IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.1556 OF 2014
ALONG WITH
CIVIL APPLICATION NO.412 OF 2014
IN
WRIT PETITION NO.1556 OF 2014

Dilip Baburao Nannajkar. .. Petitioner
Vs
The Advocate General and Another .. Respondents
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Shri Sanjay D. Thokade for the Petitioner.
Shri A.B. Vagyani, Government Pleader for Respondent No.1.
Shri G.N. Salunke i/by Shri Umesh Kurund for Respondent No.2.
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CORAM : A.S. OKA &
REVATI MOHITE DERE, JJ
DATED : 3RD JULY 2015

ORAL ORDER: (PER A.S. OKA, J)

1. By this Petition under Article 226 of the Constitution of India, the Petitioner has taken an exception to the refusal on the part of the learned Advocate General of Maharashtra to take action with a view to prevent the second Respondent from filing vexatious litigations. The case made out by the Petitioner is that on the basis of the Application made by the Petitioner, an Application ought to have been made by the learned Advocate General in accordance with Sub-section (1) of Section 2 of the Maharashtra Vexatious Litigations (Prevention) Act, 1971 (for short “the said Act”).

2. The learned counsel appearing for the Petitioner invited our attention to the Application made by the Petitioner to the learned Advocate General which is at Page 150 of the Petition. He pointed out that the said Application was kept pending and was belatedly decided by the learned Advocate General on 30th July 2011. He urged that the learned Advocate General could not have rejected the Application and he should have acted upon the said Application by making an Application under Section 2 of the said Act. He submitted that as the personal hearing was not given to the Petitioner, the proceedings filed by the Second Respondent subsequent to the date of filing of the Application could not be brought to the notice of the learned Advocate General. He urged that the learned Advocate General ought to have given an opportunity of being heard to the Petitioner. He urged that it is not necessary that there should be a finding recorded in the proceedings filed by the Second Respondent that the proceedings are vexatious. He urged that ultimately it is for this Court to decide the Application on the basis of the material produced along with the Application made to the learned Advocate General as to whether the litigant concerned has habitually and without any reasonable grounds instituted vexatious proceedings. He urged that an opportunity may be granted to the Petitioner of being heard before the learned Advocate General so that subsequent proceedings can be brought to the notice of the learned Advocate General.

3. The learned Government Pleader has tendered the written submissions. We have perused the annexures to the Petition as well as the Written Submissions. We have perused the Application submitted by the Petitioner in December 2010 to the learned Advocate General. In Paragraph 2 of the said Application, in Clauses (a) to (n), various proceedings allegedly filed by the second Respondent have been listed. The first proceeding is a Civil suit filed in the year 1972 not by the Second Respondent but by his father. The second proceeding is an Appeal preferred by the father of the Second Respondent in this Court arising out of the decree passed in the year 1972. The said Appeal was dismissed on 22nd November 1988. The third proceeding is a Letters Patent Appeal preferred by the Second Respondent against the judgment and decree passed by the learned Single Judge of this Court which was also dismissed by a Division Bench of this Court on 5th August 1993. The fourth proceeding is in the nature of two RTS Appeals preferred in the years 1970 and 1971 respectively by the Second Respondent against mutation entries. The Appeals were dismissed by the Sub Divisional Officer, Solapur. The fifth proceeding is a Second Appeal and a Reivision Application filed by the Second Respondent arising out of the same proceedings. The Second Appeal was dismissed on 28th February 1974 and the Revision Application was dismissed on 29th October 1983. The sixth proceeding is the second

Revision Application preferred by the Second Respondent against the said orders which was rejected by an order dated 15th November 1991. The next proceeding is an Application filed by the Second Respondent before the City Survey Officer and an Appeal preferred before the Deputy Director of the Land Records in the year 1995 which was dismissed on 31st May 2000. The order of the Appellate Authority was confirmed by the State Government by an order dated 23rd November 2000. The proceedings in Clauses (k) and (l) of Paragraph 2 arise out of the Regular Civil Suit No.499 of 2002 filed by the Second Respondent. It is an admitted position that in fact the said suit was decreed in favour of the Second Respondent and an Appeal preferred by the Petitioner against the said decree is pending. The second last proceedings set out in the said Application is an Appeal filed before the Deputy Director of the Land Records, Solapur, of the year 2001 which was dismissed by the order dated 19th December 2007. The last proceedings relied upon by the Second Respondent was Miscellaneous Application filed by the Second Respondent against the Petitioner and his brothers seeking action for Contempt of Court.

