

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

WRIT PETITION NO. 1059 OF 2013
WITH
NOTICE OF MOTION NO. 391 OF 2015

M/s. Mangla Hospitality Limited }
A company incorporated under }
the provisions of Companies Act, }
1956 and having its office at }
163-C, Mittal Tower, Nariman }
Point, Mumbai 400 021 } Petitioner

versus

1. The State of Maharashtra }
Through its Revenue Department }

2. The Superintendent, City }
Survey and Land Records, }
having office at 1s floor, Old }
Custom House, Fort, }
Mumbai 400 001. } Respondents

Mr. G. V. Murti with Mr. Mohan Rao i/b.
M/s. Murti and Associates for the
petitioner.

Mr. Mohit P. Jadhav – AGP for respondent
nos. 1 to 4.

CORAM :- S. C. DHARMADHIKARI &
P. D. NAIK, JJ.

DATED :- APRIL 16, 2016

ORAL JUDGMENT :-

With the consent of both sides, we take up the petition
for final hearing.

2) This petition under Article 226 of the Constitution of India discloses as to how a innocuous request and from parties like the petitioner is not granted by the authority under the Maharashtra Land Revenue Code, 1966.

3) The facts which are undisputed are that there is a plot of land together with building standing thereon, more particularly described in para 3 of the petition. The petitioner points out as to how that land was leased under an indenture of lease dated 29th June, 1940 and registered on 11th July, 1940 under serial number 3077 executed by the Governor of Bombay referred to as the lessor and one Mr. Jhaverchand Nemchand Mehta and his wife Smt. Bai Shantagauri as lessees. These were styled as joint tenants in the said document. By another indenture of lease dated 23rd November, 1943 and registered on 29th February, 1944, the then Governor of Bombay referred to as lessor and the lessees let out on lease another piece and parcel of land admeasuring 688 square yards in the name of the joint tenants. Both these properties, styled as, City Survey No. 1742 and City Survey No.1/1742 have been transferred, in the records of Superintendent, City Survey and Land Records, in the name of these joint tenants. It is stated that Jhaverchand Mehta died on 16th March, 1989 and after his death, the properties devolved

upon the widow by right of survivorship, they being joint tenants, as a result of which, the right, title and interest in the said properties got merged with her share already standing in her name and that is how she claims to be entitled to the leasehold rights. Even the widow Bai Shantagauri died on 24th July, 1997 leaving behind her last Will dated 13th December, 1995, which was later on probated. We are not concerned with how the property thereafter was claimed, simply because, what we find is that the petitioner entered the scene on the basis of a document stated to be executed in its favour. It claims that this property ought to have been mutated in its name. The petitioner has stated in the petition that the Deed of Assignment dated 15th December, 2006 registered on 13th March, 2007 transferred the property in the name of three persons. Thereafter they executed a deed of assignment. On the strength of this, the petitioner claims to be a lawful assignee. The petitioner claims that all these transactions were brought to the notice of the second respondent by letter dated 13th march, 2007 and on receipt of this letter on 19th June, 2007, the second respondent called upon the petitioner to furnish and submit certain documents. That letter was replied on 25th June, 2007. The petitioner only requested that its name be mutated in the Property Register Card (PR Card) pertaining to the above properties.

4) It is the case of the petitioner that from 2007 to 2012, no steps have been taken. The petitioner is only requesting for entering its name in the Property Register Card. It also relied upon another order passed in similar circumstances by the Divisional Commissioner, Konkan Division on 29th September, 2005 in the case of M/s. Sewri Land Company Private Limited. The petitioner submits that despite forwarding a copy of this order, the second respondent has not complied with its request and which is pending from 2007. It is in the above circumstances that we called upon the State to explain as to why this request of the petitioner has not been granted.

5) There is no affidavit in reply. From what one can gather and from the annexures to the writ petition is that there is some communication from the office of the Collector and District Magistrate, Mumbai City with the Principal Secretary (Revenue), Government of Maharashtra. In that, the case of the petitioner is referred and what one can find is that the Collector purports to inform the Principal Secretary that the plot of land/properties have been a subject matter of lease and obtained from the then Governor General in Council. The benefit of these leases is being claimed by several parties. The benefit of the lease is now being claimed by the petitioner and what possibly disturbs the Collector

is that the land and the properties would be used for commercial purpose. If that is the user or purpose intended, then, the Government would suffer a loss if the lease rentals remain frozen. The Government must also obtain some benefits and in the form of unearned income. If the benefit of the lease is being claimed by several parties, then, unless the Government's interest is protected, it would not be proper to take the steps as are requested. We find that the Collector intends to recover a sum of Rs.14,37,46,827/- as unearned income and only then the transfer in the name of the petitioner, on certain terms and conditions, will be recorded.

