

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.3695 OF 2014

Shri Anil Nemichand Bafna and Others. .. Petitioner

Vs

The Collector, Pune and Others. .. Respondents

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Dr. Virendra V. Tulzapurkar, Senior Advocate along with Shri R.D. Soni
i/by M/s. Ram & Co for the Petitioners.

Shri N.P. Deshpande, AGP for the Respondents.

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CORAM : A.S. OKA &
REVATI MOHITE DERE, JJ
DATED : 3RD JULY 2015

ORAL JUDGMENT (PER A.S. OKA, J)

. Considering the narrow controversy involved in this
Petition, the Petition is forthwith taken up for final disposal.

2. Rule. The learned AGP waves service for the Respondents.

3. Subject matter of this Petition is the land bearing Survey
No.47 (for short “the said land”) situated at Village- Baner, Taluka-
Haveli, District –Pune, admeasuring 12,100 sq. meters.

4. The Petitioners are relying upon the orders passed in the
proceedings in the Urban Land (Ceiling and Regulation) Act, 1976 (for
short “the ULC Act”) in relation to the said land.

5. An Application was made by the Petitioners for grant of permission for non-agricultural use in respect of the said land under the provisions of the Maharashtra Land Revenue Code, 1966 (for short “the said Code”).

6. By a letter dated 21st August 2012, the District Collector called upon the Additional Collector-cum-Competent Authority of Pune Agglomeration to submit its comments on the grant of permission for non-agricultural use in respect of the said land. It refers to the recommendations of a One Man Committee as well as pendency of the Special Leave Petition (Criminal) No.2139 of 2011 and Criminal Public Interest Litigation No.6 of 2008. The challenge in this Petition under Article 226 of the Constitution of India is to the communication dated 22nd November 2012 (Exhibit-G to the Petition) issued by the District Collector, Pune to the Petitioners. The said communication records that as per the recommendations of the Competent Authority, the subject matter is included at Sr.No.41 of the list of 45 cases in the report of the One Man Committee. The District Collector, Pune, therefore, informed that the Application for grant of permission for non-agricultural use has been rejected.

7. There is an affidavit-in-reply filed by Shri Subhash Dharmadhikari, the Additional Collector and Competent Authority of Pune Urban Agglomeration. In Paragraph 10 of the said affidavit, a reference is made to the report submitted by the One Man Committee. Paragraph 10 of the said affidavit reads thus:

“10. I further say that the said One Man Committee then submitted final report has classified the cases scrutinized as under:-

- (i) Fake, fabricated and forged documents,
- (ii) Orders under Section 34 passed by the then Minister of State for Urban Development,
- (iii) Illegal and irregular orders,
- (iv) Cases in which no illegalities/irregularities were noticed,
- (v) Cases pertaining to the Defence Estate Officer and Competent Authority under the ULC Act,
- (vi) Cases of which no record was available.

Annexure-I-A of the report deals with 29 cases in respect of which the report was submitted by the One Man Committee on 18.9.2010. Annexure-II is the list of 19 orders passed by the Minister of State for Urban Development. Annexure III is the list of 45 illegal/irregular orders passed by the Competent Authorities or the Appellate Authorities. Annexure IV is the list of 97 cases in which no illegalities/irregularities were noticed. Annexure V is the list of three cases which were outside the purview of the Committee and finally Annexure VI is regarding the case in which no record was made available to the Committee.”

8. An extract of the recommendation of the One Man Committee in relation to the said land has been annexed at Exhibit-2 to the said reply. We have perused the said extract at Exhibit-2. Even the recommendations of the One Man Committee are reproduced therein. All that the One Man Committee has found is that the order dated 30th November 2004 under the ULC Act is erroneous. It is observed that the Competent Authority wrongly allowed excess area to the extent of 446.46 sq. meters as retainable. It is further recorded therein that the Competent Authority has not taken the action under Sub-sections (3) and (5) of Section 10 of the ULC Act with the result, the surplus land to the extent of 10818.46 sq. meters remained with the original declarants.

