

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.275 OF 2007

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1. Mr. Hillary Lobo
The Chief Promoter,
Federation of Co-operative Housing Societies
2. Mr., Hillary Lobo,
The Secretary
Federation of Co-operative Housing
Societies, Usha Colony Plot Holders Ltd.
3. Shri Manmohan Singh Sohal,
The Chairman
Federation of Co-operative Housing
Societies, Usha Colony Plot Holders Ltd.
4. Federation of Co-operative Housing
Societies, Usha Colony Plot Holders Ltd. ...Petitioners

v/s.

1. M/s.Khandelwal Engg.Co.Ltd.
2. The Deputy Registrar,
Co-operative Societies, Mumbai
3. The Divisional Joint Registrar,
Co-operative Societies, Mumbai
4. The Hon'ble Minister for
Co-operation, Maharashtra State,
Mantralaya, Mumbai
5. The State of Maharashtra ...Respondents

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Ms. N.C. Nichani with Mr. R.S. Ghadge i/b Mr A.S. Desai for the
Petitioners

Mr. N.N.Bhadrashete for Respondent no.1
Ms. I. Calcuttawalla, AGP for Respondents 2 to 5

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CORAM : A.A. SAYED, J.

DATED : 13 MARCH 2015

ORDER:

By this Petition under Article 226 of the Constitution, the Petitioners have impugned the order dated 3 January 2007 passed by the Respondent No. 4 Minister (Cooperation) in the Revision Application filed by the Petitioners under section 154 of the Maharashtra Co-operative Societies Act, 1960 (hereinafter referred to as "the MCS Act"). By the impugned order, the Revision Application was dismissed and the order dated 12 July 2006 passed by the Respondent No.3 Divisional Joint Registrar in Appeal under section 152 of the MCS Act, was confirmed. The order dated 12 July 2006 of the Respondent No. 3 Divisional Joint Registrar had in turn allowed the Appeal of the Respondent No. 1 filed under section 152 of the MSC Act and set aside the order of Respondent No. 2 Dy. Registrar granting registration to the Petitioner No. 4 Federation.

2. The challenge in the Petition is thus with regard to the cancellation of registration of the Petitioner No. 4 Federation under the MCS Act. The Petitioner No.1 is the Chief Promoter of the Petitioner No.4 Federation as also the Honorary Secretary (Petitioner No. 2). The Petitioner No. 3 is the Chairman of the Petitioner No.4 Federation. Respondent No. 4 is the Federation of Co-operative Societies, Usha Colony Plot Holders Ltd. The Respondent No.1 is the original owner of a large tracks of land at village Valnai, Malad, Mumbai. Respondents Nos. 2 & 3 are Authorities constituted under the MCS Act. Respondent No.4 is the Minister (Co-operation). Respondent No.5 is the State of Maharashtra.

3. By Deed of Conveyance dated 26 December 1970, Respondent No.1 purchased about 77,052 sq. mts. of plot forming part of Survey No.26, Hissa No.1(part) and Hissa No.3 (part) (hereinafter referred to as the said property) wherein the member affiliated Societies of the Petitioner No 4 Federation are situate. Respondent No.1 also purchased about 84,000 sq.mts. forming part of Survey No.26, Hissa No.1(part) and Survey No.46, Hissa No.5(part) under the Deed of Conveyance dated 26 December 1970. The said plots purchased under two separate Deeds of Conveyance are away from each other.

4. According to the Petitioners, in respect of said property, the Respondent No.1 got three separate Layouts sanctioned by the Corporation. The first Layout consists of 18 plots, the second Layout consists of 7 plots and the third Layout consists of 28 plots, in all 53 plots. The Petitioner has alleged that the Respondent No. 1 has later got the layout amended illegally. In the Petition, the Petitioners have averred that the Respondent No. 1 has sold or given for development all the plots and 7 plots are vacant, and on 4 plots buildings are under construction and remaining 42 plots are fully developed. It is the case of the Petitioners that as per the terms and conditions of the Layouts approved by the Corporation, Respondent No. 1 was required to form an Association/Federation of Housing Societies of the plot owners/Societies of flat purchasers of the buildings constructed on the plots for the purpose of maintenance of roads, storm water drains, sewers, lights, water pipe lines and garden. Respondent No. 4 however, did not take any steps in that behalf. The Petitioner No. 1 therefore, took initiative and convened a meeting of the office bearers of the Co-operative Housing Societies and after complying with all the requirements and formalities as required under section 9 of the MSC Act, submitted the proposal for registration of the Petitioner No. 4 Federation before the Respondent No.2 Deputy Registrar, Co-operative Societies, P-Ward. The

Respondent No.2 Deputy Registrar, thereafter, granted registration of the Petitioner No.4 Federation under section 9 of the MCS Act and issued a Certificate of Registration in the name of the Petitioner No. 4 Federation on 29 November 2004.

