

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

WRIT PETITION NO. 351 OF 2015
WITH
CHAMBER SUMMONS NO. 293 OF 2015
IN
WRIT PETITION NO. 351 OF 2015

M/s. Kukreja Construction
Company & Ors. .. Petitioners
vs.
State of Maharashtra & Anr. .. Respondents

Mr. Prasad Dani - Senior Advocate with Mr. Shardul Singh with Mr. Samit Shukla and Mr. Joaquim Fernandes i/b. DSK Legal for Petitioners.

Mrs. Geeta Shastri - Additional Government Pleader for Respondent Nos. 1 and 2.

CORAM : M. S. SONAK, J.
DATE: 11 JANUARY 2016

P.C. :-

1] The challenge in this writ petition is to the order dated 24 December 2014 made by the Collector, Mumbai Suburban District under the provisions of the Maharashtra Land Revenue Code 1966 (Code).

2] During the pendency of this petition, upon noticing that applications dated 1 July 2012 and 30 September 2012 made by the petitioners had not been considered, this Court, by order dated 30 April 2015, directed the Collector to decide the said applications without being influenced by earlier orders. The Collector, by order

dated 9 July 2015 has decided the said applications but held against the petitioners.

3] The petitioners have taken out a chamber summons no. 293 of 2015 seeking leave to amend the petition and challenge the order dated 9 July 2015 made by the Collector.

4] When the petition and the chamber summons were taken up for consideration at the stage of admission, Mrs. Shastri, the learned Additional Government Pleader submitted that the petitioners have alternate and efficacious remedy by way of instituting appeal under Section 247 of the Code and therefore, the present petition should not be entertained.

5] The learned counsel for the petitioners submitted that in the past, petitions against the orders of the Collector have been entertained by this Court. For this purpose, he referred to the order dated 7 August 2014 in writ petition no. 873 of 2014. Further, he submitted that the Collector before making the order dated 9 July 2015 has not even referred to the decision of this Court in the case of *Vinod Harikrishan Gupta vs. Minister for Revenue, State Government & Ors.*¹, even though, this Court, by its order dated 30 April 2015 had required the Collector to decide the pending

1 2006 BCI -368

applications by reference to the said decision. He further submitted that this is an issue which relates to the jurisdiction of the Collector and if, the lands in question are not Class-2 lands, then the Collector would lack jurisdiction to make any demands towards unearned income. For all these reasons, he submitted that the petitioners ought not to be relegated to avail the alternate remedy.

6] As against the order dated 24 December 2014, which is already impugned in the petition, and as against the order dated 9 July 2015, which the petitioners seeks to impugn in this petition, there is statutory remedy of appeal under Article 247 of the Code available to the petitioners. According to Mrs. Shastri, appeal would lie to the Additional Commissioner, Konkan Division. The reasons put-forth by the petitioners, are not sufficient to persuade me to exercise the extra ordinary jurisdiction, rather than relegate the petitioners to avail the alternate remedy available under the statute. The issue of jurisdiction, in the present case, is the mixed question of fact and law. The Collector, has taken a view in the matter. As such, it is only appropriate that such view is tested in appeal which is statutorily provided under the Code. No extra ordinary circumstances have been demonstrated as to warrant the entertainment of the present petition directly. Accordingly, the objection raised by Mrs. Shastri is hereby upheld.

7] The learned counsel for the petitioners submits that the petitioners will institute appeals before the Appellate Authority within four weeks from today and that suitable applications will be made to restrain the respondents from taking out any coercive proceedings for enforcement of the impugned orders. He points out that the petitioners have already deposited an amount of Rs.15,94,304/- which was the demand in terms of order dated 24 December 2014. Mrs. Shastri however points out that under the order dated 9 July 2015, the petitioners are required to pay an amount of Rs.2,62,50,000/- and therefore, if any interim protection is to be granted to the petitioners, the said amount should be secured.

8] In case the petitioners institute appeals before the Appellate Authority against orders dated 24 December 2014 and 9 July 2015 within four weeks from today, the Appellate Authority is directed to entertain the said appeals on merits, without adverting to the issue of limitation. Further, during the period of four weeks from today, the respondents shall not take any coercive steps for enforcement of demands contained in the impugned orders. The Appellate Authority to consider in accordance with law and on its own merits any application for interim relief that may be made by the petitioners in the matter of enforcement of the demand contained in the impugned orders. The respondents shall be at liberty to withdraw the amount of Rs.15,94,304/- deposited by the petitioners before

this Court. However, such withdrawal shall be without prejudice to the rights and contentions of the petitioners and further, such withdrawal shall be subject to further orders that may be made by the Appellate Authority in the appeals to be instituted by the petitioners.

9] In case the petitioners appeals succeed and directions are issued for refund of the said amount, the respondents shall do so within the period prescribed by the Appellate Authority and subject to further orders with regard to payment of interest etc. thereon.

10] In view of the aforesaid, there is no necessity to either entertain this petition or to allow the chamber summons. The petition and the chamber summons are accordingly disposed of with liberty as aforesaid.

11] It is clarified that all contentions of all parties are left open. The Appellate Authority to consider the appeals, if and when instituted in accordance with law and on their own merits.

12] All concerned to act on basis of authenticated copy of this order.

(M. S. SONAK, J.)