

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION (ST.) NO.33491 OF 2015

Mr.Dnyanoba Limbaji Dahiphale and 24 Ors. .. Petitioners
 Vs.
 The State of Maharashtra and Ors. .. Respondents

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 Mr Yogesh Sankpal a/w. Mr. Makrand Kale a/w. Mr.Vindyan Daware for the petitioners.

Ms. M.S.Bane 'B' Panel Counsel for Respondent no. 1 to 4.

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CORAM : M.S.SONAK, J.
DATE : 8th DECEMBER, 2015.

P.C.:

1. The challenge in this petition is to the orders dated 29th April 2015 and 7th December 2015 made by the competent authorities, i.e., Assistant Conservator of Forest (Respondent no.2) and Sub Divisional Officer (SDO)- (Respondent no.3) directing removal of the petitioners' structures from the property, in respect of which the State Government has issued notification dated 17th September, 2013 under the provisions of sections 4, 17 and 29 of the Indian Forest Act, 1927 (Forest Act).

2. Mr.Kale learned Counsel for the petitioners, has submitted that the respondent no.2 has purported to invoke powers under section 53 of the Maharashtra Land Revenue Act, 1966 (LRC) in making the impugned order dated 29th April, 2015. He submits that the powers under section 53 of the LRC can only be exercised by the Collector of the concerned district and no such powers are vested in the respondent no. 2. Accordingly, he submits that the impugned order dated 29th April, 2015 is *ultra vires*, null and void.

3. Mr. Kale further submits that the notification dated 17th September, 2013 made under the Forest Act merely proposes to reserve the property as "reserved forest". As of date, there is no notification actually declaring

the property as “*reserved forest*”. In such circumstances, Mr. Kale submits that the Respondent no. 2 has clearly no power or authority to issue the impugned order.

4. Mr. Kale further contended that the order dated 7th December 2015 made by the SDO declining to entertain the appeal instituted by the petitioners is also improper. Since the respondent no.2 had purported to exercise powers under the LRC, the appeal under the provisions of LRC lay before the SDO and the same would never have been rejected as not maintainable.

5. Mr. Kale finally submitted that there are notification declaring the area where the petitioners' structures are located as “*slum area*” for the purpose of the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971 (Slum Act). Therefore, in terms of Section 22 of the Slum Act, only the competent authority has jurisdiction to make orders in relation to such slums. In any case, respondent Nos.2 and 3 have no right or authority to make the impugned orders without obtaining the prior consent of the competent authority under Section 22 of the Slum Act. Mr.Kale contended that there is obligation to make provisions for rehabilitation or allotment of alternate accommodation, before the Petitioners can be evicted or their structures demolished.

6. Having heard the learned counsel for the parties and perusing the record, in the facts and circumstances of the present case, it is not possible to grant the petitioners any relief in this petition.

7. The contention of Mr. Kale that the notification dated 17th September, 2013 merely contains a proposal with regard to reservation of the property as forest, cannot be accepted. From the phraseology employed in the notification as also from the reference to the provisions

under which the same has been issued, it is clear that the notification relates to exercise of powers under sections 4, 17 and 29 of the Forest Act. Section 4 of the Forest Act provides that whenever it has been decided to constitute any land '*a reserved forest*', the State Government shall issue a notification in the Official Gazette declaring that it has been decided to constitute such land '*a reserved forest*', specifying, as nearly as possible, the situation and limits of such land, and appointing an Officer to be called "*the Forest Settlement Officer*" to inquire into and determine existence, nature and extent of any rights alleged to exist in favour of any person in or over any land comprised within such limits or any over forest produce and to deal with the same as provided in Chapter 2 of the Forest Act.

8. The notification dated 17th September, 2013 appoints an officer as Forest Settlement Officer and vests in him necessary power, jurisdiction and authority as provided under Chapter 2 of the Forest Act. Further the notification makes it clear that the powers of appeal against action of such officer, shall lie with the Collector for the purposes of sections 4, 17 and 29 of the Forest Act. The impugned order made by the respondent no.2 is clearly relatable to exercise of powers by the Forest Settlement Officer in terms of the notification dated 17th September, 2013. As against the impugned order, the Petitioners chose not to appeal to the Collector. The SDO, quite rightly declined to exercise jurisdiction in the matter. There is neither any failure to exercise jurisdiction nor can the impugned orders be said to be in excess of jurisdiction.

9. The respondent no.2 may have made reference to some provisions contained in LRC. However, it is apparent that the respondent no.2 has exercised powers under the provisions of Forest Act. There is no serious dispute that the notification dated 17th September 2013, applies to the property, whereon the petitioners' structures are located. There is

sufficient description of the property, in the context of survey number, area and location and the property has also been described as “*Kaadi*” (Creek). This is relevant because the respondent no. 2 as an officer concerned with mangroves conservation. It appears that the petitioners' structures had encroached upon the mangroves forest. The learned Counsel for the Respondents submitted that there are Public Interest Litigations pending in this Court, urging action against the encroacher upon the mangroves forest.

10. In this case, the petitioners were issued show cause notices. The petitioners claimed to have filed replies, however, the replies are not placed on record. The impugned orders came to be made upon consideration of the replies. Even otherwise, the petitioners claim no rights as such to the properties whereon they have erected their structures. The petitioners only contend that the property whereon they are erected their structures have been declared as '*slum area*' under the Slum Act, therefore, they are not entitled to protection.

11. Insofar as the contention based upon the provisions of the Slum Act are concerned, it is to be noted that in the first place, the petitioners have not produced any notification or declaration to the effect that the property, which is now covered by notification dated 17 September 2013 is indeed a slum area. The petitioners rely upon certain notices issued under the Slum Act and on the said basis claimed that the property is a slum area. In absence of proper material, it is not possible to undertake the exercise of presuming that the notices indeed relate to the property covered under the notification dated 17th September 2013. On basis of such flimsy material, it is not possible to extend the protection of Slum Act to the petitioners. Besides, the petitioners have not taken out any proceedings to challenge the notification dated 17th September 2013, *inter alia*, on the ground that the same is in conflict with the provisions of the Slum Act. Accordingly, there is

no merit in the contention of the petitioners, based upon the provisions contained in the Slum Act.

12. There is no jurisdictional infirmity in the making of impugned orders. Accordingly, no case is made out to interfere with the impugned orders.

13. This petition is therefore, dismissed. There shall, however, be no order as to costs.

(M.S.SONAK, J.)