

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO.925 OF 2016

Mohammed Isaque Amir Ali. .. Petitioner

Vs

The Secretary,
The Slum Rehabilitation Authority and Others. .. Respondents

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Shri S.G.Kudle for the Petitioner.

Shri Rishikesh Soni along with Shri Tejas Gokhale i/b M/s. Ashok
Purohit & Co for the Respondent Nos.1 and 3.

Shri Amar Mishra, AGP for the Respondent No.2.

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CORAM : A.S. OKA &
SMT.ANUJA PRABHUDESSAI, JJ
DATED : 16TH DECEMBER 2016

PC.

1. Rule. The Advocate on record for the first and third Respondents waives service. The learned AGP waives service for the second Respondent.

2. On the last date, we have heard the submissions of the learned AGP who appears for the second Respondent.

3. Considering the order which we propose to pass, the notice to fourth and fifth Respondents is dispensed with.

4. The present Petitioner filed an Application being Application No.211 of 2013 before the High Power Committee. The claim of the Petitioner was that he is entitled to be declared as eligible for allotment of a permanent commercial structure in a Slum Rehabilitation Scheme.

5. By the judgment and order dated 16th April 2014, the Application/Appeal preferred by the Petitioner was allowed. Clause 4 of the said judgment and order dated 16th April 2014 reads thus:-

“4. The records of this HPC indicate that the Additional Tahasildar (NA), Andheri on 31.10.1997 had passed an order under Section 47(b) read with Section 114 of the Maharashtra Land Revenue Code, 1966, whereby the land admeasuring about 63 sq. mtrs. comprising of Survey No.111/b (Pt) village had been assessed as Non-agricultural land w.e.f. 01.08.1982. Therefore in view of the aforesaid facts of the case and primarily in view of the N.A order dated 31.10.1997 passed by the Additional Tahsildar (NA), Andheri this HPC sets aside the order passed by the Secretary SRA dated 5th April, 2013 and direct the Secretary/SRA to pass a fresh order considering all the documents, evidence produced by the Applicant and after obtaining report from the Additional Tahasildar (NA) Andheri. In view of the aforesaid facts of the case, nothing survives in the Application No.211 of 2013 and as such it stands disposed off by this HPC.”

6. Thereafter, the first Respondent passed an order dated 18th May 2015 which his impugned in this Petition. By the said order, the Secretary of the first Respondent-Slum Rehabilitation Authority held that the Petitioner was ineligible.

7. We have already quoted Clause 4 of the order of the High Power Committee. In terms of the said order, the Secretary of the Slum Rehabilitation Authority was under an obligation to take into consideration the order dated 31st October 1997 passed under Section 47(b) read with Section 114 of the Maharashtra Land Revenue Code, 1966. Moreover, a specific direction was issued to obtain a report from the Additional Tahasildar (NA), Andheri with a view to decide whether the order dated 31st October 1997 pertains to the structure claimed by the Petitioner.

8. Perusal of the impugned order dated 18th May 2015 shows that without calling for the report of the Additional Tahasildar (NA), Andheri, the issue of eligibility has been decided by the Secretary of the Slum Rehabilitation Authority. Only after considering the report of the Additional Tahasildar (NA), Andheri, a finding could have been recorded whether the order dated 31st October 1997 was in relation to the structure claimed by the Petitioner.

9. Hence, the Petition must succeed and we pass the following order:-

ORDER :

- (a) The order dated 18th May 2015 passed by the Secretary of the Slum Rehabilitation Authority is hereby set aside;
- (b) We direct the Secretary of the Slum Rehabilitation Authority to call for a report from the Additional Tahasildar (NA), Andheri. The Additional Tahasildar (NA), Andheri shall submit a report to the Secretary of the Slum Rehabilitation Authority on the question whether the order dated 31st October 1997 passed under Section 47(b) read with Section 114 of the Maharashtra Land Revenue Code, 1966 was in relation to the structure claimed by the Petitioner or the land on which the structure claimed by the Petitioner was situated;
- (c) We direct the Petitioner to appear before the Secretary of the Slum Rehabilitation Authority on 27th December 2016 at 11.00 a.m. The Petitioner shall produce an authenticated copy of this order before the said Authority. The said Authority shall pass a formal order calling for the report of the

Additional Tahsildar (NA), Andheri in terms of this order;

- (d) The Additional Tahasildar (NA), Andheri shall submit a report to the Secretary of the Slum Rehabilitation Authority within a period of three weeks from the date on which the requisition is received by him;
- (e) We direct the Secretary of the Slum Rehabilitation Authority to pass appropriate order in accordance with law. As per the direction issued by the High Power Committee on 16th April 2014 as expeditiously as possible and in any event within a period of two months from 27th December 2016;
- (f) Rule is made absolute on above terms;
- (g) All the contentions on merits are kept open;
- (h) All concerned to act upon an authenticated copy of this order;

(SMT.ANUJA PRABHUDESSAI, J)

(A.S. OKA, J)