5. Aggrieved by the order of the Respondent No.2 Deputy Registrar granting registration, the Respondent No.1 filed an Appeal under section 152 of the MCS Act before the Respondent No.3 Divisional Joint Registrar seeking to cancel the registration of the Petitioner No.4 Federation. The Respondent No.1 joined the Petitioners Nos. 2 to 4 by way of amendment in the Appeal and the Petitioners Nos. 2 to 4 had filed their Reply as also Written Arguments. By order dated 6 October 2005, the Respondent No.3 allowed the Appeal and cancelled the registration of the Petitioner No.4 Federation.

6. Aggrieved by the said order dated 6 October, 2005 of the Respondent No.3 Divisional Joint Registrar, the Petitioners filed Revision Application before the Respondent No.4 Minister (Co-operation) and also took out an Application for stay. As the said Application was not decided, the Petitioner filed Writ Petition being Writ Petition No.7568 of 2005 before this Court. By an order dated 29 October 2005 in the Writ Petition,

this Court directed that the Revision Application be decided by Minister (Co-operation) within eight weeks and in the meantime granted stay to the order dated 6 October 2005 passed by the Respondent No.3 Divisional Joint Registrar. On 22 December 2005, the Revision Application was dismissed by the Respondent No.4 Minister (Co-operation).

7. Aggrieved by that order the Petitioners preferred a Writ Petition being Writ Petition No.567 of 2006. By order dated 16 March 2006, this Court set aside the order dated 22 December 2005 of the Respondent No. 4 Minister and the order dated 6 October 2005 passed by the Respondent No.3 Divisional Joint Registrar and remitted the matter back to the Respondent No.3 Divisional Joint Registrar and directed him to decide the Application seeking condonation of delay (which had remained to be decided) and the Appeal within three months from the date of receipt of the order.

8. Respondent No.3 Divisional Joint Registrar, thereafter condoned the delay on 19 June 2006 and by an order dated 12 July 2006 allowed the Appeal filed by the Respondent No.1 and cancelled the registration of the Petitioner No.4 Federation. Aggrieved by the said order dated 12 July

2006, the Petitioners filed Revision Application before the Respondent No. 4 Minister. A stay Application was also filed. As the Respondent No.4 was not available and as the stay Application was not decided by Respondent No.4, the Petitioners filed Writ Petition No.2587 of 2006 before this Court. On 4 October 2006, this Court passed an order directing the Respondent No.4 Minister to decide the Revision Application within three months. On 3 January 2007, the Respondent No.4 neither passed an order dismissing the Revision Application. Aggrieved by the order dated 3 January 2007 of the Respondent No.4, the Petitioners have preferred the present Writ Petition.

9. It would be apposite to extract paragraphs 14 to 18 of the order dated 12 July 2006 passed by the Respondent No.3 Divisional Joint Registrar while allowing the Appeal of the Respondent No. 1 thereby cancelling the registration of the Petitioner No.4 Federation. Paragraphs 14 to 18 read as under:

“14. After hearing both the parties, it is admitted position that the layout known as Khandelwal Layout consisting of about 53 plots which appears to be owned by the Appellants. The plots are sold to different plot-purchasers and some of those plot-purchasers' buildings have been constructed and separate societies have been registered. Ten (10) societies have approached the Respondent No.1-Deputy Registrar for registration of the Federation for entire layout. Perusal of the

document shows that the Respondent No.1-Deputy Registrar has passed order in undue haste and non compliance of basic requirements under law which is evident from the fact that the Registration Proposal was submitted on 19-11-2004 and the said Federation came to be registered on 29-11-2004 i.e. within a span of only 10 days.

15. It is admitted fact that the whole Layout consists of 53 plots in Layout 1 and Layout 2, out of which many plots are yet to be developed. Layout 1 consists of 25 plots and Layout 2 comprises of 28 plots. It is contended by the Appellants that only 28% in respect of Layout 1 and 10% in respect of Layout 2 of plot holders decided to form the federation without taking into account majority of the plot holders viz. 72% from Layout 1 and 90% from Layout 2. it is an admitted position that the Appellants have not been given opportunity of being heard, and, therefore, principles of natural justice are not followed before registering the said Federation.

