

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

WRIT PETITION NO. 1965 OF 2013

Apurva Natvarlal Parikh. ... Petitioner.
Versus
The Slum Rehabilitation Authority & ors. ... Respondents.

Mr. P.K. Samdhani, Sr. Counsel i/b. Wadia Ghandy & Co., advocate for Petitioner.

Mr. Vijay Patil a/w. Mr. J.G. Reddy, advocate for respondent No. 1.

Mr. D.A. Nalavade, Govt. Pleader a/w. Mr. M.P. Jadhav, AGP for respondent Nos. 2 and 3.

Mr. P.K. Dhakephalkar, Sr. Counsel a/w. Mr. Ajay Patil, advocate for respondent No. 4.

Mr. P.S. Dani, Sr. Counsel a/w. Mr. Amol Mhatre, advocate for respondent No. 5.

CORAM : B.R. GAVAI & A.S. GADKARI, JJ
DATE : APRIL 15, 2015

P.C.:

1 The Petition challenges notification dated 22nd August, 2007 issued by the respondent No.3 under Section 14(1) of the Maharashtra Slum Areas (Improvement, Clearance and

Redevelopment) Act, 1971 (hereinafter referred to as the said Act). The facts are not in dispute. Since, the facts have already been reproduced by a Judgment of the Division Bench of this Court in Writ Petition No. 2380 of 2010, which has been dismissed by this Court though reserving right of the Petitioner therein to challenge acquisition, it will not be necessary to burden the present petition again with the said facts.

2 Heard Shri Samdhani, learned Senior Counsel appearing for the Petitioner, Shri Patil, learned Counsel appearing for the respondent No. 1, Shri Nalawade, learned GP for respondent Nos. 2 and 3, Shri Dhakephalkar, learned Senior Counsel for the respondent No.4 and Shri Dani, learned Senior Counsel appearing for the respondent No. 5. Though duly served, respondent Nos. 6 and 7 are not represented.

3 The basic contention raised by the learned Senior Counsel for the Petitioner is that the notification issued by the Competent

Authority under Section 14(1) of the said Act is issued without compliance with the provisions of Section 5, 5(C) and Section 12 of the said Act and as such is not sustainable in law. It is the contention of the learned Senior Counsel for the Petitioner, that under the scheme of the said act, first opportunity is required to be given to the owner of the land to carry out improvement prior to the Competent Authority taking decision to execute the work himself. The learned Senior Counsel submits that admittedly, this has not been done and as such, the notification under Section 14 is vitiated. The learned Senior Counsel submits that had the Petitioner been given an opportunity to execute the work, the Petitioner would have himself executed the work and as such the Competent Authority could not have been stepped in to get the work executed itself.

4 The learned Senior Counsel relies on the Judgment of the learned Single Bench of this Court in the case of **Ramkali Sitaram Kushawaha & ors. v/s. Deputy Collector(ENC) & Competent Authority & ors. reported in 2004(3) Bom. C.R. 14**, which has been

upheld by the Division Bench of this Court in Appeal No. 324 of 2004 vide order dated 14th February, 2011, wherein it has been held that unless a notification under section 3C(1) of the said Act is issued, the requirement of following the provisions of Sections 5, 5C and 12 cannot be done away with. It is therefore, submitted that since the proceedings in the present case are not covered by Chapter I(A) of the said Act, it was incumbent upon the respondent Nos. 2 and 3 to have first called upon the owners of the land to get the works executed themselves without deciding to get the work executed by it. Having not followed the procedure, the learned Senior Counsel submits that the entire proceedings stand vitiated.

5 Shri Dhakephalkar, learned Senior Counsel for the respondent No. 4 vehemently opposes the petition. He submits that the Petition deserves to be dismissed on the ground of delay, locus and also on merits. Shri Dani, learned Senior Counsel appearing for respondent no.5 opposes the petition on the same grounds. Shri Jadhav, learned AGP submits that perusal of the affidavit would reveal that the

Competent Authority has followed the procedure. as prescribed under the Statute and as such the Petition has no merits.

6 No doubt that the reliance placed by Shri Samdhani on the Judgment of the learned Single Judge of this Court in the case of **Ramkali Sitara Kushawaha(Supra)** and the judgment of the Division Bench in Appeal arising out of the same judgment is well merited. In the said judgments, it has been held that unless a notification is issued under Section 3C, the competent authorities are bound to comply with the requirement of Section 5, 5C and 12 of the said Act before issuing notification under Section 14 of the said Act. However, we do not find that the said judgment can operate as ratio decidendi in the present case. What is ratio decidendi has been squarely observed by the Apex Court in the case of **Regional Manager and another v/s. Pavan Kumar Dubey reported in AIR 1976 SC 1766.** The Apex Court observed thus :

“It is the rule deducible from the application of law to the facts and circumstances of a case which constitutes its ratio decidendi

and not some conclusion based upon facts which may appear to be similar. One additional or different fact can make a world of difference between conclusions in two cases even when the same principles are applied in each case to similar facts.”

It can thus be seen that the Apex Court held that one additional or one different fact can make a world of difference between conclusions in two cases even when the same principles are applied in each case to similar facts.