6) We have been noticing that such stand has been taken by the Collector and the State in several cases. We have never been shown any law, rule or regulation in nature thereof whereunder a request of the nature made and simply to mutate the name of somebody like the petitioner in the Property Register Card can be refused on the ground and particularly referred above. If the State desires to recover money because the property belongs to it and is valuable and scarce and people intent to exploit and use it for commercial purpose without passing on the benefits of such user to the State, then, the State must demonstrate that in law the request as above can be withheld or it

can be refused unless compliance is made with the State's directions. There must be a provision in law to withhold the request and on the ground mentioned above. One of us (S. C. Dharmadhikari, J.) in a Division Bench had an occasion to consider a somewhat identical controversy and after noting the rival contentions, the Bench held thus:-

“4. While we maintain our directions and ad-interim order to mutate the name of the petitioner No. 2 in the Property Register Card, we clarify that it would be open for the State and even after compliance with our directions, to initiate such proceedings as are permissible in law, including issuance of a notice to recover the sum styled as “unearned income”. We had granted that liberty on 1st April, 2016, itself but we clarify further that the ad-interim order and directions to mutate the name of petitioner No. 1 in the Property Register Card shall not preclude the State and the Collector concerned from initiating such measures as are permissible in law, including issuance of notices so as to calculate and determine the unearned income. Of course, on receipt of such notices, it would be open for the petitioners to resist them and by pointing out that the legal issue is completely settled in favour of the petitioners by two judgments of this Court delivered in the case of *Jaikumari Amarbahadur Singh & Ors. vs. State of Maharashtra through the Secretary, Revenue and Forests Department & Anr.*, reported in 2009 (2) BCR 407 and prior thereto on 20th July, 2006, in Writ Petition No. 2476 of 2003, *Vinod Harkishan Gupta vs. Minister for Revenue, State Government, Government of Maharashtra & Ors.*

5. We also clarify that that any steps taken by the respondent shall not prevent both sides from raising the primary legal contention as is raised in the writ petition. Equally, any adverse orders may be impugned by the petitioners and subject to this primary challenge. We clarify that our ad-interim order and direction must be complied first and thereafter whatever steps may be taken in terms of the above.”

7) We do not think that a different view can be taken in the present facts and circumstances. The State cannot refuse the request of the petitioner in writing simply because the State desires to recover some moneys. If the State has any law, rule or regulation permitting it to recover any sum as unearned income, then, reserving that right and the remedy in that behalf, it can always grant the request of the petitioner. We have noted that in the teeth of the Division Bench judgments of this court, the request of the petitioner cannot be withheld or kept in abeyance indefinitely. Hence, we pass the following order:-

- (i) Rule is made absolute in terms of prayer clause (a).
- (ii) The petitioner's request to enter its name in the Property Register Card shall be accepted and its name be mutated within a period of 4 weeks from today. We clarify that this would be without prejudice to the rights and contentions of the State to initiate any proceedings for recovery of unearned income. If that is permissible in law, then, the State can proceed to recover it.
- (iii) We also clarify that when we record that the facts in the petition are undisputed, we only refer to the documents executed in relation to the property and the land in question. How the contents thereof are to be interpreted and if that raises any issue of right, title and interest in the immovable property, then, that can be adjudicated irrespective of any entries in the Property Register Card and mutation of the petitioner's name therein.

(iv) The writ petition is allowed in the above terms.

(v) We impose costs quantified at Rs.50,000/- on the respondents for refusing the request of the petitioner, because there is absolutely no explanation why that has not been accepted and acted upon. The refusal is without any valid reason or explanation. We do not think that the State can get away by such conduct and in cases after cases. Therefore, we are constrained to impose costs. The costs are imposed also because precious judicial time of this court has been wasted.

8) The learned AGP requested us not to impose costs in this case. However, this is not the first time that this court is faced with such litigation. If from one order or one authoritative pronouncement by this court the State has not learnt any lesson and refuses to mutate the name of the applicant (petitioner) in the Property Register Card, but forces it to move this court, then, we cannot accede to the request of the learned AGP not to impose costs. The request is refused.

9) In the light of the disposal of the writ petition, the notice of motion does not survive and stands disposed of as such.

(P.D.NAIK, J.)

(S.C.DHARMADHIKARI, J.)