

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.4860 OF 2016

The Evangelical Alliances Ministries Trust,
Nashik

.. Petitioner

Versus

The Minister for Revenue,
Mantralaya, Mumbai-400 032 and others

.. Respondents

ALONGWITH

WRIT PETITION (STAMP) NO.34536 OF 2015

Mr. Gorakhnath Krishna Shinde

.. Petitioner

Versus

The Minister for Revenue,
Mantralaya, Mumbai-400 032 and others

.. Respondents

Mr. S. S. Shah a/w Mr. A. T. Gade, for the Petitioner in Writ Petition No.4860 of 2016.

Mr. V. D. Patil a/w Mr. S. R. Kapre, for the Petitioner in Writ Petition Stamp No.34536 of 2015.

Mr. S. D. Rayrikar, AGP for the Respondent Nos.1, 2, 3 & 5 in Writ Petition Stamp No.34536 of 2015 and for Respondent Nos.1 to 3 in Writ Petition No.4860 of 2016.

CORAM : R.M. SAVANT, J.

DATE : 28th APRIL 2016

PC.

1. The above Petitions take exception to the order dated 10.08.2014 passed by the Hon'ble Minister for Revenue, Maharashtra,

acting as a Revisionary Authority, by which order, the Revision Application filed by the Petitioner in Writ Petition No.4860 of 2016 and the Respondent No.4 in Writ Petition Stamp No.34536 of 2015 i.e. the Evangelical Alliances Ministries Trust came to be dismissed and the order dated 12.03.2012 passed by the Additional Collector, Pune came to be confirmed.

2. It is not necessary to burden this order with unnecessary details. Suffice it would be to state that the State Government had granted to the Evangelical Alliances Ministries Trust a lease of the property in question being CTS No.254 admeasuring 2 Hectors and 50 Ares with a residential bungalow thereon being “Bonne View” situated at Malkumpeth Mahabaleshwar, Taluka Mahabaleshwar, District Satara. The said lease was granted to the Respondent No.4 i.e. the Petitioner in Writ Petition No.4860 of 2016 initially for a period of 30 years. The said lease it seems was renewed for a further period of 30 years by the State Government and the said lease by efflux of time has expired in the year 1981. The Petitioner herein claims through the Respondent No.4, and claims that the said property was sold to him on 25.07.1990 for consideration of Rs.1,10,000/-. Since the said agreement dated 25.07.1990 was not being complied with by the Respondent No.4, the Petitioner herein had filed Special Civil Suit No.185 of 2000 against the Respondent No.4. The said

suit came to be settled and accordingly a compromise pursis came to be filed on 09.01.2004. The Petitioner thereafter filed Regular Civil Suit No.585 of 2002 in the Court of the Learned Civil Judge Senior Division, Satara, seeking permanent injunction. In the said suit, an order of status-quo came to be passed on 30.12.2002. It seems that the said suit came to be dismissed for default on 28.11.2011 and Restoration Application being No.1 of 2012 has been preferred by the Petitioner which it seems is pending. It seems that since the lease in question was not renewed after 02.03.1981, the Respondent No.3 herein vide his order dated 04.09.2003 directed the forfeiture of the suit property to the State Government. The Petitioner had filed application Exh.37 in the said suit under Order XXXIX Rule 2-A against the Respondent Nos.3 and 5 for breach of the order of status-quo on account of the order dated 04.09.2003 forfeiting the suit property being passed. It seems that the said application under Order XXXIX Rule 2-A of the CPC is also pending. The Petitioner contemporaneously challenged the said order dated 04.09.2003 by filing Writ Petition No.8425 of 2003 in this Court. A Division Bench of this Court disposed of the said Writ Petition vide its order dated 18.12.2003 by directing the parties to maintain status-quo until the final adjudication of the said application under Order XXXIX Rule 2-A of the CPC being Exh.37 filed by the Petitioner in Regular Civil Suit No.585 of 2002. It is required

to be noted that the Respondent Nos.3 and 5 herein were parties to the said Petition. The Petitioner however filed Appeal No.51 of 2004 under the Maharashtra Land Revenue Code against the said order dated 04.09.2003 passed by the Collector. The Respondent No.2 herein i.e. the Additional Commissioner vide his order dated 22.03.2012 dismissed the said Appeal being No.51 of 2004 as also connected Appeals preferred by the Respondent No.4 Trust and one Amar Jadhav.

