

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 2118 OF 2000

Hemantrao Dhulaji Sonsale & Ors.

... Petitioners

V/s.

The Cantonment Board and Ors.

... Respondents

Mr. Hemant Sethi for the Petitioner.

Mr. K. J. Presswala a/w Mr. Sandeep Goyal i/b M/s. Mulla & Mulla & C.B.C for the Respondent Nos. 1 and 2.

Mr. H.S.S. Murthy and Mr. Ajinkya Lokre for Respondent Nos. 8 to 12, 14, 16, 17, 18, 20, 21, 24 to 28, 30 to 34, 36, 41 to 49, 51 to 53, 55 to 59, 63, 64, 66 to 70, 72 to 81, 84, 87 to 102, 104, 106 to 110, 112 to 116, 119 to 123, 128 to 130, 132 and 133.

CORAM : A.S.OKA &

SMT. VIBHA KANKANWADI, JJ.

DATE : 28th JULY, 2017

:ORAL JUDGMENT:(PER A.S.OKA, J)

. Heard the learned Counsel appearing for the Petitioner, the learned Counsel appearing for the first and second Respondents and the learned Counsel appearing for the private Respondents.

2 This petition concerns a land vesting in first Respondent in Deolali Bazar area in Deolali Cantonment, District Nashik. In paragraph 3 of the petition, it is averred that the first Respondent has been allotting open spaces on 'C' class lands in Deolali Bazar area admeasuring 30 to 100 sq. ft. for a temporary period of one year by a public auction. It is alleged that in the said market, there is a provision of allotting about 150 open spaces. It is also alleged that the last allotment was

made with effect from 01st April, 1999, which is valid for a period of one year. The petition is based on apprehension that after the open spaces are vacated, the allotment of open spaces will be made by the first Respondent Cantonment Board without taking recourse to provision of Section 200 of the Cantonment Act, 1924. The Section 200 confers a power under the Cantonment Board to transfer by a public auction for any period not exceeding three years at a time, the right to occupy or use in stall, shop standing, shed or pen in a public market. By the judgment and order dated 04th October 2000, this Writ Petition was disposed of by relying upon the paragraph six of the affidavit-in-reply filed by the first Respondent Cantonment Board. Paragraph 6 of the Reply, reads thus:

“6. We say that since the licences for the period 1999-2000 were to expire on 31st March 2002, Respondents have issued notices in the month of March 2000 to the occupants of space in Public market for vacating their concerned stalls open spaces, sheds etc. We say that the Board is taking steps to get vacated the said open space stalls, sheds, etc. in Public Market, which is delayed because of the political reasons and agitations by the occupants. We say that as soon as the said open spaces, sheds, stalls etc. are vacated the steps will be taken to allot the said open spaces by Public Auction under Section 200 of the Cantonment Act, provided that the proposal for construction of new shopping centre being not materialised as being pending final approval of the Government.”

3 The said order was subjected to a challenge before the Apex Court. By the Judgment and Order dated 25th February 2003. The Apex Court remanded this Writ Petition to this Court. The order of the Apex Court reads thus:

“O R D E R

Leave granted.

The principal grievance of the appellants in this case is that they had not been made parties to the proceedings and adverse order had been passed by the High Court, which is under appeal in this matter.

There is hardly any answer to this contention advanced by the learned senior advocate appearing for the appellants. In the circumstances, we set aside the order made by the High Court and remit

the matter to the High Court for fresh consideration in accordance with law subject to the condition that the appellants and other intervenors are at liberty to implead themselves as party within two weeks from today and they shall also deposit in the Court or pay the licence fee, if any, to the Cantonment Board as may have become due till 31.12.2001 and continue to pay the same until disposal of the matter as and when it becomes due. The High Court shall dispose of the matter as expeditiously as possible. If the High Court thinks fit, it may withdraw the appeals filed against order dated 21.11.2000 in Regular Civil Suit No. No. 955/2000 and 974/2000 i.e. Civil Misc Appeal No. 264/2000, 265/2000 filed by the Petitioners before the District Judge, Nasik and Civil Misc. Appeal No. 266/2000 and 267/2000 filed by Cantonment Board, pending before the District Court and dispose them of alongwith the Writ Petition.

The appeal is disposed of accordingly.”

