

Shailaja

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 266 OF 2017

Dayanand L. Bane] Petitioner
Vs.
The State of Maharashtra & Anr.] Respondents

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Mr. Sanjay Jain a/w Mr. Vasim Shaikh i/b M/s. Pravin Mehta and Mithi and Co., for petitioner.

Ms. Geeta Shastri, A.G.P for respondent-State.

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CORAM : R.G. KETKAR, J.

DATE : 19th JULY, 2017.

P.C.

Heard Mr. Jain, learned Counsel for the petitioner and Ms. Shastri, learned A.G.P for respondents at length.

2. By this Petition under Article 226 of the Constitution of India, the petitioner has challenged the judgment and order dated 21st October, 2016 passed by the Hon'ble Minister for Revenue rejecting the Review Petition u/s 258 of Maharashtra Land Revenue Code, 1966 [for short 'Code'].

3. In support of this Petition, Mr. Jain submitted that Letter of Intent was issued by the respondents on 20th July, 2004 to the petitioner/Society proposing to allot Plot No.2 in Survey No. 4 Mauje Charkop, Tal. Borivali admeasuring 1673.02 square meters.

By that Letter of Intent, the petitioner was called upon to submit the documents. In pursuance thereof, petitioner/Society submitted the documents viz: affidavits of the members duly signed and notarized as per annexure attached thereto. He submitted that Shri Devdatta Ganganwate was the Chief Promoter of the Society at the relevant time. Members of the Society were completely dependent on the efforts of Mr. Ganganwate. Mr. Ganganwate informed the members that within a period of two years all the procedural formalities will be completed and possession will be obtained of the said Society. Between 2004 and 2006, petitioner never received any communication from the State Government. By order dated 8th June, 2012, the then Hon'ble Minister for Revenue revoked Letter of Intent on the ground that petitioner did not comply the requisitions made in the Letter of Intent dated 20th July, 2004 within two months and, therefore, it stood automatically revoked. He invited my attention to paragraph 2 of the reasoning of that order. In paragraph 2, it was noted that though the petitioner/Society claimed that documents such as affidavits and information in the prescribed form were submitted to Collector, Mumbai Suburban District on 29th July, 2004, petitioner did not produce any acknowledgment of the Government or office copy of the petitioner/society. Hon'ble Minister, therefore, held that petitioner did not establish compliance of the requisitions of Letter of Intent.

4. Mr. Jain submitted that aggrieved by this order, petitioner instituted Writ Petition No. 2851 of 2012 in this Court. Matter was heard before Division Bench of this Court [Coram: B.R.

Gavai & A.S. Gadkari, JJ.]. On 6th May, 2015, the Court noted that on the last date i.e on 17th March, 2015, it had requested the learned Government Pleader to take instructions as to whether the State is willing to reconsider the matter. Learned Government Pleader placed copy of letter dated 31st March, 2015 addressed by the Under Secretary, Revenue and Forest Department stating therein that Hon'ble Minister of Revenue has decided to review the order dated 8th June, 2012. Accordingly, Division Bench disposed of Writ Petition as infructuous.

5. Mr. Jain submitted that by the impugned order, Hon'ble Minister has rejected Review Petition on the ground that no new points are raised/no new material is produced by the petitioner. He submitted that the Hon'ble Minister also held that review is not maintainable. He submitted that Hon'ble Minister failed to appreciate that power of review is exercised suo moto. Petitioner had not made application seeking review of order dated 8th June, 2012. He submitted that members of the petitioner/Society are underprivileged and after great efforts, they were in a position to obtain plot admeasuring 300 square meters. Even lay out is approved.

6. Mr. Jain submitted that no affidavit is filed in the present Petition though it is sought to be contended that several reminders were issued to the petitioner calling upon it to comply requisitions contained in the Letter of Intent dated 20th July, 2004. He submitted that though reliance is placed on correspondence from 2004 to 2006, no acknowledgment of the Society is produced.

In other words, he submitted that between 2004 and 2006, defendant did not receive any communication from the State Government.

