

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Writ Petition NO. 2891 OF 2012

Shri. Babu Dewoo Farale
& Ors.

...Petitioners

Versus

Chief Executive Officer, Maharashtra Housing
And Area Development Board, & Ors.

...Respondents

WITH
Civil Application No.1775 OF 2012
In
Writ Petition NO. 2891 OF 2012

....

Mr.Surel S. Shah, Advocate for the Petitioners.

Mr.V.M. Parshurami, Advocate for Respondents No.1 & 2.

Mr.R.S. Apte, Senior Advocate i/b. R.M. Vasudeo, for Respondent
No.3.

Ms.Jyoti Jadhav, AGP for respondents No.4 to 6-State.

Mr. Ahmed Abdi a/w. Vishal Kasbekar i/b. P.M. Motwani,
Advocate for Applicants/Intervenors in CAW/1775/2012.

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CORAM : R. G. KETKAR, J.

DATE : 20th JULY, 2017

P.C.

1. Heard Mr.Surel S. Shah, learned Counsel for the
Petitioners, Mr.V.M. Parshurami, learned Counsel for
Respondents No.1 & 2, Mr.R.S. Apte, learned Senior Counsel for

Respondent No.3, Ms.Jyoti Jadhav, learned AGP for respondents No.4 to 6-State and Mr. Ahmed Abdi, learned Counsel for the applicants/intervenors in C.A. No.1775/2012, at length.

2. By this Petition under Article 226 of the Constitution of India, the petitioners have challenged the judgment and order dated 19.3.2012 passed by respondent No.4, Hon'ble Minister for Revenue, Maharashtra State in Review Application filed by respondent No.1 under Section 258 of the Maharashtra Land Revenue Code,1966 (for short, 'MLRC'). By that order, respondent No.4 allowed the Review filed by the first respondent and set aside the order dated 28.4.2010 passed by the Collector, Mumbai Sub-urban District, by which the permission for sell Survey No.56, hissa No.2 (City Survey No.273) admeasuring 2 Acres 31 Gunthas 12 Annas (for short 'suit property') was granted on 19.5.2010. The Hon'ble Minister also declared that decision dated 31.7.2010 is illegal and void and set aside the mutation entry No.717. Respondent No.4 also directed that 60% out of the suit property should be handed over to respondent No.1 and remaining 40% should be handed over to Babu Dewoo

Farle and others and necessary entries may be made in the record.

3. In support of this Petition, Mr. Shah has invited my attention to

- (i) the certificate issued under Section 32-M of the Bombay Tenancy and Agricultural Lands Act, 1948 (for short,'BTAL Act') in the name of Babu Dewoo Farale and 11 others in tenancy case No.TNC-32G/61/63 dated 10.9.1991 in respect of Survey No.56/2 (part) admeasuring 2 Acres 31 Gunthas 12 Annas. Said certificate was registered at Sr. No.P-6916 of 1991 on 13.9.1991. He submitted that the proceedings under Section 32-G of BTAL Act were conducted in respect of one acre out of 3 Acres 31 Gunthas 12 Annas of Survey No.56, Hissa No.2. 32-G proceedings were, however, not held in respect of the balance area admeasuring 2 Acres 31 Gunthas 12 Annas. By order dated 17.8.1991, the Tahsildar and A.L.T. Borivali fixed the purchase price.
- (ii) the certificate issued under Section 32-M of the BTAL Act in favour of Mukund Raghunath Farle and three others in

respect of Survey No.56/2 admeasuring 1 Acres and Survey No.55, Hissa No.1 admeasuring 1 Acre 32 Gunthas in Tenancy case No.60/61/63 dated 29.7.1988.

