

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

WRIT PETITION NO.2617 OF 2012

Antop Hill Warehousing Co. Ltd.,
Wadala (E), Mumbai & Anr.
V/s.

.... Petitioners

Municipal Corporation of Greater Mumbai & Ors.

.... Respondents

Mr. Virag Tulzapurkar, Senior Counsel, a/w. Ms. Shoma Maitra, i/by M/s.
Wadia Ghandy & Co., for the Petitioners.

Mr. A.A. Kumbhakoni, Senior Counsel, a/w. Mr. H.C. Pimple, for
Respondent Nos.1 to 6 – BMC.

Mr. Bharat Mehta, A.G.P., for Respondent Nos.7 and 8 – State.

CORAM : S.C. DHARMADHIKARI &
DR. SHALINI PHANSALKAR-JOSHI, J.J.

DATE : 4TH AUGUST, 2016.

P.C. :

1. This Writ Petition, under Article 226 of the Constitution of India, challenges the order passed by the Government of Maharashtra and particularly of the Minister for Revenue dated 20th September 2012.

2. There are various reliefs claimed in the unamended and amended Petition, but as the Writ Petition is being disposed of on the short ground that the impugned order violates the principles of natural justice, fairness

and equity, required even in quasi-judicial matters, all the details, facts and submissions need not be recorded.

3. Suffice it to note that the first Petitioner is a Company incorporated under the provisions of the Indian Companies Act, 1956 and the second Petitioner is its Chairman and authorized signatory. The Respondents to the Writ Petition includes the State of Maharashtra, Department of Revenue & Forest and the Collector of Mumbai. It would be necessary only to make a reference to their role.

4. A plot of land admeasuring 17.26 acres was handed over to Petitioner No.1 in 1980 for construction of chemical godowns, so that all chemical godowns in the city of Mumbai could be shifted to the said place. The case of the petitioner is, on account of the Bhopal Gas tragedy, this plan never materialized and the plot was, therefore, not utilized for construction of chemical godowns. On the representations of the Petitioners, subsequently, the reservation of the plot in the Development Plan was changed by the State Government by sanctioning a modification on 5th August 2003. By this notification, the reservation of the plot has been changed from “chemical godowns” to “I 3 Zone”. The buildings constructed on the subject plot are claimed to have been utilized by the

Petitioners for the permissible user under this Zone. The Petitioners applied for regularization of such user, which was sanctioned by the Municipal Authorities on 16th May 2009, subject to imposition of various conditions. The claim of the Petitioners is that these conditions have been complied with. Yet, the Municipal Authorities are threatening that the permission for regularization would be revoked. The Municipal Authorities were proposing to take action on alleged change of user also. In the meanwhile, the State Government has initiated proceedings and these proceedings also threatened the Petitioners with a drastic action, namely, of resumption of the land.

5. The Petitioners have pointed out from paragraph Nos.2.1 to paragraph No.2.74 as to how the events leading to the impugned order unfolded. They point out as to how they have been in possession and lawfully. They also point out that despite the change in policies, the shifting stands and that of the Municipal Authorities and the State has not permitted or allowed the user in terms of the Development Plan Regulations. In para No.2.75, the Petitioners, in response to a notice, which was styled as "show cause notice" threatening to resume the lands, were informed that a hearing is scheduled on 7th January 2012. The notice was received about this hearing. The hearing was scheduled at Konkan

Bhavan, CBD Belapur. The date and time is 7th January 2012 at 1:45 pm. The Petitioners' representatives, whose names are set out in the communication of 7th January 2012, attended the place and on the given date and time (1:30 in the afternoon), but they were informed that the scheduled hearing was preponed and it has concluded in the morning session itself.

6. The Petitioners, by placing this event on record, have alleged that the communication from the State Government, i.e. the impugned order, omits to take into consideration this and another vital aspect.