16. Perusal of the registered bye-law shows that the membership of the said Federation is as under which appears to be contrary to provisions of MCS Act 1960.

(a) "All Housing Co-operative Societies, Corporate Bodies, Companies and Individual's holding Plot by way of Conveyance/Agreement Development rights, Association of Persons of Flat Holders in a building, Plot owners/holders having individual bungalow/house(s)/ building(s), in the said Layout shall be eligible for membership of the Federation.

(b) To buy and sell, for the benefit of the Federation, members moveable and immoveable properties including Societies as set out in Section 20 of the Indian Trust Act.

17. It is a fact that the Appellants being the owners are entitled to develop the said recreation ground as provided under Regulation No. 23 of D.C. Regulation. This right is being sought to be denied by forming a Federation and lodging various objections with BMC about development by Appellants. The said Federation is registered with the main object of seeking conveyance and take over the entire layout and is bound to adversely affect the rights of the Appellants.

18. It is fact that already there is a Mumbai District Co-operative Housing Federation registered for extending guidance and other activities of its members which are housing Co-operative Societies. This Federation is defending for Co-operative housing societies for the entire Greater Mumbai Area. By registering such a Federation for small area, there will be overlapping area of both the Federal Societies. It is fact that Respondent No.1-Deputy Registrar has not obtained NOC from the already existing Federation before registering this Federation, and, therefore, the act of the Respondent No.1 Deputy Registrar by registering the Federation is improper. Considering these facts and circumstances of the case, I am pleased to pass the following order:-

ORDER

Appeal is allowed.

The registration granted by the Respondent No.1-Deputy

Registrar, Co-op. Societies, P-Ward, Mumbai u/s 9 of the MCS Act, 1960 on 29-11-2004 for Federation of Co-operative Housing Societies Usha Colony Plot Holders Ltd., Malad (W), Mumbai- 400 064 is hereby quashed and set aside.

No orders as to costs.”

10. Confirming the aforesaid order dated 12 July 2006 of the Respondent No.3 Divisional Joint Registrar and dismissing the Revision Application of the Petitioners, the Respondent No.4 Minister (Co-operation) by the impugned order dated 3 January 2007, held as follows:

“On examining the submissions of both the parties and on perusing documents, it has come to my notice that by taking hearing on the point of condonation of delay, the Divisional Joint Registrar has passed the order with appropriate reasonings by giving opportunity to the Applicants. While passing interim order also, he has followed the prescribed procedure. The concurrence cannot be shown to the submission of the Applicant that it would be proper to take action by the Divisional Joint-Registrar under Section 21 A of the Act., because the Respondent No.1 has submitted of giving false information at the time of registration. As per the provisions in Act, Appeal under Section 152 can be filed to the Divisional Joint Registrar against registration. Respondent No.1 is the developer of the said layout and in respect of development of layout, there is legal obligation on him. In this regard, he has given bond also to the Municipal Corporation for Greater Mumbai. Therefore, before making registration of society

in respect of this property, it was necessary to give opportunity to them to put their say by the Deputy Registrar. However, he did not do so. The Deputy Registrar has not given opportunity of hearing to Respondent No.1. No objection Certificate of Mumbai District Cooperative Housing Society Federation is not taken. For formation of any society, it is necessary that majority of members are required to be participated. It was necessary for the Deputy Registrar to issue Registration Certificate by confirming as to whether majority of societies are included in the registration proposal of Federation Society. However, he did not do so. The Judgment of Hon'ble High Court cited by the Applicants is not in registration matter of Federation society and the facts of the said matter are totally different. On perusing the provisions in bye-laws of the society, the following provisions are made in bye-laws:-

(a) "All Housing Co-operative Societies, Corporate Bodies, Companies and Individual's holding Plot by way of Conveyance/Agreement Development rights, Association of Persons of Flat Holders in a building, Plot owners/holders having individual bungalow/house(s)/ building(s), in the said Layout shall be eligible for membership of the Federation.

(b) To buy and sell, for the benefit of the Federation, members moveable and immoveable properties including Societies as set out in Section 20 of the Indian Trust Act.

