

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
LETTERS PATENT APPEAL NO. 348 OF 2007
IN
WRIT PETITION NO. 2931 OF 2005

Safzal Khan Amir Khan and another

.....Appellants

V/s.

The President-Maharashtra Slum Areas
(Ic and R) Tribunal and others

....Respondents

Mr. S. G. Deshmukh for the appellants

Mr. A. P. Kulkarni for the respondent nos. 113, 209

**CORAM : SMT. VASANTI. A. NAIK,
SARANG V. KOTWAL, JJ.**

DATE : DECEMBER 15, 2017.

P.C.

By this Letters patent appeal, the order of the learned Single Judge, dated 05/10/2007 is appealed against.

The appellants are the original petitioners. They had filed writ petition no. 2931 of 2005 challenging the declaration under the Maharashtra Slum Areas (Improvement, Clearance And Redevelopment) Act, 1971 as being bad in law. The only ground raised by the appellants before the learned Single Judge for challenging the notification was that the notice was not served on the petitioners and that they did not have the knowledge of the proceedings. The learned Single Judge however rejected the submission made on behalf of

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the appellants and dismissed the writ petition by upholding the order of the Tribunal under the Maharashtra Slum Areas (Improvement, Clearance And Redevelopment) Act, 1971.

The order of the learned Single Judge is sought to be faulted with at the behest of the appellants only on one ground. It is stated that it is wrongly observed by the learned Single Judge in the order dated 05/10/2007 that petitioner-Safzal Khan Amir Khan had accepted the notice on behalf of Alhaj Ibrahim Khan and therefore, he had knowledge of the proceedings in the matter of issuance of notification. It is submitted that the notice was not served on Safzal Khan and he is not the son of Alhaj Ibrahim Khan as observed by the learned Single Judge.

We do not find any force in the submission made on behalf of the appellants. We find that even as per the submissions in the writ petition Alhaj Ibrahim Khan was a predecessor in title of the appellants. It is observed in the order of the Tribunal that earlier an appeal was filed by Alhaj Ibrahim Khan against a similar declaration on the ground that he was not served with a notice. The Tribunal had found that the property involved in the earlier appeal filed by Alhaj Ibrahim Khan and the appeal filed by the appellants herein was the same. The Tribunal considered the fact that the subject matter of the appeals was the same and the earlier declaration was set aside mainly on the ground that Alhaj Ibrahim Khan and the other parties that had filed the appeal were not served with a show cause notice and an opportunity was not granted

to them. The Tribunal had found from the record that appellant Safzal Khan Amir Khan was holding the deed of power of attorney of Alhaj Ibrahim Khan, who had empowered him to file the appeal in respect of the properties. In the aforesaid set of facts, it cannot be said that the petitioner did not have the notice of the proceedings pertaining to the issuance of the declaration and therefore the second notification issued under the said Act, after the appeal filed by Alhaj Ibrahim Khan were allowed was liable to be set aside. Merely because the learned Single Judge has observed that Alhaj Ibrahim Khan was the father of Safzal Khan, it cannot be said that the appellants did not have notice, specially when the appellants claim the title to the property only through Alhaj Ibrahim Khan. The order of the learned Single Judge appears to be just and proper and as same is based on the findings of facts recorded by the Tribunal on the issue of service of notice.

In the result, we dismiss the letters patent appeal with no order as to costs.

[SARANG V. KOTWAL, J.]

[SMT. VASANTI A. NAIK, J.]