4. The learned counsel appearing for the Petitioner candidly stated that in none of the proceedings, there is a finding recorded by the concerned Court or Tribunal that either the proceedings filed by the Second Respondent were vexatious and/or frivolous or that the stand taken by the Second Respondent was vexatious and frivolous. He, however, urged that no such

finding is required to be recorded by the concerned Court or the Authorities as it is ultimately for this Court to satisfy itself that any person has habitually instituted the vexatious proceedings.

5. After having considered the proceedings which have relied upon by the Petitioner in the Application of December 2010, we do not find that there was any material available before the learned Advocate General to file an Application under Sub-section (1) of Section 2 of the said Act. Section 2 of the said Act reads thus:

> "2.(1) If, on an application made by the Advocate General, the high Court is satisfied that any person has habitually and without any reasonable ground instituted vexatious proceedings, civil or criminal, in any Court or Courts, whether against the same person or against different persons, the High Court may, after hearing that person or giving him an opportunity of being heard, order that no proceedings, civil or criminal, shall be instituted by him in any Court (and that any legal proceedings instituted by him in any Court before the order shall not be continued by him),-
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> (a) in Greater Bombay, without the leave of the high Court; and
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> (b) elsewhere in the State, without the leave of the District and Sessions Judge.
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> At the hearing of any such application, the Advocate General may appear through a pleader.
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> (2) Such leave shall not be given unless the High Court of the Judge, as the case may be, is

satisfied that the proceedings are not an abuse of the process of the Court and that there is prima facie ground for the proceedings.

(3) No appeal shall lie against an order refusing leave for the institution or continuation of any proceedings by a person who is the subject of an order for the time being in force under sub-section (1). Nothing in this sub-section shall apply to any appeal which may lie to or any proceeding before the Supreme Court.

(4) If it appears to the High Court that the person against whom an application is made under sub-section (1), is unable, on account of poverty to engage a pleader, the High Court may engage a pleader to appear for him.

Explanation.- For the purpose of this section "pleader" has the same meaning as in clause (15) of section 2 of the Code of Civil Procedure, 1908.

(5) A copy of every order made under sub-section (1) directing any person to obtain leave before instituting or continuing proceedings shall be published in the Official Gazette and may also be published in such other manner as the High Court thinks fit."

6. For good reasons, the Legislature has provided that the action under the said Act can be taken by this Court only on the Application made by the learned Advocate General. There is no provision in the said Act which enables an aggrieved party to move this Court for grant of the relief under Sub-section (1) of Section 2. Considering the scheme of the said Act, when the learned Advocate General considers an Application made by a litigant requesting him to take action under the provisions of the said Act, he is required to apply

his mind to the material placed before him and to decide whether the case is worth moving an Application under Sub-section (1) of Section 2 of the said Act. The Application made by a litigant for taking action cannot be mechanically acted upon by the learned Advocate General by making an Application under Sub-section (1) of Section 2 of the said Act without application of mind. If the interpretation sought to be put by the learned counsel appearing for the Petitioner is accepted, the very object of providing that this Court can act only on the basis of an Application by the learned Advocate General will be frustrated. This Court will be flooded with the Applications mechanically preferred by the learned Advocate General. Considering the scheme of the Act, the learned Advocate General can make an application under Sub-section (1) of Section 2 of the said Act on a request made by a party provided he is prima facie satisfied that a case is made out to grant a relief under Sub-section (1) of Section 2 of the said Act.

7. Therefore, the learned Advocate General was fully justified in applying his mind to the material placed before him by the Petitioner. Considering the nature of the function exercised by the learned Advocate General, it is not possible to accept the contention of the learned counsel appearing for the Petitioner that the learned Advocate General was under an obligation to give an opportunity of being personally heard to the Petitioner.

8. At this stage, the learned counsel appearing for the Petitioner relies upon Section 18 of the Land Acquisition Act, 1894. He urges that if an Application made by a party under the said provision is within limitation, the Collector has no discretion to reject the Application and he is under an obligation to forward the said Application to the Civil Court and that only the Civil Court can go into the merits of the Application.