3. Aggrieved by the said order dated 22.03.2012 passed by the Respondent No.2, the Petitioner had preferred a Second Appeal before the State Government on 18.05.2012. The Respondent No.4 had also filed Revision challenging the order dated 22.03.2012. Though the Revision filed by the Respondent No.4 was taken up for adjudication, the said Second Appeal filed by the Petitioner Gorakhnath challenging the impugned order dated 22.03.2012 was kept in abeyance. The impugned order dated 10.08.2014 has been passed in the Revision filed by the Respondent No.4. As indicated above, the Respondent No.4 has after filing of Writ Petition No.34536 of 2015 has filed its own Writ Petition being No.4860 of 2016 which is the companion matter. The challenge to the order dated 22.03.2012 is on the ground that the said order has been passed only on the basis that the lease has come to an end and that the State Government was not a party to the suit filed by the Petitioner

Gorakhnath. As indicated above, the Petitioner Gorakhnath claims through the Respondent No.4. It seems that the Petitioner Gorakhnath is in possession and he is therefore vitally affected by the impugned order dated 10.08.2014 passed by the Revisionary Authority. Since both Gorakhnath and the Respondent No.4 had filed proceedings challenging the order passed by the Additional Commissioner, it was required on the part of the Revisionary Authority that both the proceedings be heard together so as not to cause prejudice to either Gorakhnath or the Respondent No.4. However, that has not been done and as indicated above, only the Revision filed by the Respondent No.4 i.e. the Petitioner in the companion Writ Petition No.4860 of 2016 was taken up for hearing. It is required to be borne in mind that a Division Bench of this Court had ordered that the status-quo would be maintained pending consideration of the application Exh.37 filed under Order XXXIX Rule 2-A CPC in the suit being No.585 of 2002. However, the matter can be said to have been precipitated by the Petitioner Gorakhnath by filing the Appeal which therefore perforce was required to be dealt with by the Appellate Authority. In my view whilst dealing with the Revision filed by the Respondent No.4, the Evangelical Alliances Ministries Trust, the Petitioner Gorakhnath can be said to be concluded and since the the application under Order XXXIX Rule 2-A of the CPC is as yet pending, in my view, the

interest of justice would be served if the impugned order dated 10.08.2014 is quashed and set aside. Hence the following directions are issued :-

I) The order impugned in both the Petitions i.e. order dated 10.08.2014 passed by the Revisionary Authority/Appellate Authority i.e. the State Government is quashed and set aside. The Revision filed by the Petitioner the Evangelical Alliances Ministries Trust would stand restored to file.

II) Since the Learned AGP Mr. S. D. Rayrikar on the basis of the communication dated 26.04.2016 he has received from the Revenue Department, under the signature of the Under Secretary of the said Department informs the Court that the proceedings i.e. Second Appeal filed by the Petitioner Gorakhnath is not available as the papers were destroyed in the fire that took place in Mantralaya. The Petitioner Gorakhnath is permitted to reconstruct the Second Appeal which was filed before the State Government. Since the Revision filed by the Evangelical Alliances Ministries Trust is also restored by the instant order, the said Petitioner is also permitted to reconstruct

the papers of the Revision if the same are also not available.

III) The Appeal as well as the Revision after reconstruction, not to be dealt with by the State Government till the application Exh.37 filed under Order XXXIX Rule 2-A of the CPC is decided by the Court of the Learned Civil Judge Senior Division, Satara. This is in view of the fact that the decision rendered on Exh.37 would determine whether the Revision or Appeal is required to be heard by the State Government.

IV) In so far as the application Exh.37 filed under Order XXXIX Rule 2-A of the CPC is concerned, the Learned Civil Judge Senior Division, Satara is directed to hear and decide the same latest by 31.07.2016 and render his decision immediately thereon.

V) It is after the decision is rendered in the said application Exh.37 by the Learned Civil Judge Senior Division, Satara, that the Revisionary Authority /Appellate Authority would take up for consideration the Revision filed by the Evangelical Alliances Ministries Trust as well as

the Appeal filed by the Petitioner Gorakhnath.

VI) This direction is issued in view of the fact that the Division Bench has already directed that the status-quo be maintained till the application Exh.37 under Order XXXIX Rule 2-A of the CPC is decided. In view of the fact that status-quo is already operating, there is no warrant for this Court to further grant status-quo.

VII) On the application Exh.37 being decided and if the Revision Application filed by the Evangelical Alliances Ministries Trust and Appeal filed by Gorakhnath are required to be taken up for hearing, the status-quo would operate pending the Revision Application as well as the Appeal.

VIII) If the date for the proceeding Exh.37 is already given, the Learned Civil Judge Senior Division, Satara, is at liberty to prepone the date, but however dispose of the said application Exh.37 within the time frame as stipulated by the instant order. With the aforesaid directions the Writ Petitions are disposed of.

[R.M. SAVANT, J]