

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.8401 OF 2012

Anupkumar Dutta & Another .. Petitioners
Vs
State of Maharashtra and Others. .. Respondents
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Shri Jaiwant S. Chandnani for the Petitioners.
Shri S.N. Patil, AGP for the Respondents.
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CORAM : A.S. OKA & A.K MENON, JJ
DATED : 7TH JANUARY 2015

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

. Heard learned counsel appearing for the Petitioner and the learned AGP for the Respondents. The Petitioners are relying upon the judgment and order dated 28th May 2007 passed by the authorised Chief Settlement Commissioner in the Revision Application under the provisions of the Displaced Persons (Compensation and Rehabilitation) Act, 1954 (for short “the said Act of 1954”). By the said judgment and order, the Revision Application No.74 of 2004 was allowed and the following operative order was passed.

“(v) The Revision Petition is, therefore, allowed. The Order cum letter bearing No.SDO/C-4/Plot/WS-247 dated 3/6/2003 passed by the respondent is set aside. The unauthorized occupation of the petitioners in respect of area admeasuring 285 sq. yds. bearing Chalta No.20-A, Plot no.1012, Sheet no.23, Camp No.4 is regularised as per the provisions of the Government

Circular No.HS-1072/40677/IC dated 27th April 1973 and Government Circular No.S11/1082/CR-18/R-9 dated 9th March 1983 and also the Government Circular dated-31/10/1981 subject to the Development Plan of Ulhasnagar Township and also subject to the provisions of the Urban Land Ceiling Act. The conveyance deed should be issued to the petitioners after recovery of the land cost at the market price with the prescribed interest and other charges as per the Government orders/instructions issued from time to time.”

2. On the basis of the said order, on 10th September 2007, the Fourth Respondent- the Managing Officer passed an order directing regularization of the possession of the Petitioner over the Government land admeasuring 285 square yards in Plot No.1012 in Camp No.4 subject to compliance with the terms and conditions incorporated therein. This Petition has been filed seeking a writ of mandamus directing the Fourth Respondent to implement the order dated 10th September 2007 as well as the order dated 28th May 2007 in the Revision Application.

3. There is an affidavit filed by Shri Nitinkumar Bhikaji Mundaware, Sub-Divisional Officer, Ulhasnagar-cum-Administrator of the Fourth Respondent. In the affidavit, reliance is placed on the Repeal of the said Act of 1954 on 6th September 2005. It is stated that the State Government issued a Circular dated 3rd October 2005 issuing a direction not to execute any Conveyance Deed under the said Act of 1954. In the said affidavit, reliance was placed on the order of the

Apex Court dated 25th February 2008 in the Special Leave Petition (Civil) No.6703 of 2008. The said order directed that the decisions of the concerned Authorities under the said Act of 1954 shall not be implemented. Therefore, it is contended that the orders in question cannot be implemented. Moreover, it is contended that the Petitioners have not complied with the conditions incorporated in the order dated 10th September 2007 regarding making of payment.

4. The case of the Petitioners is that by addressing three letters which are marked as Exhibit-I (Collectively), a request was made by them to the Fourth Respondent for grant of installments. The contention is that no orders were passed on the said letters. The stand taken by the Fourth Respondent in its affidavit is that the said letters/Applications have not been received by his office. However, it is not disputed that the notices dated 20th October 2011 and 22nd March 2012 issued by the Advocate for the Petitioners were received by the Fourth Respondent.

5. The learned counsel appearing for the Petitioners has placed on record the judgment and order dated 28th April 2014 of the Apex Court in Civil Appeal No.6079 of 2010. He invited our attention to Paragraph 2 of the said order which is applicable to the State of Maharashtra. Paragraph 2 of the said order reads thus:

“2. As against respondent Nos.6 & 8, it is ordered as follows:

It is declared that the provisions of Section 6 of the General Clauses Act are applicable to the Displaced Persons Claims and Other Laws Repeal Act, 2005 (for short “Repeal Act, 2005”) and that the respondent Nos.6 and 8 herein shall continue to decide the cases and proceedings pending on the date of the said Repeal Act, 2005 and implement the decisions in the said cases under the unrepealed Displaced Persons Compensation & Rehabilitation Act, 1954 and other related Acts.”

6. The learned AGP has placed on record a letter dated 17th September 2014 issued by the Revenue & Forests Department of the State Government addressed to the Fourth Respondent and other officers of the State in which the said judgment and order of the Apex Court dated 28th April 2014 has been quoted. The said letter records that in view of the order of the Apex Court dated 28th April 2014, the pending proceedings under the said Act of 1954 on the date of its repeal can be decided by the concerned officers and the decisions can be implemented. The said letter dated 17th September 2014 is taken on record and marked “X” for identification. In view of what is stated in the letter and in view of the aforesaid order of the Apex Court, now the State Government cannot act upon the Government Circular dated 3rd October 2005 by which a direction was issued not to execute the Conveyance Deed.

7. In the facts of the present case, the order dated 28th May 2007 passed by the Revisional Authority is in the Revision Application filed in the year 2004. Therefore, in view of the aforesaid order of the Apex Court, the order passed in the said Revision Application will have to be implemented. Further, the order dated 10th September 2007 passed by the Fourth Respondent is for the implementation of the directions issued by the Revisional Authority. Now in view of the order of the Apex Court and the letter dated 17th September 2014, there is no impediment in the way of implementation of the orders dated 28th May 2007 and 10th September 2007.

8. Now the other issue is regarding the alleged breach committed by the Petitioners by not depositing the amount specified in the order dated 10th September 2007. It is true that the State Government has disputed the fact that the Applications for grant of installments to pay the said amount were received by the office of the Fourth Respondent. However, from paragraph 4 of the affidavit of Shri Nitinkumar Mundaware, it is apparent that in the Circular dated 3rd October 2005, a direction was issued not to execute the Conveyance Deeds under the provisions of the said Act of 1954. The said direction continued to operate till 17th September 2014 and in any event, at least till 28th April 2014 when the Apex Court passed the aforesaid order. In

light of these factual aspects, the case of the Petitioners for grant of extension of time to comply with the terms and conditions in the order dated 10th September 2007 will have to be considered by the Fourth Respondent. As there is some controversy regarding the receipt of the Application made by the Petitioners for grant of installments, we permit the Petitioners to make a fresh Application to the Fourth Respondent for grant of extension of time to pay the installments.

9. Hence, we, dispose of the Petition by passing the following order:

ORDER :

- (a) We hold that in view of the letter dated 17th September 2014 (marked "X" for identification) issued by the State and in view of the order of the Apex Court dated 28th April 2014 in Civil Appeal No.6079 of 2010, now there is no legal impediment in the way of implementation of the orders dated 28th May 2007 and 10th September 2007 (Exhibits-'G' and 'H' to the Petition respectively);
- (b) We direct the Petitioners or their representative to appear before the Fourth Respondent on 13th March 2015 at 11.a.m. The Petitioners shall make an

Application for grant of installments on that day. The Petitioners shall produce an authenticated copy of this order on that day;

- (c) In the light of the observations made by this Court in this order, the Fourth Respondent shall decide the said Application in accordance with law as expeditiously as possible and preferably within a period of four weeks from 14th March 2015;
- (d) Needless to state that if extension of time is granted and the Petitioners comply with the terms and conditions incorporated in the order dated 10th September 2007 within the extended time, the said order shall be implemented by the Fourth Respondent;
- (e) The Petition is allowed on above terms;
- (f) All concerned to act upon an authenticated copy of this order.