(Revenue).

The aforesaid orders hereinafter shall be referred to as the
'*impugned orders*'.

3] By the impugned orders, the aforesaid Authorities have regularised the user in respect of plot No.35 of the petitioner society and further directed the enrollment of respondent No.4 as a member of the petitioner society.

4] The original order in this regard was made by the Collector, Pune on 2 May 2009. The appeal against the same was dismissed by the Additional Commissioner on 7 December 2010. Finally, the Minister (Revenue) by order dated 6 August 2012 has dismissed the revision against the order dated 7 December 2010 made by the Additional Commissioner. The Minister (Revenue) has, however, at para 26 of the impugned order dated 6 August 2012 observed that as the issue of membership of respondent No.4 to the petitioner society, is pending before the Cooperative Court, it would not be appropriate to express any opinion upon the said aspect.

5] For the order which is proposed to be made, there is no necessity to advert to the factual aspects in great details. Suffice to state that by Lease dated 15 November 1968, the State leased the said property to the petitioner society, in order to enable the society to carry out development by laying out plots to be allotted to the persons affected by Panshet floods for residential purposes. Accordingly, about 44 plots were laid out and allotted by the society to its members. Plot No.35 (said plot) was allotted to one Murlidhar Kulkarni. Upon his demise and consequent upon production of succession certificate, the said plot was allotted to Ramesh Kulkarni (respondent No.3). It is the case of the petitioner that respondent No.3 in collusion with respondent No.4 commenced user of the said plot for non-residential purposes, i.e., for the purposes of a garage. Upon the complaint by the petitioner society, the Collector, Pune,

caused the Tehsildar to make an enquiry and submit a report in the matter. The Tehsildar made enquiries, recorded statements, conducted panchanama, etc. and made a report that the said plot was indeed being used for non-residential purposes. Thereupon, the Collector issued a show cause notice dated 7 March 2008 to respondent No.3 requiring him to show cause as to why the grant of plot in his favour should not be cancelled for breach of conditions of Lease. The copy of such show cause notice was also marked to the petitioner society.

6] It is further the case of the petitioner that respondent No.3 submitted a conditional resignation, the condition being that respondent No.4 be admitted as a member of the society in respect of the said plot. The petitioner society accepted the resignation of respondent No.3, but without the condition imposed. The resolution, to this effect was, however, challenged by respondent No.3 before the Cooperative Court. The Cooperative Court has injuncted the petitioner society from allotting, transferring and disposing of the said plot to any third party.

7] The Collector (Pune) by the impugned order dated 2 May 2009 imposed a fine of Rs.13,82,242/- upon respondent No.3, condoned the non-residential user and further directed the petitioner society to enroll respondent No.4 as its member, in pursuance of request by respondent No.3. There is no dispute that respondent No.4 has paid such amount for and on behalf of respondent No.3 to the State. The Additional Commissioner, Pune by order dated 7 December 2010 dismissed the petitioner's appeal against the Collector's order dated 2 May 2009. The Minister (Revenue) has dismissed the petitioner's revision against the

Additional Commissioner's order dated 7 December 2010. However, the Minister (Revenue) in paragraph 26 of the impugned order dated 6 August 2012 has observed that as the issue of membership of respondent No.4, is pending before the Cooperative Court, it would not be appropriate to express any opinion in the said aspect.

8] Dr. V.V. Tulzapurkar, learned senior advocate for the petitioner basically made the following two submissions in support of the petition:

(a) That the impugned order dated 2 May 2009 made by the Collector disposes of the petitioner's complaint with regard to non-residential user of the said plot and further foists respondent No.4 as a member upon the petitioner society. Such order, indeed visits the petitioner society with civil consequences. Accordingly, the Collector was duty bound to afford an opportunity of hearing to the petitioner society. This having not been done, impugned orders are liable to be set aside for breach of principles of natural justice and fair play;

(b) The Collector, has no jurisdiction to direct enrollment of respondent No.4 as a member of the petitioner society. Such jurisdiction is exclusively vested in the Cooperative Court under the provisions of Maharashtra Cooperative Societies Act, 1960. In fact, the dispute in that regard is pending before the Cooperative Court, the same having been raised by respondent No.3. The impugned order dated 2 May 2009, is consequently without jurisdiction and liable to be set aside.