7. On the other hand, Ms. Shastri supported the impugned order. She submitted that Letter of Intent was issued on 20th July, 2004. Para 1 of Letter of Intent requires petitioner to submit the documents enlisted in clause 1, 3, 4, 5 and 6. Paragraph 2 stipulated that petitioner/Society will have to comply these requisitions within two months from receipt of Letter of Intent, failing which it will stand automatically revoked. She submitted that petitioners contend that by letter dated 26th July, 2004, it had submitted all the documents and thus complied requisitions of Letter of Intent. However, along with that Letter of Intent, petitioner enclosed Affidavits of members duly signed and notarized and not other information. On 6th August, 2014, Collector, Mumbai Suburban District returned the documents submitted by the petitioner on 27th July, 2004 and called upon it to produce all the documents. Subsequently, on 20th December, 2004, reminder was issued calling upon the petitioner to submit proposal as per letter dated 6th August, 2004. Again on 13th November, 2006, Collector, Mumbai Suburban District called upon the petitioner to submit complete proposal as per the conditions laid down in the Letter of Intent dated 20th July, 2004. On 20th September, 2008, the petitioner was once again called upon to submit proposal as per Letter of Intent dated 20th July, 2004. She submitted that till date, petitioner did not comply with requisitions contained in Letter of Intent dated 20th July, 2004.

8. I have considered the rival submissions advanced by learned Counsel appearing for the parties. I have also perused the material on record as also original record produced by the learned AGP. As noted earlier, by order dated 8th June, 2012, then Hon'ble Minister for Revenue had cancelled Letter of Intent on the ground that petitioner did not comply with the requisitions made in Letter of Intent dated 20th July, 2004. Petitioner instituted Writ Petition No. 2851 of 2012 challenging that order. In that Petition, Dattatraya Bane filed Affidavit dated 10th September, 2014, inter alia, contending that petitioner had submitted letter dated 26th July, 2004 along with declaration of its members. The petitioner had only submitted letter dated 26th July, 2004 without any papers and documents and, therefore, it was returned by the 2nd respondent to the petitioner vide letter dated 6th August, 2004.

9. Petition was disposed of on the basis of statement made by learned A.G.P that Hon'ble Minister has decided to review order dated 8th June, 2012. In pursuance thereof, Hon'ble Minister has passed the impugned order on 21st October, 2016. A perusal of the impugned order shows that the order is passed u/s 258 of the Code. Section 258 (1) (2) reads thus:

258. Review of orders.- (1) The State Government and every revenue or survey officer may, either in its 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:

(2) No order shall be reviewed except on the following grounds, namely:-

(i) discovery of new and important matter or

- evidence;
- (ii) Some mistake or error apparent on the face of the record.
- (iii) any other sufficient reason.

10. A perusal of Section 258 extracted hereinabove shows that power of review is conferred on the State Government either on its own motion or on the application of any interested party to review the order passed by itself or himself or any of its or his predecessors in office. Sub Section (2) thereof lays down that no order shall be reviewed except on the ground of discovery of new and important matter or evidence. It is material to note that petitioner has come with a case that between 2004 and 2006, it did not receive any communication from the Government. From perusal of original record produced by A.G.P, it is evident that State Government has issued several reminders including 20th September, 2008. Not only that, in the Affidavit filed in Writ Petition No. 2851 of 2012 reference was specifically made to the communication dated 6th August, 2004 returning all documents submitted by the petitioner along with letter dated 26th July, 2004.

11. As noted earlier, after submitting letter dated 26th July, 2004, respondents have returned the documents by letter dated 6th August, 2004. Thereafter, this was followed by reminders dated 20th December, 2004, 13th November, 2006 and 20th September, 2008. Apart from that, perusal of the impugned order shows that Hon'ble Minister had also held that no material is produced by the petitioner as also no new point is raised for exercising powers under Section 258 of the Code. A perusal of paragraph 2 of Letter

of Intent dated 20th July, 2004 shows that it specifically required petitioner society to submit documents within 2 months failing which Letter of Intent was to stand cancelled automatically. Despite this position, respondents issued several reminders from time to time in the year 2004, 2006 and 2008. The petitioner did not comply the requisitions. Even today, petitioner is not in a position to show compliance of all the requisitions made in the Letter of Intent dated 20th July, 2004.

12. In view thereof, no case is made out for invocation of powers under Article 226 of the Constitution of India. Hence, Petition fails and the same is dismissed reserving liberty to the petitioner to approach State Government for allotment of plot. If such request is made, Government shall consider it on its own merits and in accordance with law. Order accordingly.

[R.G. KETKAR, J.]