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

WRIT PETITION NO.1544 OF 2014

The Malad Cosmopolitan Education Trust ... Petitioner
versus
State of Maharashtra and others ... Respondents

Mr.J.J.Bhatt, Sr.Advocate with Mr.Kamal Katha, Mr.Akshay Vani i/by M/s.Vani & Associates for Petitioner.
Ms.Anjali Helekar, AGP for Respondent nos.1 to 3.
Ms.Surekha Sonawane for Respondent nos.4 and 5.

CORAM : S.C.DHARMADHIKARI AND
B.P.COLABAWALLA, JJ.

DATE : 20 November 2015

PC :

By this petition under Article 226 of the Constitution of India, the Petitioner has sought following reliefs :

> "*(a) That the Hon'ble Court be pleased to issue a Writ of Certiorari or a writ, direction or order in the nature of Certiorari or any other appropriate writ, direction or order under Article 226 of the Constitution of India calling for the records from the Respondents, their successors, subordinates, officers, servants and agents or such of them as this Hon'ble Court may deem fit and after going into the legality, validity and propriety of impugned order dated 24 March 2005 at Exhibit-K and possession notice dated 10 January 2007 at Exhibit-L and after examining the legality, validity and propriety of the impugned order dated 24 March 2005 and possession notice dated 10 January 2007, be pleased to quash and set aside the same;*

> *(b) That this Hon'ble Court be pleased to issue a Writ of Mandamus or a writ, direction or order in the nature of Mandamus or any other appropriate writ, direction or order under Article 226 of the Constitution of India to direct the Respondents, their successors, subordinates, officers, servants and agents or such of them as this Hon'ble Court may deem fit to forthwith enter the name of the Petitioner in the property register card."*

2. The petition proceeds on the clear understanding of the factual position. One Music India Limited was absolutely seized and possessed of and well and sufficiently entitled to all those pieces or parcels of land admeasuring 22,407.2 sq.meters of village Wadhwan together with the structures standing thereon situate lying and being at Kandivali (East), Mumbai. An agreement dated 12 March 1988 between Music India Limited on the one hand and M/s.Gokul Enterprises of the other part came to be executed. Music India Limited agreed to sell all those pieces or parcels of land admeasuring 22,407.2 sq.meters of village Wadhwan together with the structures standing thereon situate at Kandivali (East), Mumbai. The Appropriate Authority under Chapter XXC of the Income Tax Act, 1961 by order dated 16 May 1988 granted no objection to the sale of the property to M/s.Gokul Enterprises.

3. It is further common ground that the property was subject to the proceedings under Urban Land (Ceiling and Regulation) Act, 1976 (`Ceiling Act'). An exemption under Section 20 of the Ceiling Act was claimed by Music India

Limited i.e. surplus land holder. The surplus land holder made that application and on the basis of the same, exemption order was passed on 13 October 1988 by the Additional Collector and Competent Authority and on the basis of the same, another order came to be passed on 21 April 1989. That order records that there is also a sub-division of the property. That sub-division also records the fact that the land in question belongs to Music India Limited. The development plan indicates that there is a reservation for secondary school. The lands which were previously declared as surplus vacant land, were exempted by Housing and Special Assistance Department, Mantralaya, Mumbai. Our attention has been invited to this reservation at page-24 of the petition paper book. That indicates that total surplus area was 7,343.00 square meters and the land in reservation for the secondary school is 2,494.70 sq.meters. The exemption order which was passed on the application dated 31 March 1987 states that the built-up area to be sold to the Government is 838.16 sq.meters. The area of the land which was exempted was admeasuring 1,995.63 sq.meters. The total number of tenements to be constructed is 70 and total number of tenements to be sold to the Government is 21.