4 The learned Counsel appearing for the first Respondent submitted that due process of law was initiated against the allottees for evicting them. His submission is that further steps could not be taken by the first Respondent in view of injunction granted by a Civil Court at Nashik. He pointed out that against the interim order passed in the suits, there are appeals preferred which are pending before the District Court at Nashik, which are referred in the order of the Apex Court dated 25th January 2002. The learned Counsel appearing for the first and the second Respondents submitted that the Appeals are not being heard as the Plaintiffs in the suits are contending before the District Court that there is a stay granted by the Apex Court. He submits that even suits are not been heard on the basis of the contention raised by the plaintiffs that there is a stay by the Apex Court. The learned Counsel appearing for the private Respondents states that the aforesaid contention raised by the first and second Respondents is not correct.

5 The only substantive prayer made in this petition is in terms of prayer clause (b) which reads thus:

“b) that this Honourable Court be pleased to issue a writ of Mandamus, or any other appropriate writ, order or direction in the nature of Mandamus directing the Respondent Nos. 1 and 2 to strictly follow the provisions of Section 200 of the Cantonment Act, 1924 with regards to allotment of open spaces at Deolai bazaar area for the year 2000-2001 and for subsequent years;”

6 By the Cantonment Act, 2006 (new Act), the said Act of 1924 has been repealed. Section 267 in the New Act is a provision which is *pari materia* with Section 200 in the Act of 1924. Section 267 of the new Acts reads thus:

“267. Power to transfer by public auction, etc.—(1) The Board may transfer by public auction, for any period not exceeding five years at a time, the right to occupy or use any stall, shop, standing, shed or pen in a public market, or public slaughter-house or the right to expose goods for sale in a public market or the right to weigh or measure goods sold therein, or the right to slaughter animals in any public slaughter-house:

Provided that where the Board is of opinion that such transfer of the aforesaid rights by public auction is not considered desirable or expedient, it may, with the previous sanction of the General Officer Commanding-in-Chief, the Command or in his absence, the Principal Director,—

(a) either levy such stallages, rents or fees as it thinks fit; or

(b) farm the stallages, rents and fees leviable under clause (a) for any period not exceeding one year at a time:

Provided further that the enjoyment of any such aforesaid right by any person for any length of time shall never be deemed to create or confer any tenancy right in such stall, shop, standing, shed, pen, public market or public slaughter-house.

(2) The Board may transfer by public auction or otherwise any immovable property other than in a public market or a public slaughter house if such property is capable of being put to remunerative use for such period and on such terms and conditions as may be approved by the General Officer Commanding-in-Chief, the Command or in his absence, the Principal Director.”

7 As far as law on disposal of the public property is concerned, the same is now well settled in the case of **Akhil Bhartiya Upbhokta Congress V/s. State of Madhya Pradesh & Ors.**¹. The Apex Court held that a public Authority can transfer a public property, only by adopting a fair and transparent process after giving an opportunity to all eligible persons to make an application for allotment. Public auction is one of the ideal methods which is very fair and transparent and therefore, as and when the plots subject matter of the present petition are vacated, there is no option for the first Respondent but to follow the provision of Section 267 of the new Act while allotting the plots forming part of the land subject matter of this petition.

8 It is pointed out that Miscellaneous Appeals of the year 2000 and the suits of the year 2000 are still pending. As far as order of the Apex Court dated 25th January 2002 is concerned, we find that there is no direction issued by the Apex Court staying the proceedings of the suits and Appeals mentioned therein.

9 If suits and appeals preferred by the private Respondents namely Respondent nos. 5 to 134 or appeals arising from the suits are still pending in the Civil Court at Nasik and the District Court at Nasik, the necessary priority will

¹ (2011) 5 SCC 29

have to be given to the disposal of the appeals and suits.

10 This Court has already issued a direction on Administrative Side to all Courts in the State to give utmost priority to the disposal of 10 years old cases. In fact, a time bound schedule has been fixed by this Court in the directions issued on the Administrative Sides.

11 Hence, we dispose of the petition by passing following order:-

ORDER

a) We direct the first and second Respondents that in the event the said Respondents intend to transfer in any manner the plots on the land subject matter of this petition to the private parties, they shall do so only in accordance with the Section 267 of the Cantonment Act, 2006;

b) We direct the District Court and Civil Court at Nashik to dispose of the suits filed by the private Respondent Nos. 5 to 134 as expeditiously as possible and in any event within the outer limits fixed by this Court on the Administrative Side for disposing of 10 years old civil cases;

c) Rule is made absolute in the above terms. No order as to costs.

(SMT. VIBHA KANKANWADI, J.)

(A.S.OKA, J.)