9] Dr. V.V. Tulzapurkar submitted that although the aforesaid grounds were specifically urged in the memo of appeal and revision, the appellate and revisional Authorities have not answered the same. For these reasons, Dr. Tulzapurkar submitted that the impugned orders are liable to be set aside.

10] Ms Aparna Vhatkar, learned AGP appearing for respondent Nos.1,2 and 5 submitted that the show cause notice dated 7 March 2008, pursuant to which the Collector commenced proceedings which lead to making of order dated 2 May 2009 was served, *inter alia*, upon the petitioner as well as respondent No.3. Further, the Tehsildar, had heard the representatives of the petitioner and respondent No.3 before record of statements and submission of a report to the Collector. The petitioner, never demanded for any personal hearing in the matter. Accordingly, there is no substance in the contention of breach of principles of natural justice and fair play. On the aspect of jurisdiction, learned AGP submitted that since the said plot was a part of the property leased out by the State to the petitioner's society, the Collector was the appropriate Authority to exercise jurisdiction over all matters concerning the said plot.

11] Mr. Ram Apte, learned senior advocate for respondent Nos.3 and 4 submitted that there was no breach in compliance with the principles of natural justice and fair play. Further, mere raising of such a ground in a memo of appeal or revision petition is not sufficient and there is no evidence that such ground was ever pressed before the appellate or revisional Authorities. On the aspect of jurisdiction, Mr. Apte supported the submissions of Ms Vhatkar, learned AGP, but further submitted that the observations in the impugned order dated 2 May 2009 could always be read and

construed alongwith the caution suggested by the Minister (Revenue) in paragraph 26 of the impugned order dated 6 August 2012. Thus construed, this is clearly not a case of any jurisdictional error.

12] Mr. Apte also submitted that the conduct of the petitioner society was such, as would dis-entitle it to any equitable relief from this Court. In this regard, Mr. Apte pointed out that the petitioner society had purported to accept the conditional resignation tendered by respondent No.3 without complying with the conditions therein. As a result, respondent No.3 was constrained to raise a dispute before the Cooperative Court, which has injuncted the petitioner society from selling, transferring or otherwise dealing with the said plot. Further, Mr. Apte submitted that the petitioner society is bent upon allotting the said plot in favour of some relations of the Managing Committee Members and therefore, undue obstacles are being created in the matter of allotment of the said plot in favour of respondent No.4. For all these reasons, Mr. Apte contended that the present petition be dismissed.

13] The rival contentions now fall for determination.

14] The impugned order dated 2 May 2009 made by the Collector, Pune comprises two parts :

- (a) The first part concerns the regularisation or the condonation in the matter of non-residential user of the said plot by respondent Nos.3 and 4;
- (b) The second part concerns the direction to the petitioner society for enrollment of respondent No.4 as its member.

15] In so far as the first part is concerned, there is no serious dispute and in fact no such dispute was raised by the petitioner that it would be within the jurisdictional domain of the Collector to regularise or condone the non-residential user of the said plot. In this regard, the Collector, acting on the basis of complaint by the petitioner society caused the Tehsildar concerned to make enquiries and submit a report. The Tehsildar, prior to submission of report afforded opportunities to both the petitioner society as well as respondent No.3. The Collector, upon consideration of such report, concluded that there was a breach, in as much as the said plot was for some time used for non-residential purposes. The Collector, however, in exercise of the jurisdiction vested in him chose to impose a fine of Rs.13,82,242/- upon respondent No.3 as a pre-condition regularisation/condonation of breach. Admittedly, before this was done, show cause notice dated 7 March 2008 was issued to respondent No.3 and a copy thereof was duly marked to the petitioner society. The petitioner society was thus very much aware of the proceedings pending before the Collector and the representatives of the petitioner society had already taken part in the enquiry held by the Tehsildar, upon directives of the Collector. At no stage, did the petitioner society demand or request for personal hearing before the Collector. In these circumstances, it is difficult to accept Dr. Tulzapurakar's contention that there has been a breach in compliance with the principles of natural justice and fair play, prior to the Collector making the first part of the impugned order dated 2 May 2009, i.e., regularisation/condonation in the matter of non-residential user of the said plot.