- (iii) the certificate issued under Section 32-M of the BTAL Act in favour of Somalibai Laxman Warli in respect of Survey No.55, Hissa No.1 admeasuring 1 Acre 32 Gunthas and Survey No.56/3 admeasuring 01 Acre 28 Gunthas and 4 Annas bearing No. TNC No.A-11/67.
- (iv) The consent terms dated 14.12.2004 in W.P. No.6376/1995 between respondent No.1 Maharashtra Housing and Area Development Authority (for short, 'MHADA') and Babu Dewoo Rana Farle. He submitted that the consent terms were only in respect of 1 Acre out of Survey No.56/2. The petitioners have purchased remaining 2 Acres 31 Gunthas and 12 Annas and the same is not subject matter of the consent terms. He submitted that the consent terms were only in respect of Survey No.53 corresponding to C.T.S. No.274 and Survey No.55, Hissa No.1 corresponding to C.T.S. No.183. The parties agreed for setting aside 32-M certificate bearing No.TNC-A/11-67-P/3963 dated

28.9.1995 issued by the Tahsildar, Borivali. As against this, the certificate under Section 32-M in respect of Survey No.56/2 admeasuring 2 Acres, 31 Gunthas and 12 Annas was issued on 10.9.1991 having number TNC-32G/61-63. In other words, this 32-M certificate was not the subject matter of the consent terms and the same was also not set aside. He further submitted that respondent No.1 Babu Dewoo Rama Farle was not the owner of Survey Nos.53 and 55 and, therefore, had no concern with these properties. He further submitted that even the consent terms filed in W.P. No.6450/1995 were not in respect of Survey No.56/2 admeasuring 2 Acres, 31 Gunthas and 12 Annas. In short he submitted that the suit property was not the subject matter of the consent terms filed in W.P. No.6376/1995 and W.P. No.6450/1995.

4. Mr. Shah further submitted that respondent No.5 had granted permission to petitioners No.1 to 8 to sell Survey No.56/2 admeasuring 2 Acres 31 Gunthas 12 Annas to petitioner No.9 on 28.4.2010. Consequential permission was granted by respondent No.6 to petitioner No.9 on 19.5.2010.

Petitioners No.1 to 8 executed the sale deed in favour of petitioner No.9 on 23.7.2010 and 31.7.2010, which was registered on 31.7.2010. On 16.11.2010, respondent No.6 issued show cause notice alleging breach of the conditions of permission dated 28.4.2010. On 26.11.2010, the petitioners No.1 to 8 filed reply to the show cause notice. Petitioner No.9 filed reply dated 14.1.2011. Respondent No.6 submitted report dated 17.3.2011 to respondent No.5 for reconsidering the permission granted on 28.4.2010. On 20.10.2011 notice was issued by respondent No.5 for hearing on 1.11.2011. On 1.11.2011, petitioners No.1 to 8 and petitioner No.9 filed separate replies. Except these replies, the petitioners have not filed any other reply. He submitted that application dated 25.4.2010 made by respondent No.1 was not served upon the petitioners. The petitioners were not called upon to file reply to that application. He submitted that respondent No.1 filed Review Petition on 6.1.2012. However, Review Petition was not served on the petitioners. They were also not given an opportunity to file reply to Review Petition. He submitted that the Hon'ble Minister while considering the issue of breach of permission dated 28.4.2010, decided Review Petition by the impugned order. He also invited my attention to the

Rozanama of the proceedings under Section 36 and 36A of the MLRC dated 1.11.2011 and 7.1.2012 before the Hon'ble Minister which was in respect of the report dated 17.3.2011 submitted by the Collector, Mumbai Suburban District. In other words, the proceedings were not for hearing of Review Petition filed by the first respondent. He submitted that in fact the learned Government Pleader had filed an application for clubbing the hearing on report dated 17.3.2011 together with Review Petition filed by respondent No.1 MHADA in respect of permission dated 28.4.2010. In short, Mr. Shah submitted that Review Petition was disposed of without giving an opportunity of filing reply as also without hearing the petitioners. He has invited my attention to the averments made in paragraphs-37 and 50 of the Petition. Mr. Shah also relied upon Section 258 of MLRC and in particular clause (1)(ii) and (iv) thereof. Section 258(1) provides that the State Government and every Revenue or Survey Officer may, either on its or his own motion or on the application of any party interested, review any order passed by itself or himself or any of its or his predecessors in office and pass such orders in reference thereto as it or he thinks fit. Sub-clause (ii) thereof lays down that no order shall be varied or reversed unless notice

has been given to the parties interested to appear and be heard in support of such order. Sub-clause (iv) thereof lays down that no order affecting any question of right between private persons shall be reviewed except on an application of a party to the proceedings, and no such application for review of such order shall be entertained unless it is made within ninety days from the passing of the order.