4. We are not concerned with this part of the controversy simply because from the total surplus land admeasuring 7,343 sq.meters, the exempted portion is 1,995.63 sq.meters and the tenements meant for sale to the Government

have been handed over. The Petitioner states that on 25 February 1989, an agreement for sale was entered into with M/s.Gokul Enterprises. The Petitioner obtained no objection certificate from the appropriate authority under the Income Tax Act. Thereafter there was a Deed of Conveyance executed on 11 November 1992 and that is a tripartite agreement. In terms of this Deed of Conveyance, the Petitioner claims that it applied for its name being entered in the property registration card. That was entered in the property registration card. But prior thereto, reliance is also placed by both sides on the Corrigendum dated 18 August 1992, a copy of which is at page 56 of the paper book. The Petitioner states that the property registration card contains an entry on the basis of an order passed in the year 1996 and that is how the name of present Petitioner educational trust was entered therein. The Petitioner approached the Municipal Corporation of Greater Mumbai (`MCGM') and sought a sanction to the building plans for construction of a school. The remarks of the Additional Collector and the Competent Authority under the Ceiling Act were obtained and reliance in that regard is placed on a document at Exhibit-F at page 60 of the paper book. That is a communication from the Competent Authority under the Ceiling Act to the Deputy City Engineer (D.P.), MCGM informing him that the land was subject to the proceedings under Ceiling Act namely the Principal Act. That there is an order of exemption in favour of the surplus land holder dated 13 October 1988 and there are two corrigendums dated 29 January 1990 and 18 August 1992. Thereafter, the competent authority has granted no objection certificate for occupation of the building constructed on the exempted land on 18 August 1992 and 6 May 1994. It is stated therein that as per the above exemption order, the land holder/developer was required to hand over the areas under the development plan reservation free of cost to MCGM. In this case, there was a reservation of secondary school and MCGM has granted no objection certificate to take-up development for secondary school by M/s.Malad Cosmopolitan Education Trust. A reference in that regard is made to the MCGM letter dated 29 December 1989. The remarks of the Competent Authority are that the trust through its Architect has requested to release no objection certificate for issuance of occupation certificate by MCGM to the secondary school building, which is complete and ready for occupation. The ULC Authority (Competent Authority under the Principal Act) gave its no objection to grant the occupation certificate for secondary school building constructed on land CTS No.57. No further occupation for any building/flats be granted until specific no objection certificate from the competent authority under the Ceiling Act is obtained. That is how reliance is placed by the Petitioner on the said document. The Petitioner has averred that earlier its name was entered in the property registration card and subsequent deletion of its name from the same is behind its back and without any notice.

5. Though the Petitioner fairly states that the land was declared as surplus vacant land, a Notification under Section 10(3) under the Ceiling Act was published in the Government Gazette on 26 May 2005 and that in pursuance of this Notification, a notice under Section 10(5) of the Principal Act was issued to the surplus vacant land holder Music India Limited on 10 January 2007. That refers to the publication of Notification under Section 10(3) of Ceiling Act in the Maharashtra Government Gazette dated 26 May 2005 and calls upon the surplus vacant land holder Mr.S.A.Patel (Polydor of India Limited), which is admittedly the earlier name of Music India Limited, that he should remain present to hand over physical possession of the land at Village Wadhwan, Survey No.3(Part), Survey No.4(Part), CTS No.75A, 57B, admeasuring 2,429.90 Sq.meters + 401.30 sq.meters = 2,830.23 sq.meters. That notice itself recites that if none remains present, then the possession can be taken and panchanama will be drawn by the officer authorized to do so. Accordingly, the possession has been taken and evidenced by possession receipt dated 2 February 2007.