I agree with the findings of the Divisional Joint Registrar that the said provisions are inconsistent with Act. Accordingly, since the registration of Applicant society is not proper, the decision of Divisional Joint Registrar canceling the same is proper. Accordingly, I pass the following Order:-

ORDER

- 1. The Applicants' Revision Application is dismissed.*
- 2. The Order dated 12.7.2006 of the Divisional Joint Registrar, Co-operative Societies, Mumbai, is confirmed.*
- 3. No order as to the costs.*

11. Thus, the Respondent No. 3 Divisional Joint Registrar as well as the Respondent No. 4 Minister (Co-operation) have concurrently held that the Respondent No. 1 was required to be heard before granting registration of the Petitioner Federation. Before this Court it is an admitted position that even in the Bye-laws of the Petitioner No. 4 Federation (submitted with their proposal seeking registration), the Petitioner No. 4 Federation has (apart from the said property viz.- 77,052 sq. mts. of plot forming part of Survey No.26, Hissa No.1(part) and Hissa No.3 (part) wherein the member affiliated Societies of the Petitioner No 4 Federation are situate), inadvertently or otherwise, included 84,000 sq.mts. forming part of Survey No.26, Hissa No.1(part) and Survey No.46, Hissa No.5(part) which is a separate land belonging to the Respondent No. 1 and in respect of which the Petitioner No. 4 Federation is not at all concerned. Even otherwise, both the Authorities have arrived at a finding of fact and concluded that the rights of the Respondent No. 1 were involved and the Respondent No. 1 ought to have been heard

before granting of the registration to the Petitioner No. 4. I concur with the findings of Authorities that the rights of the Respondent No. 1 would be adversely affected if the registration of the Petitioner No. 4 Federation was allowed to be continued. It is an admitted position that the Bye-laws of Respondent No. 4 Federation covered the land of the Respondent No.1, which the Petitioners are not concerned and which is a separate land away from the said property and it does appear that there was undue haste in granting the registration within 8 to 10 days of the proposal of the Petitioner No. 4 Federation. In these circumstances, it cannot even be said that the Respondent No. 1 had no locus to challenge the registration of the Petitioner No. 4 Federation. There is no ground raised in the Petition that there was violation of principles of natural justice before passing the impugned order. Hence the contention of the Petitioners claiming violation of principles of natural justice cannot be countenanced. Even otherwise, I find no merit in this contention as the Petitioners had chosen not to attend the hearing before the Respondent No. 4 Minister at Nagpur and after the matter was closed for orders on 6 December 2006 had even filed their written submissions dated 18 December 2006, which was considered by the Respondent No. 4 Minister.

12. Apart from the above, it is noticed that though the Petitioners had come with a case that the Respondent No. 1 was avoiding to form a federation, it is now an admitted position before the Court that there is another Federation of Co-operative Societies of the plot owners/societies in place known as “Khandelwal Layout Co-op. Housing Society’s Federation Ltd” (hereinafter referred to as ‘the said Federation’) in respect of the said property, which claims to have 24 members as stated in the Additional Affidavit dated 7 March 2012 of the Respondent No. 1. In the said Additional Affidavit it is further stated that the said Federation was issued Registration Certificate on 11 September 2007. It is averred that the first constituted General Body meeting was held on 28-09-2007 and in that meeting the managing committee was formed and the managing committee held its first meeting on 28-09-2007 wherein the office bearers were elected. It is stated that the managing committee has held several meetings on the dates as set out in the Additional Affidavit and that the said Federation has been functioning since 2007. It is stated that the Petitioners including the Petitioners are at liberty to make an application for joining the said Federation. It is pointed out that the registration of the Petitioner No. 4 Federation has been set aside by the Respondent No. 3 Divisional Joint Registrar by order dated 12.07.2006 and the said order has been confirmed by the Respondent No. 4 Minister

on 03.01.2007 and in view of the registration of the said Federation, the present Petition does not survive. It is averred that though by order dated 02.07.2007, the Petitioners were given liberty to maintain roads, garden, water pipelines, lights, etc., however, they have failed to maintain the same.