5. Mr. Shah submitted that in the present case, while passing the impugned order there is breach of clause (ii) of sub-section (1) of Section 258 of the MLRC. He further submitted that respondent No.1 MHADA was not party to the proceedings, in which the permission was granted on 28.4.2010. Respondent No.1, therefore, could not have filed review in terms of clause (iv) of sub-section (1) of Section 258 of MLRC. Apart from that, Review Petition was also clearly suffering from gross delay and laches as it was filed on 6.1.2012 seeking review of the permission dated 28.4.2010. Review Petition was not filed within 90 days from passing of the order dated 28.4.2010. He submitted that the Hon'ble Minister has not considered these aspects.

6. Mr. Shah submitted that the petitioners have purchased the property which is not the subject matter of the consent terms filed in W.P. No.6376/1995 and W.P. No.6450/1995. He relied upon the decision in **Syed Afzal Hussain Hussaini v. Hon'ble Minister, Revenue and Forest Department, Bombay and others, 2000(1) Mh.L.J. 685** and in particular paragraphs-7 and 8 thereof.

7. On the other hand, Mr.Parshurami supported the impugned order. He submitted that the possession was already taken on 20.12.2007 in pursuance of the consent terms dated 14.12.2004 filed in W.P. No.6376/1995 and W.P. No.6450/1995. He has taken me through the impugned order to contend that the Hon'ble Minister has considered various contentions advanced by the petitioners not only in the replies, but, also in the written arguments and, therefore, no case is made out for interfering with the impugned order. He has also tendered statement in tabular form showing allotment of 60% land to MHADA and remaining 40% to Shri Farle and others. The details whereof are as under :

ALLOTMENT OF 60% LAND TO MHADA

Survey No.	CTS No.	Area (Sq. Mtrs.)
562/2	273 -A (part)	5696.00
56/2 (part)	273- C (part) and 274-B/2 (part)	3513.00
56/2 (part)	273-A (part)	792.00
56/2 (part)	273-B (part)	922.00
55/1	274-A/2 (part) 183-A	6270.00
	Total	18372.00

ALLOTMENT OF 40% LAND TO SHRI FARLE AND OTHERS

Survey No.	CTS No.	Area (Sq. Mtrs.)
56/2 (part) 56/3 (part)	273-A (part) 274-B/1	4412.00
56/2 (part)	273-A (part)	528.00
56/3 (part)	273-A (part) and 274-B/2 (part) 273-A/3 (part)	2342.00
55/1 (part)	273-B, 274-B/4	786.00
55/1 (part)	274-A/2 (part) 274-B/3 (part)	4180.00
	Total	12248.00

8. Mr.Apte while supporting the impugned order submitted that the petitioners have not disclosed the proceedings of W.P. Nos.6376/1995 and 6450/1995, the

consent terms filed therein in this Court and the order passed by this Court. In other words, the petitioners have suppressed the material facts and has played fraud while obtaining permission dated 28.4.2010. He, therefore, submitted that the contention of the petitioners that as Review Petition was not filed within 90 days from passing of the order dated 28.4.2010 it suffers from gross delay and laches, cannot be accepted.

9. Mr. Apte relied upon Clauses-3, 9 and 12 of the consent terms filed in W.P. No.6376/1995 & 6450/1995. He submitted that the order dated 2.2.1987 in Tenancy Appeal No.12/1967 passed by the Sub-Divisional Officer, Mumbai Suburban District was set aside. Tenancy Appeal No.12/1967 covers all three properties, namely, Survey No. 56, Hissa Nos.2 and 3 corresponding to CTS No.273 and Survey No.53 corresponding to CTS No.273 and Survey No.55/1 corresponding to CTS No.183. He submitted that Clause-12 also recorded that respondent No.1 Babu Dewoo Farle in W.P. No.6376/1995 and respondents No.1A, 1B and 1C in W.P. No.6450/1995 agreed not to claim any right, title and interest of whatsoever nature in respect of remaining portion of the larger