6. Though extensive arguments were canvassed before us on this point, we have, after due verification and scrutiny of these documents from the original files and records of the competent authority, found that there is no necessity of setting

aside or disturbing the action of taking possesion and vesting of the land in the State. All these steps are admittedly preceding the repeal of the Principal Act. The only request made by the Petitioner and as highlighted by Mr.Bhatt, learned Senior Advocate for it is that there is no substance in the objection of learned AGP that at no point of time, any request for allowing construction of school building on the land was made to MCGM on behalf of Petitioner trust. In that regard, Mr.Bhatt produces from the Petitioner's file a document which evidences, according to him, that MCGM has granted permission/no objection certificate to take-up development of the portion of the property namely CTS No.57(Part) of the said village which is reserved for the purpose of secondary school in the published draft revised development plan of `R' ward, by the Petitioner M/s.Malad Cosmopolitan Education Trust. This communication, according to Mr.Bhatt, informs the Petitioner's Architect that for approval of the building plans, he may approach the Deputy Chief Engineer, Buildings Proposals, western Suburbs; Executive Engineer, Building Proposals Western Suburbs, `R' Ward. Mr.Bhatt, therefore, submits that it is not as if the letter which has been referred to by the Petitioner at page 60 of the paper book is an isolated or solitary document. That precedes the development plan reservation, the specific reference therein of a secondary school and that MCGM having permitted setting up of the same by the Petitioner trust and thereafter granting of occupation certificate. Mr.Bhatt, therefore, submitted that it is in these peculiar facts that though supervening events have taken place that the educational trust on 19 June 2013 approached the State Government particularly its Principal Secretary in Urban Development Department requesting that the school which has been established and has been set up by the Petitioner trust, be permitted to undertake an expansion programme. So long as this expansion programme is not permitted to be undertaken and completed, the activities of the trust and the interest of students would be adversely affected. The Petitioner pointed out that unless and until the Government gives its no objection, no expansion activities could be undertaken and completed.

7. Mr.Bhatt has brought to our notice the remarks of the Additional Collector and Competent Authority under Ceiling Act which informs the Government and particularly the Urban Development Department that possession has been taken and the land vests in the Government, but it was without considering the existing secondary school, its activities, its management and administration by Petitioner trust.

8. Mr.Bhatt would submit that without in any manner disturbing the other action, the Government could even now consider the Petitioner's request and allow it to retain the land only for the purposes of the existing functional secondary school and in terms of the reservation under development plan. No

activities save and except running and administering a school, but by expanding the building or construction at site, would be undertaken.

9. From the original files produced by learned AGP, we could find the application, a copy of which is at page 85 and the remarks at pages 87 and 88 of the paper book. We have also been shown the letter addressed to M/s.N.M.Barai, the Architect of the Petitioner trust by the Deputy Chief Engineer, Development Plan, MCGM.

10. In the above peculiar facts and circumstances and though the point is covered by a Full Bench judgment of this court rendered in the case of **Maharashtra Chamber of Housing Industry and others Vs. State of Maharashtra and others**[1], we direct that the Petitioner's representation be considered by the Principal Secretary in the Urban Development Department, Government of Maharashtra and after giving an opportunity of being heard to the Petitioner trust and allowing it to produce all the relevant records, the said Principal Secretary shall pass a reasoned order and communicate the same to the Petitioner. All this be done as expeditiously as possible and within a period of two months from the date of receipt of a copy of this order.

11. Needless to clarify that in the event the representation of the Petitioner together with the remarks of the

1 2014(6)-Bom.C.R.247

competent authority are favourably considered, then all other parties, particularly the revenue authorities, shall carry out the relevant corrective exercise. It would be open for the revenue authorities to act in consonance with the order of Principal Secretary of Urban Development Department and consider the request of Petitioner to restore its name in the revenue records and the property registration card.

12. Needless to clarify that even this exercise following the order of Principal Secretary of Urban Development Department shall be completed within a period of six weeks from the date of receipt of a representation from the Petitioner accompanied by the copy of a favourable order of Principal Secretary, Urban Development Department.

13. This Court's ad-interim orders granted earlier shall continue until the aforementioned exercise is completed.

14. The petition stands disposed of with above directions. No order as to costs.

(S.C.DHARMADHIKARI, J.)

(B.P.COLABAWALLA, J.)

MST