

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

WRIT PETITION NO. 963 OF 2014

Naresh Lachmandas Aswani

... Petitioner

vs.

The State of Maharashtra through
Revenue Minister and ors.

... Respondents

Ms. Jyotika Aswani, C. A. of petitioner in person.

Mr. D. A. Nalawade, Additional Government Pleader a/w Mr.
Bharat Mehta, for respondents No.1 to 4.

Mr. T. N. Subramaniam a/w Mr. Rohan Rajadhyaksha and Mr.
Sanmish Gala i/by Markand Gandhi & Co., Advocate for
respondent No.6.

Mr. P. S. Dani, Senior Advocate a/w Mr. Mahesh Mishra i/by Ravi
Thankan, Advocate for respondents No.7 and 8.

Coram : Smt. R. P. SondurBaldota, J.

Date : 7th December, 2015

P.C. :

1. This petition filed under Article 226 of the Constitution of India challenges the order dated 18th December, 2013 passed by respondent No.1 on the application for review under Section 256(2) of Maharashtra Land Revenue Court ('MLRC', for short). By the impugned order, the decision dated 14th May, 2011 passed by respondent No.1 on the Revision Application No. 2610/1356/M. No.248/L-1 was cancelled and the order dated 28th February, 2010 passed by the Deputy Director of the Land Records, Konkan Region along with order dated 29th September, 2009 passed by the Superintendent, Land Records, Mumbai

Suburban was confirmed. The order further directs revision of record of rights in respect of the property in dispute.

2. The factual conspectus required to be noticed for deciding the challenge is as follows.

One Joseph Pareira was the owner of the property in dispute. On his death in the year 1962 the same devolved upon his son Neol Pareira. The petitioner claims that by the registered Lease Deeds dated 27th November, 1963, Neol Pareira granted lease of the property to the petitioner's father for 98 years. The father died on 18th October, 1985. Thereafter, the petitioner and his brother, respondent No.1 inherited leasehold rights in equal share. But, admittedly neither the father nor the petitioner and his brother were ever put in possession of the property.

3. According to respondent No.6, who is the contesting respondent, Joseph Pareira had, during his lifetime, allotted the property to three persons Gangaram Kadam, Jayram Kadam and Devji Yadav, who constructed chawls thereon and let out rooms in the Chawls to several persons. On the death of Joseph Pareira his son Neol executed registered Deed of Conveyance dated 6th March, 1992 and sold the property to respondent No.5 Yusuf Ahmed for valuable consideration. The name of Yusuf Ahmed was, then, entered in the Property Register Card as the owner of the

properties. By three registered deeds of conveyances dated 17th January, 2007, Yusuf Ahmed sold the properties to respondent No.6. The three allottees of the land from Joseph Pareira, also executed registered Deed of Conveyance dated 2nd August, 2006 in favour of respondent No.6. The property has since been declared as a slum under the Maharashtra Slum Areas (Improvement, Clearance And Redevelopment) Act, 1971. The slum dwellers have formed a co-operative society and after completion of all the requisite formalities and approvals the work of Slum Redevelopment pursuant of the scheme sanctioned therefor is undertaken. The project of redevelopment consists of construction of three buildings i.e. Rehab building, Composite Building and Sale Building. The Rehab building of ground plus seven floors is constructed and allotment of 65 tenements therein to the eligible occupants is made. The construction of Sale building has commenced. It's slab is cast upto 15th floor. The composite building is also partly constructed with certain Rehab tenements, tenements for project affected persons with municipal market upto 9th floor etc.

