

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.10428 OF 2014

Shri Arif Patel, sole proprietor of)
M/s Axis Realty).. Petitioner

V/s

Smt. Sudha Krishna Salian (Pujari) & ors.).. Respondents.

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Mr. Y.E. Mooman a/w Ms Manisha Gawde, for Petitioner.

Mr. Madhusudan Joshi, for Respondent No.1.

S.D. Rayrikar-AGP, for Respondents No.2 and 4.

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CORAM : M.S. SONAK, J.

DATE : 07 JANUARY, 2015

ORAL JUDGMENT:

1] This petition questions the decision making process leading to making of an order dated 20 September 2014 by the Maharashtra Revenue Tribunal, Mumbai ("*Tribunal*").

2] Respondent No.1, sometime in the month of May 2014 preferred an Appeal No. 17 of 2014 before the Tribunal impugning the order dated 19 April, 2014 made by the Superintendent of Land Records. This appeal was accompanied by an application for stay/interim relief. The matter was taken up by the Tribunal, *inter*

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alia, on 16 June 2014, 17 June 2014 and 16 July, 2014 and on all these dates, except on 17 June 2014, the petitioner was represented by Mr Y.E. Mooman. The roznama dated 16 July 2014 records that an issue of jurisdiction had arisen and a reference needs to be made to this Court under Section 113 of Code of Civil Procedure, 1908. The roznama further records that such reference is under preparation and since the Steno is on sick leave, the matter has to be posted for 20 September, 2014.

3] On 20 September 2014, it is the case of the petitioner (original respondent), that his advocate was very much present before the Tribunal, but was informed that the reference order was not ready and the matter was posted to 18 December 2014. It is case of the petitioner that on 1 October 2014, the petitioner and his advocate received a letter dated 27 September 2014 from the advocate for the respondent (appellant before the Tribunal) that interim order of *status quo* had been made by the Tribunal on 20 September, 2014 itself. The petitioner, soon thereafter applied for certified copy of the roznama and upon receipt of same preferred the present petition to impugn the interim order dated 20 September 2014, primarily on the grounds that the same breaches the principles of natural justice and fair play.

4] Mr. Mooman, learned counsel for the petitioner reiterated that he was present before the Tribunal on 20 September 2014, when the

matter was simply adjourned to 18 December 2014 on the ground that the Court's Steno continued on leave and the reference order was not ready. At that stage, no motion was made for any interim reliefs. Further, Mr. Mooman submitted that upon perusal of the impugned order, it is clear that same is totally bereft of reasons. For all these reasons, it was submitted that there is gross breach in compliance with principles of natural justice and fair play.

5] Mr Joshi, learned counsel for respondent No.1 made the following submissions in defence of the impugned order:

(a) In view of the provisions contained in Section 321 of Maharashtra Land Revenue Code, 1966 ("*said Code*"), which confers finality upon the orders made by the Tribunal, the present petition was not at all maintainable;

(b) The roznama on all previous dates as recorded the presence of Mr. Mooman. If Mr. Mooman was indeed present before the Tribunal on 20 September 2014, there was no reason as to why his presence could not have been recorded by the Tribunal. Therefore, Mr. Mooman was not at all present before the Tribunal on 20 September 2014, when the impugned order was made. Since this date, was a scheduled one, there was no necessity of any fresh notice either upon the petitioner or his advocate. In any case, the memo of appeal as well as an application for interim relief had

already been served upon the petitioner wayback on 3 June 2014;

(c) The petitioner was bent upon altering the *status quo*. In such circumstances, there was nothing wrong the Tribunal in making the impugned order in absence of the petitioner or his advocate.

6] The rival contentions, now fall for my determination.

7] At the outset, there is absolutely no merit in the objection raised by Mr. Joshi to the maintainability of this petition based upon the provisions contained in Section 321 of the Code. Section 321(2) of the Code, no doubt provides that every order or decision of the Tribunal made or passed by or under this Code shall be final and shall not be questioned in any suit or other legal proceedings. It is well settled, however, that finality clauses of such nature, do not in any manner affect the jurisdiction of this Court under Articles 226 and 227 of the Constitution of India. The power of judicial review of the High Court is recognized by the constitution and the same cannot be taken away by in Statute like Maharashtra Land Revenue Code, 1966. Notwithstanding, the finality clause as contained in Section 321 (2) of the Code, if the Tribunal acts without jurisdiction, or fails to exercise jurisdiction vested in it, or if the order passed by the Tribunal is arbitrary, perverse, mala fides or in breach of principles of

natural justice, then certainly the same can be interfered with by the High Court in exercise of its extra-ordinary jurisdiction under Articles 226 and 227 of the Constitution of India. In case of *Re Gilmore's Application*¹, dealing with a similar 'finality' clause, the Court of Appeal made the following observations:

“The second point is the effect of s. 36(3) of the National Insurance (Industrial Injuries) Act, 1946, which provides that “any decision of a claim or question . . . shall be final”. Do those words preclude the Court of Queen's Bench from issuing a certiorari to bring up the decision ? This is a question which we did not discuss in R. v. Northumberland Compensation Appeal Tribunal, Ex p. Shaw (4) ([1952] 1 All E.R. 122), because it did not there arise. It does arise here, and on looking again into the old books I find it very well settled that the remedy by certiorari is never to be taken away by any statute except by the most clear and explicit words. The word “final” is not enough. That only means “without appeal”. It does not mean “without recourse to certiorari”. It makes the decision final on the facts, but not final on the law. Notwithstanding that the decision is by a statute made “final”, certiorari can still issue for excess of jurisdiction or for error of law on the face of the record.”

