Vidya Amin

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

WRIT PETITION NO. 568 OF 2013
WITH
NOTICE OF MOTION NO. 279 OF 2013 IN W.P. NO. 568 OF 2013

Amiruddin Azizpasha Jagirdar & Ors. … Petitioners
vs.
The State of Maharashtra & Ors. … Respondents

WRIT PETITION NO. 1728 OF 2013

Elson Joseph Fernandis & Ors. … Petitioners
vs.
The State of Maharashtra & Anr. … Respondents

Mr. Nigel Quraishy a/w. Mr. Manoj Shukla, Advocate for the petitioners in W.P. No. 568 of 2013.
Mr. Sanjeev Kadam i/b. Mr. Prashant Jadhav, Advocate for the petitioners in W.P. No. 1728 of 2013.
Mr. P.G. Lad, AGP for respondent nos. 1 and 3/State in W.P No. 568 of 2013.
Mr. J.S. Saluja, AGP for respondent no. 1 in W.P. No. 1728 of 2013.
Mr. Janak Dwarkadas, Senior Advocate a/w. Mr. Shara Jagtiani & Neha Chopra i/b. M/s. Malvi Ranchoddas & Co., Advocate for respondent no. 2 in W.P. No. 568/2013 and W.P. No. 1728/2013.
Mr. Milind Sathe, Senior Advocate a/w. Mr. Chirag Balsara and Mr. Parimal Shroff, Mr. D.V. Deokar, Mr. Sachin Pandey i/b. Parimal K. Shroff & Co., Advocate for respondent no. 5 in W.P. No. 568/2013 and for respondent no. 3 in W.P. No. 1728 of 2013.

CORAM : SMT. VASANTI A. NAIK &
C.V. BHADANG, JJ.
DATE : 29th January, 2015.

P.C.

Since the issue involved in these petitions is identical and the petitions question the permission granted by the respondent no.1/State

Government to the respondent no. 2 to sell the land admeasuring 28501 sq. mtrs., they are heard together and are decided by this common order.

The State of Maharashtra had acquired two pieces of land having an aggregate area of 124024 sq. mtrs. on 15th October, 1958 and 17th January, 1969 for establishment of the industry of the respondent no. 2. Two sanads were executed by the State Government in favour of the respondent no. 2, one dated 29th November, 1969 in respect of the land acquired on 15th October, 1958 and the other dated 23rd June, 1975 in respect of land acquired on 17th January, 1969. There was a condition in the sanads which gave a right to the respondent no. 2 to dispose of the land with the previous permission of the Government in writing. It is not in dispute that the respondent no. 2 had set up an industry on a major part of the land admeasuring 124024 sq. mtrs. According to the respondent no. 2, since about 28000 sq. mtrs. of land was utilized only for the activity of storage of finished goods, the respondent no. 2 decided to shift that activity to another location and seek the permission of the State Government to alienate the land. On 10th March, 2008 an Agreement for Sale-cum-Development in respect of the land in question was executed between the respondent nos. 2 and 5 and it was mentioned in the said Agreement that the sale would be subject to the prior permission of the State Government. Before entering into an

Agreement on 10th March, 2008, the respondent no. 2 had applied to the Labour Commissioner on 28th December, 2006 for a No Objection Certificate. The respondent no. 2 gave an Indemnity Bond on 15th February, 2007 that the respondent no. 2 was not closing the industry. The Labour Commissioner granted the No Objection Certificate on 11th January, 2008 and a modified No Objection Certificate was granted on 22nd January, 2008.

On the application made by the respondent no. 2 to the State Government for grant of permission to transfer the property, the State Government, by an order dated 18th September, 2010 granted permission for the transfer of the land on the condition that 50% of the unearned income be paid to the State Government. It appears that on 19th January, 2011 the amount was worked out and the respondent no. 2 was directed to deposit a sum of Rs.61,56,00,000/- towards unearned income. The said amount was deposited by the respondent no. 5 on 10th February, 2011. On 25th July, 2011 a registered conveyance was executed by the respondent no. 2 in favour of the respondent no. 5.

Pursuant to the conveyance, it appears that the respondent no. 5 secured the planning permission and the TDR was also purchased. Out of the four wings of the buildings that are being constructed by the respondent no. 5, it is stated in the affidavit-in-reply of the respondent no. 5 that the B & C wings of the buildings are completed upto 36th floor and there is a construction of A and D wings upto podium level. It is also stated in the affidavit that about 220 flats in the said buildings are sold and the respondent no. 5 has expended an approximate amount of Rs.475 crores on the project so far.