4. About 43 years after execution of the alleged indenture of lease i.e. in the year 2006, the petitioner applied for his name to be entered as lessee in the Property Register Card. That

application was dismissed by the City Survey Officer by the order dated 21st April, 2007. The petitioner challenged the dismissal by way of Appeal No. SR 58 of 2007. The Superintendent of Land Records, allowed the appeal and remanded the matter to City Survey Officer. On reconsideration of the application after remand the City Survey Officer allowed the same by his order dated 31st October, 2008. Being aggrieved by that order, respondent No.6 preferred appeal being Appeal No. B. S. 7/Appeal S. R. 264/2009/1614 before the Superintendent of Land Records. By the order dated 29th September, 2009, the appeal was allowed and the order dated 31st October, 2008 of the City Survey Officer was set aside. The petitioner, being obviously aggrieved by the order, preferred Appeal No.1048 of 2009 to Deputy Director of Land Records impleading Yusuf Ahmed and respondent No.6 thereto. The appeal came to be rejected by the order dated 20th February, 2010 and the petitioner carried it in revision vide REV/2610/1350/Pra.Kra. 2008/L-1 to respondent No.1. That revision was decided by the order dated 4th May, 2011. Respondent No.1 allowed the revision to confirm the order of the City Survey Officer but made it subject to the orders that may be passed in the suits filed by the petitioner in this Court as well as in the Bombay City Civil Court.

5. The petitioner had filed a suit in this Court being H. C. Suit No.808 of 2011 for declaration that the lease deeds executed in favour of the father of the petitioner, are legal, valid, subsisting and binding upon all the respondents including Yusuf Ahmed and respondent No.6. Later, by the order dated 18th October, 2013 the petitioner's suit came to be dismissed on the ground that the same is barred by the Law of Limitation and that in view of Section 42 of the Maharashtra Slum Areas (Improvement, Clearance And Redevelopment) Act, 1971 ('the Slum Act' for short), this Court had no jurisdiction to entertain the suit.

6. The petitioner had also filed three suits in the Bombay City Civil Court being S. C. Suit No.362, 363 and 364 of 2007. By the judgment and order dated 30th September, 2014 the suits were disposed off by the City Civil Court as not maintainable, being barred by Section 42 of the Slum Act.

7. On 15th June, 2011 respondent No.6 had filed an application for review of the order dated 4th May, 2011 as provided under Section 258 of MLRC. It was also required to file Writ Petition No.691 of 2012 in this Court to seek expeditious hearing, by respondent No.1, of the review application because the petitioner was allegedly misusing the order dated 4th May, 2011 and making applications to various authorities to stall the

redevelopment scheme. By the order impugned herein the review application has been allowed and the order passed by the City Survey Officer in favour of the petitioner, has been set aside.

8. The petitioner contends that the registered lease deed in favour of the father of the petitioner subsists till date as the same has not been terminated by the original owner at any point of time. The lease deed being prior in point of time to the conveyance in favour of respondent No.5 by Neol Pareira, all that respondent No.5 got under the conveyance was only the reversionary rights on expiry of the lease period of 98 years. The deed of assignment in favour of the respondent No.5 makes a reference to the lease in favour of the father of the petitioner. Since respondent No.6 has acquired the rights to the properties from respondent No.5, there cannot be a claim for a right higher than that respondent No.5 possessed.

9. As the record shows, there is no dispute that the father of the petitioner during his lifetime and the petitioner or his brother have at any point of time been put in possession of the property. There is also no dispute that there have been several structures on the property and the property had been declared as slum under the Slum Act. Further under the scheme approved by the appropriate Authorities the work of redevelopment of the slum

is taken up and has made substantial progress. The suits filed by the petitioner for establishing and asserting his leasehold rights in respect of the property have failed. In that circumstance, there could not have been an order on the review petition other than the order that has been passed. The impugned order takes note of all the above facts and observes that since the rights claimed by the petitioner are rejected by the competent Court, it would be wrong to make entry of his rights in the Property Register Card. The impugned order also notes that the jurisdiction of the Revenue Court regarding the recording of right is very limited and restricted. The conclusion and decision of the Revenue Court cannot be contrary to the decision of the Civil Court.

10. The Constituted Attorney of the petitioner, who has appeared in this petition, had raised an objection of the maintainability of the review application before respondent No.1. That objection has been dealt with at para 37 of the impugned order, wherein respondent No.1 holds that the prayer for review is maintainable under Section 258(2) of the MLRC. There is no infirmity in this view taken by respondent No.1.

11. For the reason stated above, there is no merit in the petition filed by the petitioner. Hence, the same is dismissed.

[Smt. R. P. SondurBaldota, J.]