16] In so far as the second part of the Collector's impugned order dated 2 May 2009 with regard to the directives to enroll the

respondent No.4 as a member of the petitioner society is concerned, there is, in my judgment, failure to comply with the principles of natural justice and fair play. This is because the enquiry by the Tehsildar in pursuance of directives of the Collector was basically with regard to the non-residential user of the said plot by respondent Nos.3 and 4. The statements made by the representatives of the petitioner society in such enquiry were also in the context of such non-residential user. Further and most importantly, the show cause notice dated 7 March 2008 issued by the Collector also concerned the aspect of non-residential user of the said plot. The show cause notice did not give any intimation that the aspect of respondent No.4 being enrolled as a member of the petitioner society, was to be considered by the Collector. The Collector's impugned order dated 2 May 2009, in fact, makes reference to the applications dated 17 May 2006 and 13 August 2008 seeking enrollment of respondent No.4 as member and that the said applications were considered by the Collector in making the impugned order dated 2 May 2009. With regard to all these matters, the petitioner society had no notice and was afforded with no opportunity whatsoever. There was no question of the petitioner society demanding any personal hearing on this aspect, because the petitioner society was never made aware that this aspect was going to be considered by the Collector whilst disposing of the show cause notice dated 7 March 2008. The petitioner society was unable to even raise its contention with regard to the jurisdiction of the Collector in matters of enrollment of members, particularly when the dispute in that regard was already pending before the Cooperative Court. For all these reasons, the second part of the Collector's impugned order dated 2 May 2009 is liable to be set aside, the same being in breach of the principles of natural justice and fair play.

17] There is no necessity to decide the issue of Collector's jurisdiction in the matter of enrollment of respondent No.4 as a member of the petitioner society. This issue is kept open for the decision of the Collector, since the matter shall have to be remanded to Collector for fresh decision on this part.

18] Accordingly, the impugned orders, in so far as they condone/regularise the non-residential user subject to payment of fine of Rs.13,82,242/-, which has admittedly been paid to the State are not interfered with. It is, however, clarified that the condonation/regularisation is not to be interpreted to mean that non-residential user of the said plot is permitted for the future, but it only means that the past non-residential user is condoned, consequent upon payment of fine as aforesaid.

19] However, in so far as, the second part of the impugned order dated 2 May 2009 of the Collector, to the extent it foists the membership of respondent No.4 upon the petitioner society is concerned, the same is set aside. To the aforesaid extent, the orders made by the Additional Collector and Minister (Revenue) are also set aside. The Collector to decide afresh the issue of respondent No.4's membership or for that matter the request made by respondent No.3 with regard to enrollment of respondent No.4 as a member, within a period of six weeks from the date of production of an authenticated copy of this order.

20] The Collector to decide this issue afresh after afford of an opportunity of hearing to the petitioner as well as respondent Nos.3 and 4. All contentions of all parties, including the petitioner's contention, that the Collector has no jurisdiction to decide such issue

of membership, are also kept open for the Collector to decide upon the same.

21] Parties to appear before the Collector, Pune alongwith an authenticated copy of this order on 30 March 2015.

22] Rule is made partly absolute to the aforesaid extent. There shall be no order as to costs.

23] Parties to act upon an authenticated copy of this order.

(M. S. SONAK, J.)

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