9. In the affidavit-in-reply, a reliance is placed on the judgment and order dated 22nd February 2011 in Criminal Public Interest Litigation No.6 of 2008 passed by a Division Bench of this Court by which a direction was issued to the DIG, ACB, CID, Mumbai to constitute a Special Investigation Team. There is a direction issued that the ongoing investigation in 29 CRs already registered by the Economic Offences Wing, State CID, Pune be transferred to the SIT of CBI by the concerned Investigating Officer as soon as the SIT is formed. The Apex Court has granted stay of operation of the said judgment and order of this Court.

10. In paragraph 13 of the said reply, the Competent Authority has stated that the State Government has decided to take a decision regarding the Application made by the Petitioners for non-agricultural permission only after the Special Leave Petition pending before the Apex Court is finally disposed of.

11. Perusal of the letter dated 21st August 2012 addressed by the District Collector to the Additional Collector-cum-Competent Authority shows that in view of the pendency of the Special Leave Petitions before the Apex Court and the findings in the One Man Committee report that the comments from the Competent Authority were called for on the Application made by the Petitioner. Only reason given in the impugned communication dated 22nd November 2012 is that the matter in respect of the land in question appears at Sr.No.41 in Annexure III to the report of the One Man Committee. It is not the case of the State Government that even prima facie, any Authority has found the orders of the Authorities under the ULC Act in respect of the said land to be fabricated or fraudulent. In the affidavit of the Competent Authority and in particular Paragraph 5, it is stated that the Annexure III to the report of the One Man Committee contains a list of 45 illegal or irregular orders passed by the Competent Authorities or the

Appellate Authorities. As recorded in the impugned communication, the case of the Petitioner is at Sr.No.41 of the said list of 45 orders which are allegedly illegal or irregular.

12. It is not the case made out in the affidavit that any proceedings were taken by the State Government to correct the alleged illegal or irregular orders in the list of forty five cases. It is not the case of the State Government that the said orders in forty five cases are the subject matter of any investigation in the offences which are already registered.

13. The stand taken in the reply by the Competent Authority is that the Application made by the Petitioner cannot be decided on account of the inclusion of the said land in the list of forty five cases. The stand is that till the Special Leave Petitions filed by the State Government in the Apex Court are disposed of, the Application made by the Petitioner will not be considered.

14. Even without taking into consideration the order of stay granted by the Apex Court, it is obvious that the direction of the Division Bench of this Court in Criminal Public Interest Litigation does not come in the way of the State Government in taking action in cases where the orders are found to be merely illegal. This is not a case

where the order or any other document is found to be fabricated or obtained by fraud.

15. Therefore, in our view, in the facts of this case, the inclusion in the cases mentioned in the list of 45 cases in the Annexure-III of the report of the One Man Committee or pendency of the Special Leave Petitions before the Apex Court is no ground to keep pending the Application made by the Petitioners for the grant of permission for non-agricultural use of the said land.

16. Therefore, we propose to direct the District Collector to consider the Application in accordance with law. We, however, make it clear that we are not making any adjudication on the merits of the Application made by the Petitioners as well as the merits of the orders passed under the ULC Act in relation to the said land of the Petitioners. Grant of relief in this Petition will not prevent the State Government from taking appropriate proceedings in accordance with law.

17. We also make it clear that the order which we are proposing to pass is on the ground that the only conclusion drawn by the One Man Committee is that the order under the ULC Act in respect of the said land is found to be illegal or irregular and that no proceeding is taken to correct the alleged illegal order.

18. Accordingly, we dispose of the Petition by passing the following order:-

ORDER :

- (a) The impugned communication dated 22nd November 2012 (Exhibit-G to the Petition) is hereby set aside;
- (b) We direct the District Collector or any other Revenue Officer who is empowered to consider the Application for grant of non-agricultural use, to decide the Application made by the Petitioners in accordance with law;
- (c) We make it clear that the Application shall not be rejected on the ground that the Special Leave Petitions are pending before the Apex Court as well as on the ground that the said land is included in the Annexure-III consisting of 45 cases in the report of the One Man Committee;
- (d) We make it clear that we have not made any adjudication on the merits of the order passed under

the ULC Act in relation to the said land of the
Petitioners;

- (e) The Application made by the Petitioners shall be decided in accordance with law as expeditiously as possible and preferably within a period of three months from today;
- (f) The Rule is partly made absolute on above terms;
- (g) The District Collector of Pune to act upon an authenticated copy of this order.

(REVATI MOHITE DERE, J)

(A.S. OKA, J)