8] The position of law in India is no different. The Supreme Court in case of *Sangram Singh v/s. Election Tribunal, Kotah and anr.*², speaking through Bose, J. has held that jurisdiction of the High Court under Article 226 of the Constitution of India to examine the decisions of all Tribunals cannot be taken away by a legislative device

¹ (1957) 1 ALL E.R. 796

² AIR 1955 SC 425

that purports to confer power on a Tribunal to act illegally by enacting a statute that its illegal acts shall become legal the moment the tribunal chooses to say that they are legal. Clearly, therefore, the objection as to the maintainability of this petition is unsustainable and is required to be rejected.

9] There is no reason to disbelieve the statement made on oath by the petitioner that his advocate was very much present before the Tribunal on 20 September 2014 and the matter was adjourned to 18 December 2014 on the ground that the reference order was not ready. In any case, if it is to be assumed that the petitioner's advocate was not present before the Tribunal on 20 September 2014, even then the factum of his appearance on several previous dates was a part of the record of the Tribunal and therefore un-disputable. The application for stay/interim relief had been moved some time in the month of May 2014. The copy thereof was no doubt served upon the petitioner on 3 June 2014. However, on various dates between 3 June 2014 and 20 September 2014, the advocate for the petitioner was very much present before the Tribunal. In such circumstances, nothing prevented the respondents or their advocates from serving at least a bare minimum notice, informing them that interim relief was going to be pressed for. Such a course, is not a matter of mere courtesy, but one of the facets of the *audi alterm partem* rule, which ought to inhere every judicial proceedings.

10] The Tribunal, before making the impugned order ought to have insisted that notice be served upon the advocate for the petitioner, particularly since such advocate, from time to time had appeared before the Tribunal in the matter. The Tribunal could have itself issued a short notice to the petitioner or his advocate before taking up the motion for interim relief. The Tribunal has done nothing of this sort and therefore decision making process which has lead to making of the impugned order has been rendered a casualty. There is total breach in compliance with the principles of natural justice and fair play before the impugned order came to be made.

11] Mr. Joshi, then submitted that the petitioner had created a situation warranting grant of urgent relief. At this stage, this Court is not really concerned with the merits and de-merits of the order made. This Court whilst exercising its writ jurisdiction is primarily concerned with the decision making process. The manner in which the Tribunal has made the impugned order, clearly renders the decision making process a casualty. This is sufficient ground to interfere with the impugned order.

12] The impugned order dated 20 September 2014, reads thus:

“Read the Application.

Perused the relevant record. Heard Advocate for the Applicant. This tribunal was to make a reference under section 113 of the CPC to Hon'ble High Court but the Judicial member had fallen sick and was on leave for about a month, the reference could not be prepared and

sent to the High Court.

In between, the time It is submitted that the Respondent has taken further steps in lieu of implementation of the order of the Supdt. Land Record. It is humbly submitted that if no prohibitory order will be passed Respondent will start developing the property under the garb of the impugned order and will make the appeal infructuous. Hence it is prayed to protect the interest of the appellant temporarily. I am convinced with the submission hence order.

Order

The present status-quo of the property and revenue record be maintain till further order. Order be served on parties accordingly.

Sd/-

20/9/14.

13] From the aforesaid, it is apparent that the impugned order does not indicate even minimal reasons which prompted the Tribunal to make the order without notice to the petitioner or his advocate. It is settled position in law that even interim orders are required to state reasons, howsoever brief, in support of the same. An order *sans* reasons, itself constitute breach of principles of natural justice. This is an additional ground which warrants setting aside the impugned order. For all aforesaid reasons, the impugned order dated 20 September 2014 is liable to be set aside and it is hereby set aside.

14] The setting aside of the impugned order, primarily on the grounds of breach of principles of natural justice and fair play will however not preclude respondent No.1 from once again pressing her motion for interim relief. If this is done, the Tribunal shall obviously consider and decide the same on its own merits and in accordance

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with law. The Tribunal shall however ensure that appropriate notice given to the petitioner or his advocate before taken up such motion for stay/interim relief.

15] This petition is, accordingly, made absolute in terms of prayer clause [a]. In the facts and circumstances of the present case, there shall be no order as to costs.

(M.S. SONAK, J.)