In the background of the aforesaid facts, the petitioners, who claim to be labourers in the industry of the respondent no. 2, have instituted these petitions only with a prayer for quashing and setting aside the permission granted by the State Government to the respondent no. 2 for the alienation and sale of 28000 sq. mtrs. of land. The petitioners had also filed a complaint before the Labour Court bearing complaint no. 152/2009. The said complaint is pending. It would be necessary to mention that interim relief was refused in the complaint by an order dated 2nd September, 2009. The petitions are filed sometime in the month of December, 2011, though there is an averment in Writ Petition No. 568 of 2013 that the petitioners had knowledge in regard to the intended sale of the land. It is also admitted by the petitioner in Writ Petition No. 568 of 2013 that the recognized union has consented to the action proposed by the respondent no. 2. Though the consent is admitted, collusion is alleged.

The learned counsel for the petitioners in Writ Petition No. 568 of 2013 has made only two submissions for challenging the impugned no-objection-certificate. Firstly, according to the learned counsel, the State Government could not have granted permission for the alienation and sale of the land when the industry was running. It is stated by referring to Regulation 57(4)(c)(i) of the Development Control Regulations for Greater Bombay that the conversion of the industrial zone to residential or commercial zone in respect of closed industries could not have been permitted unless a No Objection Certificate from the Labour Commissioner, Maharashtra State, Mumbai stating that all legal dues of the workers have been paid was obtained. It is stated that the State Government could not have permitted the conversion of the industrial zone to the residential or commercial zone when the industry was actually running and in operation. Secondly, according to the learned counsel for the petitioner in Writ Petition No. 568 of 2013, the No Objection Certificate from the State Government was secured in pursuance of the report of Tahsildar dated 29th September, 2008 referred to in the Collector's report dated 3rd March, 2009, which records that the industry is closed. It is stated that the respondent no. 2 had misrepresented before the Tahsildar and the other authorities and since the industry is admittedly running, the No Objection Certificate granted by the State Government on the report of the Tahsildar is liable to be set aside.

Apart from the two submissions made by the counsel for the petitioner in Writ Petition No. 568 of 2013, the counsel for the petitioners in Writ Petition No. 1728 of 2013 had one more submission to make. According to the learned counsel, the respondent no. 2/Company could not have used the land for a purpose other than the purpose for which it was acquired. It is stated that in view of Clause 4 of the sanads executed by the State Government in favour of the respondent no. 2, the State Government could not have issued the No Objection Certificate in favour of the respondent no. 2 on 18th September, 2010. While making this submission, the learned counsel for the petitioner in Writ Petition No. 1728 of 2013 fairly admitted that the petitioners do not have any personal interest in this litigation.

Mr. Dwarkadas, the learned senior counsel for respondent no. 2 submitted that the petitioners have not challenged the development permission granted by the Commissioner of the Municipal Corporation and the Commissioner is also not joined as a party to the petitions. It is submitted that the permission for conversion of the industrial zone to the residential zone is granted by the Commissioner of the Municipal Corporation and the No Objection Certificate granted by the State

Government for the alienation of the land by the order dated 18th September, 2010 has nothing to do with the permission for conversion and development. It is stated that though the petitioners have relied on the report of the Collector dated 3rd March, 2009, the additional report of the Collector dated 19th May, 2009 clearly records that breach of conditions of the sanad executed in the years 1969 and 1975 is not to be seen and the land was used by the respondent no. 2 for the purpose for which it was acquired. The learned senior counsel took this Court through the Collector's report dated 19th May, 2009 to point out that the land in question, i.e. land admeasuring 28000 sq. mtrs. was not used for manufacturing purpose and was surplus. It is stated that the reliance placed by the counsel for the petitioner in Writ Petition no. 1728 of 2013 on clause (iv) of the sanads executed in the year 1969 and 1975 is misplaced, as in view of clause (vi) of the sanad, the respondent no. 2 could have alienated the property with the prior permission of the State Government in writing. It is stated that it is entirely for the State Government to decide whether the land allotted to the respondent no. 2 by the sanads was used for the purpose for which it was acquired. In any case, according to the learned senior counsel, condition no. (iv) on the grantee would not bind the grantor - the State Government. It is submitted that the petitioners have only challenged the No Objection Certificate granted by the State Government for the alienation and sale of the land and the permission for conversion of the land from industrial to residential or commercial purpose by the Corporation authorities is not challenged. It is submitted that these submissions are made in addition to the primary submission that the petitioners do not have locus to file these petitions. It is stated that there were only 38 workers in the storage department of the respondent no. 2 and all the 38 workers have been shifted by the respondent no. 2 to the main plant. It is stated that the petitioners are not the workers that are affected by the shifting of the storage department and the recognized union of workers have given No Objection for the alienation of the land in question and for the shifting.