9. The Land Acquisition Act, 1894 is a complete Code in itself. The functions and the duties of the Collector while dealing with the Application under Section 18 of the Land Acquisition Act, by no stretch of imagination, can be compared with the functions assigned to the learned Advocate General, who is a highest Law Officer of the State. We reiterate that the learned Advocate General is under an obligation to make an Application under Sub-section (1) of Section 2 of the said Act provided he is prima facie satisfied that a case is made out to proceed against the litigant under the provisions of the said Act. Therefore, the submission based on the Land Acquisition Act will have to be rejected.

10. Another grievance made by the learned counsel appearing for the Petitioner is that the Application dated 23rd December 2010 was

kept pending for a long time by the learned Advocate General though the Petitioner repeatedly visited the office of the learned Advocate General. On 30th July 2011, the learned Advocate General took the decision which is a subject matter of challenge in this case. We must note here that the communication dated 30th July 2011 issued by the learned Advocate General appears to be on the basis of the Application dated 22nd July 2011 filed by the Petitioner. The Petitioner has not annexed a copy of the said Application. It is not the case made out that no such Application was made by the Petitioner on 22nd July 2011.

11. Another submission of the learned counsel appearing for the Petitioner is that the first Application made by the Petitioner to the learned Advocate General was dated 31st January 2006 on which no decision was taken. The Petitioner has annexed a letter dated 7th February 2006 issued by the office of the Government Pleader to the Petitioner which refers to the Application dated 31st January 2006 and which calls upon the Petitioner to supply copies of all the orders as well as pleadings. The Petitioner has referred to the said letter in Paragraph 17 of the Petition. Only a vague averment is made thereafter in the same paragraph that the Petitioner again submitted copies of the pleadings and also the judgments. The fact that the Petitioner submitted copies of the pleadings and the judgments has not been set out in Paragraph 17 of the Petition. Thereafter, a bald averment is

made that the Petitioner and the his Advocate were making inquiries with the office of the learned Advocate General. It is alleged that in the month of December 2010, the office of the learned Advocate General told the Petitioner that the Application of the year 2006 was missing and, therefore, he should make a fresh Application. Accordingly, an Application dated 23rd December 2010 was made by the Petitioner. Careful perusal of the Application made by the Petitioner on 23rd December 2010 shows that there is not even a reference to the Application of the year 2006 in the said Application and the same does not record that in terms of the oral suggestion given by the office of the learned Advocate General that the fresh Application has been filed. Thus, the case made out in the Writ Petition that the Application of the year 2006 was misplaced by the office of the learned Advocate General appears to be an afterthought.

12. If according to the case of the Petitioner, between 23rd December 2010 and 22nd July 2011, there were further proceedings filed, nothing prevented the Petitioner from submitting copies of the said proceedings before the learned Advocate General. It is not the case made out by the Petitioner that the copies of the said documents were submitted in the office of the learned Advocate General.

13. It is true that even if there is no finding recorded by the concerned Court or the Authorities that the proceedings filed by the persons are vexatious within the meaning of Sub-section (1) of Section 2 of the said Act, on the basis of the Application made by the learned Advocate General, this Court can always grant relief if a case is made out. However, the fact that none of the Courts or the Authorities have found that the proceedings filed by the Second Respondent were vexatious is also a relevant factor which is required to be considered by the learned Advocate General. The last substantive proceedings in the form of Application dated 23rd December 2010 filed by the Second Respondent is a Civil Suit of the year 2002 which has been in fact decreed in favour of the Second Respondent. Even today the contentions of the Application made by the Petitioner are taken as correct, no case is made out to grant relief under Sub-section (1) of Section 2 of the said Act.

14. If according to the case of the Petitioner, the proceedings filed by the Second Respondent are malafide or vexatious, there are sufficient remedies available to the Petitioner.

15. Therefore, we are unable to find fault with the action of the learned Advocate General of informing the Petitioner that the action cannot be taken on the basis of the Application of the Petitioner. In fact,

the learned Advocate General has specifically recorded that it will not be appropriate for his office to initiate proceedings under the said Act.

16. There is no merit in the Petition and the same deserves to be rejected. However, we make it clear that we have not made any adjudication on the pending disputes between the parties and the case of the Petitioner is considered only in the limited context of the challenge to the action of the learned Advocate General.

17. Subject to what is observed above, the Writ Petition is rejected. Civil Application No.412 of 2014 does not survive and the same is disposed of.

(REVATI MOHITE DERE, J) (A.S. OKA, J)