7. Mr. Tulzapurkar, learned senior counsel for the Petitioners, by inviting our attention to the original record and files, which were summoned in order to satisfy ourselves about the correctness of the submissions of the Petitioners, has relied upon a Roznama or recording of hearing dated 7th June 2011. Mr. Tulzapurkar submits that the original noting is of 7th June 2011 shows that there was a hearing held before the then Minister of Revenue, Government of Maharashtra. On that occasion, the Brihanmumbai Mahanagar Palika sought a week's adjournment to place on record its version, that the time was granted and equally extended. Within this period also, no response or reply was filed by the

Municipal Corporation. The Minister of Revenue, therefore, directed the Officers concerned to seek clarification from the Municipal Corporation on the points noted in the file by him on 7th June 2011 itself. Thereafter, the next date of hearing is stated to be 7th January 2012 at 1:45 pm.

8. Mr. Tulzapurkar submits that it is, therefore, not a one sided version of the Petitioners. That version gets support and corroboration from this record in the file. The minutes of the hearing of 7th June 2011 reveal that what the Minister of Revenue has recorded in the same had indeed transpired on that date. The response of the Municipal Corporation was not forwarded for a long time, but, curiously, Mr. Tulzapurkar submits that the Petitioners find in the file a written version from the Municipal Corporation dated 6th January 2012. No copy of this was ever made available. This version of the Municipal Corporation may or may not support the stand of the Petitioners on merits, but the point is that, if any material was to be utilized and against the Petitioners, the minimal that is expected, even from the quasi-judicial authorities, is that a copy of this communication or version of the Municipal Corporation is made available to the Petitioners for their perusal and comment. Any order and adverse to the interest of the Petitioners, if passed, after a complete opportunity of this nature would only meet the principles of natural justice. Else there is a fragrant breach or violation thereof.

9. Lastly, Mr. Tulzapurkar submits that fairness and justice is also breached and violated, if the hearing is concluded on 7th January 2012, but the impugned order is passed on 20th September 2012. This delay of nearly ten (10) months vitiates the exercise, as, during this time, additional materials can be called for and which exercise necessarily would not be to the knowledge of the Petitioners. The adverse remarks or comments in the impugned order or observations can be recorded without the Petitioners having any opportunity to satisfy the concerned Minister, that such a view of the case or matter cannot be taken on merits. Mr. Tulzapurkar, therefore, relying on the original record, submits that on this short ground alone, the Writ Petition can succeed. The impugned order must be quashed and set aside and a fresh opportunity be given to the Petitioners to satisfy the authorities on merits of the case.

10. Mr. Mehta, learned A.G.P., appears on behalf of the Respondent-State and submits that this grievance is an after-thought. The Petitioners were aware that the impugned order has been passed on 20th September 2012. The Writ Petition was filed on 16th July 2012. Though all these grounds were available, they were never raised till the amendment. Even prior to the amendment, from the time the Petition was pending, no request was made to produce the original record or allow it to be perused

otherwise. Now that the original record and files are available, the Petitioners have discovered some documents therein and it is stated to be a version or report from the Municipal Corporation. If during the period of nearly 10 months, in which the matter was pending, had all these facts had been brought to the notice of the Department concerned or the authority, possibly, they could have considered it. Now the Respondents and particularly the State and the Revenue Department is taken by surprise and it is asserted that the impugned order is contrary to the principles of natural justice. In the absence of real and serious prejudice, this Court should not interfere in writ jurisdiction on such technical grounds.

11. We have heard both sides at some length. With their assistance, we have perused the Writ Petition and the relevant annexures thereto. We have also perused all the affidavits placed on record. To be fair to both sides, we have also perused, with their assistance, the documents in the original files and record.

12. The Petitioners, in paragraph No.2.75, have raised a specific contention with regard to the lack of hearing. Though they were summoned for an oral hearing on 7th January 2012 at 1:45 pm, on

reaching the site at 1:30 in the afternoon, they were informed that the hearing is already concluded in the morning session. Exhibit-"RRR", at page No.259 of the Writ Petition, is relied upon to buttress and support this statement and submission. That letter is addressed to the Hon'ble Revenue Minister, Maharashtra State. In that letter, the Petitioners, consistent with the pleading in para No.2.75, record that on attending the place of hearing on the given date and time, they were informed that the hearing was preponed in the morning session and already concluded. They have referred to the conversation with the Tahasildar Mr. Pawan Chandak. They have also referred in this letter to the presence of their representatives and one Advocate.