Mr. Lad, the learned Assistant Government Pleader submitted that the State Government has not granted permission to the respondent nos. 2 and 5 for the development of the property and by the impugned order, the State Government has only granted a No Objection Certificate for the transfer of the land in question.

Mr. Sathe, the learned senior counsel for the respondent no. 5 in Writ Petition No. 568 of 2013 submitted that the order permitting conversion of the industrial zone to the residential zone has not been challenged. It is stated that the Municipal Corporation has rightly granted permission for the conversion of Industrial zone in pursuance of

Development Control Regulation No. 57(iv). It is stated that the respondent no. 5 has so far expended an amount of Rs.475 crores on the project and grave and irreparable loss would be caused to the respondent no. 5 if this Court entertains the Writ Petitions by the petitioners, who have no locus.

On hearing the learned counsel for the parties, it appears that there is no force in the submissions made on behalf of the petitioners. Apart from the fact that nothing is pointed out by the counsel for the petitioners prohibiting the conversion of an industrial zone into a residential or commercial zone in respect of an industry, it would be necessary to note that the land in question, i.e. 28000 sq. mtrs. does not appear to be a land on which manufacturing activity is conducted. It appears from the reading of the documents annexed to the petitions, the affidavits-in-reply and the reports of the Collector that the land in question was being used for the storage of finished goods and since the said land was surplus and was not being used for manufacturing purposes, the respondent no. 2 had sought the permission of the State Government in view of Clause (vi) of the Sanads, for alienation of the land to the respondent no. 5. After considering the reports of the Collector and the other material on record, the State Government has granted the No Objection Certificate on 18th September, 2010 for transfer of the land to the respondent no. 5 on the condition that 50% of the unearned income be paid to the State Government. It is not in dispute that on 10th February, 2011, the respondent no. 5 has paid a sum of Rs.61.56 crores to the State Government after the said amount was worked out by the State Government on 19th January, 2011. After the respondent no. 5 secured the planning permission and the TDR was purchased, it appears that these Writ Petitions are filed. It is not the case of the petitioners that they are affected by the shifting of the storage unit from the land in question to some other location. When a specific query was made to the counsel for the petitioners as to how the petitioners were affected by the No Objection Certificate granted by the State Government to the respondent no. 2, the counsel for the petitioner in Writ Petition No. 1728 of 2013 fairly stated that the petitioners do not have personal interest.

The submission made on behalf of the petitioners that the permission for alienation and sale of property has been secured by the respondent no. 2 on a false representation that the industry was closed is not supported by any material. The industry is admittedly running on the land admeasuring 124024 sq. mtrs. and the land admeasuring 28000 sq. mtrs. that was being used by the respondent no. 2 for storage purpose was alienated. We do not find that the impugned No Objection Certificate is granted by the State Government on a belief that the industry of the respondent no. 2 was completely closed at the relevant time. The report of the Collector dated 19th May, 2009 clearly shows that the land in question was not used by the respondent no. 2 for manufacturing purposes and was surplus. The statement in the Tahsildars report in respect of the closure of the industry may be referable to the closure/shifting of the storage unit

We reject the third and the last submission made on behalf of the petitioners in Writ Petition No. 1728 of 2013 that the respondent no. 2 could not have used the acquired land for any purpose other than the purpose for which it was acquired and hence, the State Government could not have granted permission for alienation. We accept the submission made on behalf of the respondent no. 2 that it is entirely for the State Government to decide whether the conditions of the sanads -- grant was breached by the respondent no. 2 and that in any case the condition on the grantee would not be binding on the grantor, i.e. the State Government. We find that though most of the submissions made by the petitioners relate to the grant of the development permission and the permission by the Municipal Corporation for change of user, the said orders of the Corporation are neither challenged nor are the Corporation authorities joined as parties to these petitions. While appreciating the fair statement made by the counsel for the petitioners in Writ Petition No.

1728 of 2013 that the petitioners do not have a personal interest in the litigation, we suspect that someone else is interested in the same.

In the circumstances, we dismiss the Writ Petitions, with no order as to costs.

In view of dismissal of Writ Petition No. 568 of 2013, Notice of Motion would not survive and the same is accordingly disposed of.

(C.V. BHADANG, J.) **(VASANTI A. NAIK, J.)**