7 In the present case, we find that the Petition deserves to be dismissed not only on one ground but on various grounds. Firstly, though the Petitioner claims to be the owner of the land, no document is placed on record to show that in the Revenue record name of the Petitioner is recorded as owner. The reliance is sought to be placed on the family arrangement contending therein that though the land originally had come to the share of the brother of the petitioner, subsequently on account of arrangement between the Petitioner and legal heirs of the original owner, land was given to the

share of the Petitioner. However, nothing is placed on record to show that the said family arrangement was given effect to by mutating necessary entries in the records of rights. The authorities while following provisions of law are required only to treat the owner who is registered and recorded as such in the Revenue Record and the authorities are not expected to make enquiry as to whether there has been any arrangement amongst legal heirs of the original owner with other parties.

8 Shri Samdhani however, submits that, it would not make any difference in as much as the legal heirs of the original owner who is registered on record are impleaded as respondents. We find that such a contention would not be available to the Petitioner, in as much as Petitioner would have to either stand or fall on the basis of his own case. Since nothing is placed on record to fortify the claim of the Petitioner that they are owners of the land, we find that the Petition deserves to be dismissed on the ground of locus alone. However, since Shri Samdhani has sought support from the judgments of this

Court, it will not be appropriate to non-suit the petitioner on the same ground.

9 Perusal of the provisions of the said Act would reveal that a substantial right is available to the owner of the land to challenge the declaration of slum by substantive appeal under the Provisions of sub-section 3 of section 4 of the said Act. Not only that prior to declaration of a notification under section 14 of the Act, a procedure is required to be followed which also requires a prior notice to be given to the owner of the land. Undisputedly, no appeal as provided under sub-section 3 of section 4 of the Act has been referred either by the original owner, legal heirs or by the present petitioner. When the original owner including the petitioner who claims to have right in the land, had substantive right to challenge declaration under sub-section 3 of section 4 of the said Act, the Petitioner not having done that, cannot be thereafter heard to say that the authorities ought to have complied with the provisions of Section 5, 5C and 12 of the said Act. As already submitted by us hereinabove, the contention raised by

Shri Samdhani with respect to the Judgments of this Court is well merited. However, on fact, the said case is different from the case of the Petitioner, in as much as, the Petitioner therein had in fact preferred an appeal under sub-section 3 of section 4 of the Act, as could be seen from paragraph 1 of the judgment of the Division Bench. As such the said judgment would not apply to the facts of the present case.

10 Apart from that, even prior to issuing final notification under Section 14 of the said Act, an opportunity is available to the owner to raise objection. Prior to issuance of final notification, if any objection is raised by the owner, the State government is bound to consider the same. In this respect, it will be appropriate to refer to affidavit in reply filed by the Competent Authority which reads thus :

“4. I say that the office of the Additional Collector (Enc./Rem.) by its notice dated 21/02/2006, issued under Section 14(1) of the Maharashtra Slum Development Act, 1971, to the owner of the said F.P. No. 494 and other respective owners. I say that the said notice was served at the last known

addressee i.e., F.P. No. 492, 493, 494, 495, 501, 502 Vile Parle, D'Souza Chawl, Soma Rauji Chawl, Vikas wadi, Santacruz (East), Mumbai.

5. I say that as the said notice is under the provisions of Maharashtra Slum Area Act, 1971, was published in “Free Press Journal” and in “Navshati” newspapers on 23.02.2006, respectively. I say that as no objection or reply was received for the said acquisition, the Competent Authority submitted its report to the Housing Department of the Government of Maharashtra i.e., Respondent No. 3 on 22.03.2006. I say that the Housing Department of the Respondent No. 3, in the Government Gazette dated 22.08.2007, in exercise of powers conferred under provisions of Section 14(1) of the Slum Act, declared by the said Gazette, to acquire the said F.P.”

It would thus reveal that the Competent Authority had in fact issued a notice, which was served on the last known address of the original owner. Not only that, notice was also published in two newspapers namely, Free Press Journal and Navshakti on 23rd February 2006. The Petitioner nor owner nor the legal heirs raised any objections in pursuance to the said notice. However, it appears that thereafter,

when the work of redevelopment was to start, the Petitioner awoke from slumber and decided to file petition seeking direction against the respondents to hand over the possession of the land to the Petitioner. The Division Bench rightly found out that the Petitioner had not availed of the remedy available to him and was not entitled for issuance of said directions and relegated the Petitioner to take recourse to alternative statutory remedy. No doubt that the Apex Court had given a liberty to the Petitioner to file a petition before this Court, in accordance with which the Petitioner approached this Court.

11 As such though in ordinary course, the Petition ought have been dismissed on the ground of delay, only because of the entertainment of the Petition by the earlier Division Bench and the liberty being granted by the Apex Court, we are not non-suiting the Petitioner on that ground.

12 Having found that the Petition is without any merit, the Petition deserves to be dismissed in limini. However, in the facts and circumstances of the case with no order as to cost.

13 The Petition is dismissed with no order as to cost.

(A.S. GADKARI, J)

(B.R.GAVAI,J)