

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 2044 OF 2018

M/s.Mantri Dwelling Pvt.Ltd. ... Petitioner.
V/s.
The State of Maharashtra and others. ... Respondents.

WITH
WRIT PETITION NO. 2012 OF 2018

M/s.Mantri Developers Pvt.Ltd. ... Petitioner.
V/s.
The State of Maharashtra and others. ... Respondents.

Mr.G.S.Godbole i/b. Mr.Drupad S. Patil for the petitioners.

Mr.Prashant P. More, AGP for respondent Nos.1 to 3.

CORAM : A.S.OKA AND M.S.SONAK, JJ.

DATE : 10th October 2018.

P.C.:

Rule. The learned AGP waives service.

2. These two petitions were essentially filed for seeking a writ of mandamus against the Sub-Divisional Officer (respondent No.2) to immediately hear and decide the application for interim relief filed by the petitioners in pending RTS Appeal before the second respondent. On the last date, the learned AGP placed on record copies of the orders in Appeal No.71/2018 and Appeal No.103/2018 passed by the second respondent

on 7th September 2018. By the said orders, both the appeals which are subject matter of these two petitions have been dismissed. On the last date, a submission was canvassed by the learned counsel appearing for the petitioners that the appeals were never heard by the second respondent and, therefore, instead of relegating the petitioners to the remedy of further appeal under the Maharashtra Land Revenue Code, 1966 (for short “the said Code”), the appeals be remitted to the Sub-Divisional Officer.

3. In fact, today, the learned counsel appearing for the petitioners pointed out that by way of abundant caution, the petitioners have preferred second appeals before the second Appellate Authority under the said Code. Today, the learned AGP has produced before the Court the record of both the appeals. The record shows that on 8th February 2018, the second respondent (first Appellate Authority) issued notice to the petitioners calling upon them to remain present on 26th February 2018. The notice specifically records that the stay applications made by the petitioners will be heard on 26th February 2018 after conclusion of hearing of regular cases. The Roznama of the appeal contains only one entry each. The Roznama records that the advocate for the appellant was present. The record from Tahasildar was called for and the matter was closed for judgment. Thus, the Roznama clearly records that 26th February 2018 was the date fixed for hearing of the said applications. The very fact that on that day while closing the appeals for orders, record of the case was called for shows that the second respondent had not heard the appeals on that day.

4. Thus, going by the record maintained by the second respondent, though submissions of the petitioners were heard on the prayer for interim relief/stay, the appeals have been finally decided. In view of this factual position which emerges from the files, it is clear that hearing of the second appeal preferred by the petitioners will be an empty formality. Therefore, we propose to set aside the order of the first Appellate Authority (second respondent) and direct the first Appellate Authority to decide the appeals on merits as expeditiously as possible.

5. Accordingly, we dispose of these petitions by passing the following order:

- (i) The orders dated 7th September 2018 passed in Appeal Nos.71/2018 and 103/2018 are hereby set aside and the appeals are restored to the file of the second respondent;
- (ii) We direct the petitioners to appear before the second respondent on 29th October 2018 at 11.00 a.m. for fixing the schedule of hearing;
- (iii) The appeals shall be heard afresh and disposed of as expeditiously as possible and preferably within a period of three months from 29th October 2018;
- (iv) In the event any steps are taken by the Tahasildar for recovery of any amount, the petitioners are free to apply for interim relief in the pending appeals;
- (v) All contentions on merits are kept open.

(M.S. SONAK, J.)

(A.S.OKA, J.)