13. Despite being aware of the registration of the said Federation, the Petitioners, for the reasons best known to them, did not take any steps before the Authorities to have the registration of the said Federation set aside. The Petitioners have also not bothered to implead the said Federation as party Respondent to the present Petition or sought any orders against them. Any orders passed in these proceedings would certainly affect their rights. The Petitioners claim that the said Federation is registered wrongly registered. Rightly or wrongly, the said Federation is now registered. In view of the categorical statement in the Additional Affidavit, it would be open for the Petitioners and/or other plot holders to become members of the said Federation, if they are so advised. The said Federation would co-operate in allowing other plot holders/societies to become members, if such applications are made by them. It is pointed out on behalf of the Petitioners that from a plain reading of the Bye-laws of the said Federation it would be evident that the Respondent No. 1 is

instrumental in the registration of the said Federation and has kept control of the said Federation by providing in the Bye-laws that the Director of Respondent No. 1 or their nominee shall always be the Ex-officio President of the said Federation and a representative nominated by the Respondent No. 1 shall always be a permanent member of the Federation. I am however, not inclined to go into that aspect. Suffice it to say that the Petitioners and/or other plot holders/societies would always have their remedies open to have the Bye-laws amended in accordance with law, if they so decide, in the event they choose to become members of the said Federation.

14. Section 152 of the MCS Act provides that an Appeal shall lie against an order granting registration under section 9. In the circumstances, I do not find any merit in the contention that the Respondent No. 1's Appeal before the Respondent No. 3 Divisional Joint Registrar was not maintainable and that the Respondent No. 1 ought to have approached the Registrar under section 21A of the MCS Act and the registration could have been cancelled only on the grounds stated in section 21 of the MCS Act. Learned Counsel for the Petitioners submitted that while granting approval to the Layouts, the Corporation had interalia laid down the condition that the plot owners/Societies would form a

Federation/Association who would be responsible for the maintenance of roads, storms water drains, sewer, lights, water pipelines and garden and that this condition was required to be incorporated in the documents of sale or lease of the plots and the same has been also incorporated in the said documents. It is pointed out that the amenities including 15% of the total layout as shown in green colour on the plan is required to be kept open and required to be developed as recreation ground and is to be maintained by the plot holders. It is submitted that the Respondent No. 1 is not co-operating in handing over the same to the plot holders and wants to somehow retain control and even develop the areas under reservation. In the Affidavit in Reply, the Respondent No. 1 has stated that they are ready and willing to form separate Federations in respect of the separate Layouts with the consent and participation of all plot owners and after completing development and infrastructure and denied that they are not co-operating and claim that the Petitioners are not even paying the maintenance charges. Again, I am not inclined to go into these aspect as the only issue before me is as regards the cancellation of registration of the Petitioner No.4 Society. I'd only observe that the Respondent No. 1 cannot extricate from their obligations and terms and conditions they are required to fulfill as per the undertakings given by them to the Corporation while seeking approval of the Layouts. If the Respondent No.

1 does not co-operate, it is always open to the plot holders/societies to even individually approach the Court (in respect of modification of the layout or otherwise) for ventilating their grievances, as has been done by some plot holders by filing proceedings before this Court as well as the Bombay City Civil Court. The Court is informed that some favourable order/decreed has also been passed in the Bombay City Civil Court proceedings and copy of the same is also produced on record. As indicated earlier, the only issue before me is as regards the cancellation of registration of the Petitioner No. 4 Federation and it is not necessary for me to go into the issue of inter se disputes between the plot holders/societies and the Respondent No. 1. It is clarified that neither this order nor the orders of the Authorities below would be construed as an expression of opinion of the rights of the parties and the plot holders/societies would be at liberty to exercise their remedies under the law to ensure that necessary compliances are made by the Respondent No. 1 including those under the Development Control Regulations and the interest of the plot holders are protected. It is further clarified that this order would not even preclude the Petitioners from applying for registration afresh, if so permissible in law.

15. In **The Custodian of Evacuee Property vs. Khan Saheb Abdul Shukoor, AIR 1961 SC 1087** (relied upon by the learned Counsel for the Respondent No.1) a Constitution Bench of the Supreme Court held in para 15 as under:

“15. The result of the view we have taken is that the High Court was not justified in looking into the order of December 2, 1952, as an appellate court, though it would be justified in scrutinizing that order as if it was brought before it under Art. 226 of the Constitution for issue of a writ of certiorari. The limit of the jurisdiction of the High Court in issuing writs of certiorari was considered by this Court in Hari Vishnu Kamath v. Ahmad Ishaque, 1955-1 SCR 1104 : (S) AIR 1955 SC 233) and the following four propositions were laid down :-

- (1) Certiorari will be issued for correcting errors of jurisdiction;*
- (2) Certiorari will also be issued when the Court or Tribunal acts illegally in the exercise of its undoubted jurisdiction, as when it decides without giving an opportunity to the parties to be heard, or violates the principles of natural justice;*
- (3) The court issuing a writ of certiorari acts in exercise of a supervisory and not appellate jurisdiction. One consequence of this is that the court will not review findings of fact reached by the inferior court or tribunal, even if they*

be erroneous;

(4) An error in the decision or determination itself may also be amenable to a writ of certiorari if it is a manifest error apparent on the face of the proceedings, e.g. when it is based on clear ignorance or disregard of the provisions of law. In other words, it is a patent error which can be corrected by certiorari but not a mere wrong decision.