13. Upon such pleadings, what was expected from the State is a response on affidavit so as to meet these allegations. It is apparent from reading of the reply and stated to be additional affidavit-in-reply, at page No.364 of the paper-book, that from page No.365, para No.3, it purports to deal with the paragraph Nos.2.77 to 2.80 of the amended Writ Petition. Pertinently, there is no denial of the averments in paragraph No.2.75 of the Writ Petition. The version there appears and with regard to the merits. In the first affidavit, i.e. filed by the Superintendent of Mumbai City Survey and Land Records (City) in the office of the Collector, Mumbai City, we do

not find any statement and dealing with the averments referred above. Rather, in paragraph No.4, it is stated that the Petitioners have filed the present Petition suppressing the fact about hearing of the show cause notice, which was concluded long back in January 2012. This paragraph states that the Petitioners were aware that the matter was reserved for orders. However, they suppress the fact from this Court that the order, which was passed on 20th September 2012 was kept in abeyance, because the Petitioners approached this Court and obtained ad-interim orders. Pertinently, this paragraph and the further paragraph do not deal with the specific allegation about no opportunity of oral hearing and the preponement abruptly of the hearing scheduled on 7th January 2012 in the post-lunch session.

14. Further, what we find in the file is that there is a written response from the Municipal Corporation, which is dated 6th January 2012. If the hearing was scheduled on 7th January 2012, then, just a day prior to that, this response is placed on record. The Petitioners should have been furnished a copy of the same, since it concerns the issues raised by them and their land. The principles of fairness, equity and justice demanded that even this material was supplied to the Petitioners, as it was proposed by the Government to rely on it. Since the Petitioners were not heard on

7th January 2012 at all, they could not make any grievance, nor they had knowledge of any such reply of the Municipal Corporation.

15. We also find that there is no justification placed with regard to the delay in passing the impugned order. If the hearing, indeed, had concluded in January 2012, there is no reason why the impugned order is delayed upto 20th September 2012.

16. Even such delay would vitiate, in the given facts and circumstances, the exercise of the powers. The State cannot turn around and say that the Petitioners should have moved in these ten months period and, possibly, it would have acceded to the request of a re-hearing. The Petitioners had no knowledge that the matter would be kept pending for orders and for months together. Once they are denied a fair and reasonable opportunity of being heard, then, it is not open to the State Government to blame the Petitioners for having waited till the communication of the impugned order. We do not find any substance in this contention of Mr. Mehta.

17. After the hearing before us concluded, we enquired from Mr. Mehta as to whether the State is ready and willing to recall the order and impugned in the present Petition and grant fresh opportunity to the

Petitioners of being heard. Mr. Mehta stated that the Minister of Revenue and Forest is busy with the ongoing Assembly Session and the Secretary could not inform him as to what the State proposes to do.

18. We do not intend to wait for we think that, on the short ground that the Petitioners have raised, the Petition must succeed. Accordingly, we quash and set aside the impugned order. We allow the Petition to this extent. We restore the matter to the file of the Government and direct the Secretary in the Department of Revenue and Forest to hear the matter afresh and pass an order in accordance with law.

19. This order shall be passed after giving a fair opportunity to the Petitioners of being heard. They should be given an advance intimation of the date and time of hearing. They should be allowed to canvass oral submissions and also tender any documents, which they wish to rely upon in support of their stand and version.

20. Let all this material be considered again and a reasoned order be passed by the Secretary, uninfluenced by any observations, findings and conclusions in the impugned order.

21. We keep all the contentions of the Petitioners as far as merits of the case open and clarify that we expressed no opinion thereon.

22. Needless to clarify that, once the impugned order is quashed and set aside, there is no question of resumption of the Petitioners' land, nor their dispossession therefrom.

23. The original record and files be returned to Mr. Mehta on placement of certified true copies of the documents relied upon by Mr. Tulzapurkar and Mr. Mehta during the oral arguments.

24. The Writ Petition is allowed in the above terms. No costs.

[DR. SHALINI PHANSALKAR-JOSHI, J.] [S.C. DHARMADHIKARI, J.]