property described in clause-3 of the consent terms. Clause-9 has provided that respondent No.1 in W.P. No.6376/1995 and respondents No.1A, 1B and 1C in W.P. No.6450/1995, by virtue of affidavits/declaration dated 2.11.2004 declared, confirmed and affirmed that neither they nor family members or any person claiming said property through them have ever had any share or right, title and interest in the property. In view thereof, petitioner No.9 who is claiming to have purchased the suit property from petitioners No.1 to 8 has no right, title and interest in the suit property, namely, Survey No.56/2 admeasuring 2 Acres 31 Gunthas and 12 Annas.

10. Mr. Apte submitted that the contention of the petitioners that Review Petition was filed on 6.1.2012 is factually incorrect and contrary to the record. He submitted that in the impugned order, the Hon'ble Minister has referred to the application dated 25.4.2011 made by the first respondent for review of the permission dated 28.4.2010. The Hon'ble Minister heard Review Petition dated 25.4.2011 along with report dated 17.3.2011 submitted by the Collector, Mumbai Suburban District. He submitted that on their own showings, the

petitioners have filed replies on 26.11.2010 and 14.1.2011 to the show cause notice dated 16.11.2010 and 1.11.2011 replies were filed by petitioners No.1 to 8 and petitioner No.9 to the report dated 17.3.2011 submitted by the Collector, Mumbai Suburban District. He, therefore, submitted that the petitioners now cannot make grievance that they were not heard while disposing of Review Petition.

11. I have considered the rival submissions advanced by the learned Counsel appearing for the parties. I have perused the material on record as also the original record. The main grievance of the petitioners is that while hearing was fixed for considering the report dated 17.3.2011 submitted by the Collector, Mumbai Suburban District as regards breach of conditions of permission dated 28.4.2010, the Hon'ble Minister decided the Review Petition without giving any opportunity to the petitioners. Though the impugned order refers to application of respondent No.1 dated 25.4.2011, a perusal of the original record shows that the application was made for stay of the permission dated 28.4.2010. In other words, it was not an application seeking review of the permission dated 28.4.2010 filed under

Section 258 of the MLRC. On the contrary from perusal of Review Petition, annexed at pages 236 to 369, shows that it was filed on 6.1.2012. A perusal of the impugned order shows that the Hon'ble Minister has referred to the hearing that took place on 1.11.2011 when Review Petition was not even filed. The matter was finally heard on 7.1.2012 when the Review Petition was filed on 6.1.2012. The petitioners were not given opportunity of filing reply to the review petition filed on 6.1.2012. A perusal of application dated 25.4.2011 made by respondent No.1 shows that prayer for stay was made. That apart even this application was not served on the petitioners. They were not called upon to file reply. The hearing that took place before the Hon'ble Minister was in respect of report dated 17.3.2011 submitted by the Collector, Mumbai Sub-urban District. In view thereof, the petitioners could not effectively participate before the Hon'ble Minister while hearing Review Petition and also could not agitate various contentions including maintainability of Review Petition under Section 258 of MLRC.

12. In view thereof, on this short count alone, the impugned order cannot be sustained and as such is liable to be

set aside. Impugned order is accordingly set aside and Review Petition dated 6.1.2012 is restored to the file of the Hon'ble Minister for deciding it afresh.

13. Mr. Shah states that the petitioners will file reply to the Review Petition dated 6.1.2012 within four weeks from today. Mr. Apte assures that respondent No.3 will file additional reply within four weeks from today. Civil Application No.1775/2012 is also disposed of reserving liberty to the applicants (1) Janu Raghunath Farle, (2) Smt. Kamla Janu Farle, (3) Shri Mukund Raghunath Farle, (4) Smt. Asha Mukund Farle and (5) Rajaram Raghunath Farle to file application for intervention in the Review Petition. The Hon'ble Minister will decide the intervention application on its own merits and in accordance with law. While deciding the Review Petition, the Hon'ble Minister is requested to deal with the contentions reproduced hereinabove and all other contentions that may be available to the parties. Rule is made absolute in aforesaid terms with no order as to costs.

(R. G. KETKAR, J.)