

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.10622 OF 2016

Mr.Vishnu Jyotiprasad Agarwal and Others. .. Petitioners
Vs
State of Maharashtra and Others. .. Respondents
—
Shri G.S. Godbole i/b Shri Drupad S. Patil for the Petitioners.
Shri Manish Pabale, AGP for the Respondent Nos.1 to 4.
—

CORAM : A.S. OKA & A.K. MENON, JJ

DATED : 4TH APRIL 2017

P.C.

1. On the earlier date, the parties were put to notice that this Petition will be heard finally at the stage of admission. Accordingly, we issue Rule. The learned AGP waives service for the Respondents.

2. The issue in this Petition under Article 226 of the Constitution of India concerns the land which is more particularly described in Paragraph 2A of the Writ Petition.

3. The first prayer in this Petition is for challenging the order dated 17th December 2013 passed by the Divisional Commissioner, Pune. The learned counsel appearing for the Petitioners clarifies that the challenge in the prayer clause (a) is to the Condition No.1 of

directing the deposit of the sum of Rs.1,77,44,000/- being 75% of the unearned income.

4. An Application was made by the Petitioners who were holding the said land as Occupants Class-II seeking permission for sale of the said land for non-agricultural purposes to Koregaon Bhima Sahakari Sanstha Maryadit. By the said order dated 17th December 2013, the Divisional Commissioner, Pune had permitted the Petitioners to sell the said land of the first and the second Petitioners to the third Petitioner subject to various terms and conditions including the condition of depositing the amount of Rs.1,77,44,000/-. Acting upon the said permission, the said amount was deposited and a Sale Deed has been executed by the first and the second Petitioners in favour of the third Petitioner which is duly registered in the office of the Registrar of Assurances of Talegaon, a copy of which is annexed at Exhibit-K to the Petition. The second prayer in this Petition under Article 226 of the Constitution of India is for challenging the impugned demand notices dated 12th August 2016 and 16th August 2016 demanding additional amount of Rs.2,05,90,375/-. The said notices of demand were issued on the basis of the order dated 23rd November 2016 passed by the District Collector, Pune, holding that in fact, a sum of Rs.3,83,34,375/- was payable as the amount representing 75% of the unearned income. Therefore, after adjusting the amount of Rs.1,77,44,000/- deposited by

the Petitioners, a demand was made of the balance amount of Rs.2,05,90,375/-. The ground of challenge by the Petitioners is that in fact, the demand for the sum of Rs.1,77,44,000/- was illegal. The second ground of challenge is that the additional demand was raised without giving an opportunity of being heard to the Petitioners.

5. The third prayer is for issuing a writ of mandamus for converting the tenure of the said land from Occupancy Class-II to Occupancy Class-I. The last substantive prayer is of refund of the said amount of Rs.1,77,44,000/-.

6. The learned counsel appearing for the Petitioners submitted that even the prayers containing a challenge to the demand of the sum of Rs.1,77,44,000/- will have to be gone into as the said amount was deposited by the Petitioners without prejudice to their rights and contentions. Therefore, he is pressing the prayer for refund. As far as the prayer clause (c) is concerned, the learned counsel appearing for the Petitioners has placed reliance on Sections 29(a) and Section 37 of the Maharashtra Land Revenue Code, 1966 (for short “the said Code”). He stated that after the Rules are framed, the Petitioners will invoke Section 29(a) of the said Code.

7. It is an admitted position that the Petitioners have acted upon the order dated 17th December 2013 by executing a registered Sale Deed. As stated earlier, the first two Petitioners have executed the registered Sale Deed in favour of the third Petitioner. They have acted upon the said order dated 17th December 2013 and have taken full advantage of the said order. But for the said order and the deposit of the amount of Rs.1,77,44,000/-, the sale could not have been effected. After having acted upon the said order by execution of the registered Sale Deed, even assuming that the amount of Rs.1,77,44,000/- was deposited by the Petitioners without prejudice to their rights and contentions, the Petitioners cannot be allowed to invoke the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India for challenging one of the conditions in the order dated 17th December 2013 regarding the deposit of the said amount. After having acted upon the said order dated 17th December 2013 and after having taken the benefit of the said order, now it is not open for the Petitioners to dispute the correctness of the demand made thereunder towards unearned income.

8. The learned counsel appearing for the Petitioners submitted that the demand contained in the said order will come in the way in the when the third Petitioner wants to make a further transfer of the property. We are not concerned with this contingency at all. Suffice it to say that the prayer for setting aside the condition imposed for the

payment of a sum of Rs.1,77,44,000/- cannot be entertained for the reasons recorded above. Consequently, the prayer for the refund of the amount cannot be granted.

9. As far as the prayer clause (b) is concerned, the demand is based on the order dated 23rd November 2016 passed by the District Collector, Pune. On the last date, we had called upon the learned AGP to take instructions on the question whether the said order was passed after giving an opportunity of being heard to the Petitioners. Today, on instructions, he states that an opportunity of being heard was not granted to the Petitioners. He states that a fresh order can be passed after giving an opportunity of being heard to the Petitioners. In view of this statement, the order dated 23rd November 2016 and consequential demands made on the basis of the said order at Exhibit-L and Exhibit-M will have to be set aside by granting liberty to the Respondents to pass an appropriate order after giving an opportunity of being heard to the Petitioners.

10. Hence, we dispose of the Petition by passing the following order:-

ORDER :

- (a) For the reasons recorded above, the prayer clauses
(a) and (b) are rejected;

- (b) The order dated 23rd November 2016 passed by the District Collector, Pune, is hereby quashed and set aside only on the ground of breach of the principles of natural justice. Consequently, the demands made at Exhibits- L and M are also set aside;
- (c) If the State Government is of the view that the additional amount will have to be paid towards the unearned income, it will be open for the appropriate Authority of the State Government to issue a show cause notice to the Petitioners setting out the basis for the additional demand. After giving an opportunity of being heard to the Petitioners on the show cause notice, it will be open for the concerned Authorities to pass appropriate orders in accordance with law. All questions in that behalf and all contentions in that behalf of the parties are kept open;
- (d) As regards the prayer clause (c), it will be open for the Petitioners to invoke Section 29(a) of the

Maharashtra Land Revenue Code, 1966 after the Rules are framed in terms of the said Sections;

- (e) The issue whether the Petitioners are entitled to seek conversion of the tenure of the subject land from Occupancy Class-II to Occupancy Class-I is kept open to be decided by the appropriate Authority in accordance with law;
- (f) The Rule is partly made absolute on above terms;
- (g) All concerned to act upon an authenticated copy of this order.

(A.K. MENON, J)

(A.S. OKA, J)