In the present case, the Custodian had jurisdiction to decide the matter once it is held that the Custodian-General had jurisdiction to set aside the order of August 22, 1950. the main question for decision in these cases was whether the respondents were evacuees within the meaning of S.2(c) of the first Mysore Act. The questions that fall for decision under S. 2(c) are questions of fact and as pointed out in Hari Vishnu Kamath's case, 1955-1 SCR 1104 : (S) AIR 1955 SC 233) it is not open on a writ praying for certiorari to review findings of fact reached by an inferior court or tribunal even though they may be erroneous. Further, unless there is a patent error of law there can be no interference by a writ of certiorari. While dealing with the writ petitions the main argument that appealed to the High Court was that the Custodian-General had no jurisdiction in revision to reopen the earlier proceedings and in consequence all subsequent proceedings were null and void. The High Court was further aware of the fact that the ordinary remedy of the respondents in these cases against the order of December 2, 1952, was to appeal to the Custodian-General under S. 24 of the Act; but as it was of

the view that the order of the Custodian-General under S. 27 was without jurisdiction it held that it should interfere and set aside the order of December 2, 1952, which was also without jurisdiction and restore that of August 22, 1950. In the view we have taken, the order of the Custodian-General was with jurisdiction and therefore there was in our opinion no reason for the High Court to interfere in the exercise of its jurisdiction under Art. 226 of the Constitution with the order of December 2, 1952, as this is a case where only a writ of certiorari could issue and that is not justified in view of the decision in Hari Vishnu Kamath's case, 1955-1 SCR 1104: ((S) AIR 1955 SC 233)."

16. In **Satyanarayan Laxminarayan Hegde vs. Mallikarjun Bhavanappa Tirumale**, AIR 1960 SC 137, a Bench of three learned judges of the Supreme Court in para 17 held as under:

"17. In interpreting provisions of such beneficial Legislation the Courts always lean in favour of that interpretation which will further that beneficial purpose of that legislation. Is this not an additional ground for thinking that in adopting S. 3 the provisions of Chapter V of the Transfer of Property Act, 1882, the Legislature had the intention of applying these provisions to all tenancies to which the Bombay Tenancy Act itself apply irrespective of the fact whether these tenancies were created before 1-4-1930, or not? It was contended therefore that even in so far as the claim for possession was based on the ground of forfeiture under the terms of the lease it was

necessary for the landlord to prove that he had given notice in writing to the lessee of his intention to determine the lease. The Bombay Revenue Tribunal took the view that the plaintiff-respondent must fail in his application for possession because he had failed to terminate the tenancy by notice before taking proceedings for ejectment. Is the conclusion wrong and if so, is such error apparent on the face of the record ? If it is clear that the error if any is not apparent on the face of the record, it is not necessary for us to decide whether the conclusion of the Bombay High Court on the question of notice is correct or not. An error which has to be established by a long drawn process of reasoning on points where there may conceivably be two opinions can hardly be said to be an error apparent on the face of the record. As the above discussion of the rival contentions show the alleged error in the present case is far from self evident and if it can be established, it has to be established, by lengthy and complicated arguments. We do not think such an error can be cured by a writ of certiorari according to the rule governing the powers of the superior court to issue such a writ. In our opinion the High Court was wrong in thinking that the alleged error in the judgment of the Bombay Revenue Tribunal, viz., that an order for possession should not be made unless a previous notice had been given was an error apparent on the face of the record so as to be capable of being corrected by a writ of certiorari.

17. In the present case it cannot be said that there is any error apparent on the face of the record. Considering the principles laid down in the aforesaid judgments of the Supreme Court, even otherwise, I am not inclined to disturb the concurrent factual findings of the Respondent No.3 Divisional Joint Registrar and the Respondent No.4 Minister.

18. For all the aforesaid reasons the impugned order warrant no interference by this Court in exercise of its powers under Article 226 of the Constitution. The Petition is accordingly dismissed. Rule is discharged, No order as to costs.

(A.A. SAYED J)

Kambli