

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO.1565 OF 2012

Pramod Kumar Ralhan

.... Petitioner

Vs.

State of Maharashtra & Ors.

.... Respondents

Mr. Sanjay Jain with Mr. Nishant Sasidharan and
Mr. B.S. Nayak i/b M/s. A.V. Jain and Associates
for the Petitioner.

Mr. Mohit Jadhav, AGP, for the Respondent-State.

CORAM: S.C. DHARMADHIKARI &
G.S. KULKARNI, JJ.

DATE : APRIL 05, 2016

P.C:

1. By this petition under Article 226 of the Constitution of India several reliefs are claimed, essential amongst the same are as under:

“(a) that this Hon'ble Court be pleased to issue a writ of Mandamus or a writ in the nature of Mandamus or any other appropriate writ, order and/or direction commanding the Respondents, their servants, agents and any person claiming by, through and/or under them or any one or more of

them to forthwith refrain from taking any steps to enforce, execute and/or implement the conditions of order No.C/ULC/D-III/SEC-20/SR-XIII/1928, 1929/B-159 dated 19th September, 1989 passed by Respondent No.3 under section 20 of the Urban Land (Ceiling and Regulation) Act, 1976;

(b) that, without prejudice and in the alternative to prayer clause (a) above, this Hon'ble Court be pleased to declare clause (b) of sub-section (1) of section 3 of the Urban Land (Ceiling and Regulation) Repeal Act, 1999 as adopted in the State of Maharashtra as *ultra vires*;

(c) that this Hon'ble Court be pleased to issue a writ of Certiorari or a writ in the nature of Certiorari or any other appropriate writ, order and/or direction calling for the records pertaining to the Plot more particularly described in the Schedule being Exhibit 'A' to the Petition maintained by the Respondents or any one or more of them under the provisions of the Urban Land (Ceiling and Regulation) Act, 1976 and after considering the legality, validity and propriety of the notice dated 18th May, 2012 (being Exhibit 'EE' to the Petition) issued by Respondent No.5 be pleased to quash and/or set aside the same;”

2. After the petition was heard for some time, we have considered Mr. Jain's complaint that Exhibit “EE” is a notice dated 18-5-2012, which is at page 151 of the paper-book, that is a 48-hours prior notice and seeking to issue a warrant of restraint of moveable property, attachment of immoveable

property and for not paying a sum in terms of a notice of demand dated 17-4-2012. Mr. Jain's submission is that this notice pertains to which property and located in which part of the city has not been clarified at all. If there is an order of exemption issued under Section 20 of the Urban Land (Ceiling and Regulation) Act, 1976, now repealed, then whether that exemption under the terms and conditions thereof can be enforced is the fundamental question. That question arises after the repeal of the Urban Land (Ceiling and Regulation) Act. Secondly, and without admitting that the terms and conditions of the exemption order can be enforced in law, still in case of any breach or violation thereof a notice will have to be given and that notice should indicate the nature of the breach with reference to specific condition and the consequences thereof. Whether those consequences can be visited in law, meaning thereby if any term of handing over certain constructed flats for Government nominees is violated, then for such violation can any monetary liability be imposed and any sum in money recovered. All these has to be indicated with clarity in a show

cause notice and thereafter a reply has to be called for after which the Competent Authority must pass an order assigning reasons. Before such an order is passed, he should offer an opportunity of being heard to the petitioner.

3. Since all this was argued earlier and even now and the learned AGP invited our attention to page 167 of the paper-book, which is part of para 3 of the affidavit in reply of the Competent Authority filed in this petition, we called upon the learned AGP to take instructions and produce the original records.

4. The matter was kept back till the afternoon session. After it was heard in the afternoon session, the learned AGP stated that the notice at page 151 was served on the petitioner's last known office address. The petitioner was called upon to appear and take inspection of the record and give his explanation but he did not turn up. That is how the demand notice is issued.

5. We are not satisfied with the stand of the

respondents as the 48-hours urgent notice issued from the office of the Collector, Mumbai Suburban District (Recovery Branch), on page 151 of the paper-book is a recovery notice. We have no record of any service of notice of demand preceding the same or issued prior thereto. We do not have any record of explanation being called for and on consideration of which a reasoned order has been passed. In these circumstances and in the facts peculiar to this case, we have confined the scope of the petition to the prayer clause (c), reproduced above. We express no opinion on the legality and validity of the demand. We direct that a notice of demand shall be issued to the petitioner afresh by the Additional Collector and Competent Authority (ULC). A copy of this notice shall be served on the petitioner's address set out in the cause title of the petition. A copy of this notice shall also be served on the Advocates in the present petition M/s. A.V. Jain and Associates who shall duly accept and acknowledge the receipt of the same. After receipt of this notice, the petitioner shall be given an opportunity to inspect the record and furnish a written reply/explanation. The Competent Authority thereafter

shall hear the petitioner and on consideration of all the materials pass a speaking order. It is only on compliance of these steps that any recovery can be effected by the respondents, not otherwise. In such circumstances, the notice at Exhibit “EE”, on page 151 of the paper-book, dated 18-5-2012, is quashed and set aside. The writ petition is disposed of in these terms. We once again clarify that no opinion is expressed by us on the rival contentions.

6. The petitioner has confined and limited his request only to the demand notice at Exhibit “EE” on page 151 of the paper-book and our order shall stand restricted to the same only.

(G.S. KULKARNI, J.)

(S.C. DHARMADHIKARI, J.)