

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 755 OF 2004

Ghanshyamdas Agarwal and Anr. } Petitioners
versus
State of Maharashtra and Ors. } Respondents

WITH
WRIT PETITION NO. 898 of 2004

M/s. Kings Construction Company } Petitioner
versus
State of Maharashtra and Ors. } Respondents

WITH
WRIT PETITION NO. 1275 OF 2004

Suresh Chanchaldas Asrani } Petitioner
versus
State of Maharashtra and Ors. } Respondents

Mr. G. S. Bhat for the petitioners.

Mr. Milind More-Additional Government
Pleader for the respondents.

CORAM :- S. C. DHARMADHIKARI &
PRAKASH. D. NAIK, JJ.

DATED :- MARCH 12, 2018

P.C. :-

1. By these petitions under Article 226 of the Constitution of India, the petitioners seek the following four reliefs (WP/755/2004):-

“(a) That this Hon'ble court be pleased to issue Writ of Certiorari or Writ or direction or order in the nature Certiorari under Article 226 of the Constitution of India for quashing and/or setting aside the impugned Notification No. DLN/LND/T/3/T/P/S IIIC, issued by the office of Sub-Divisional Officer, Mumbai Suburban District, Administrative Building dated 31st October, 2001 and the Order dated 31.7.2002 and 25.4.2003 passed by Respondent No. 2 being Exhibit “M”, “H” and “J” annexed to the Petition;

(b) That the Hon'ble Court be pleased to issue writ of Mandamus or Writ or direction or order in the nature Mandamus under Article 226 of the constitution of India directing the Respondent No. 4 to forthwith withdraw their letter dated 19.12.2001 insisting on issuance of NOC from Respondent No. 2 being Exhibit “E” to the Petition.

(c) That this Hon'ble Court be pleased to issue Writ of Mandamus or direction or order in the nature of Mandamus directing the Respondent No. 4 to ignore notification dated 31.10.2001 and Orders dated 31.7.2002 and 25.4.2003 passed by the Respondent No. 3 being Exhibit “M”, “H” and “J” annexed to the Petition and sanction the plan for construction on the said property.

(d) That the Hon'ble Court be pleased to issue Writ of Mandamus or Writ or direction or order in the nature of Mandamus under Article 226 of the Constitution of India directing the Respondent No. 1 to 3 to refund to the Petitioners the said sum of Rs.6,73,221/- and Rs.50,000/- which was paid by the Petitioners.”

2. The petitioners claim to be the owners of a piece of land, more particularly described at Exhibit 'A' to the petition. Respondent nos. 1 to 3 are the authorities under the Maharashtra Land Revenue Code, 1966 and they have issued the above two orders. These orders are under challenge. The fourth respondent is the Municipal Corporation of Greater Mumbai.

3. The claim of the petitioners is that based on the allotment of the land, the petitioners are even entitled to exploit its future potential. Since there was a structure and which was not habitable any longer, the petitioners sought necessary permissions so as to redevelop the property. They wanted to exploit the potential to the fullest and that is how the application for a no-objection certificate was made. That application was not granted and by certain conditions imposed, the petitioners were called upon to make payment. It is this action which is under challenge.

4. During the course of arguments, reliance is placed by Mr.Bhat on a Division Bench judgment of this court in the case of *Sundarsons and Ors. vs. State of Maharashtra and Ors.*¹. This court allowed the writ petitions and declared as under:-

“28. For the aforesaid reasons, in our view the letter issued by the Collector dated 19th May, 2007 is clearly illegal and without authority of law.

It is however, made clear and it is specifically clarified that it would be open for the State Government to take such steps, if any breach has been committed by the petitioner or by its Predecessor-in-title in respect of the land allotted to the petitioners or its Predecessor-in-title by following due procedure of law.

Further it is expressly made clear that we have not decided the question as to whether the petitioners are the owners of the land as claimed by them or the contentions of the Government that the petitioners and its Predecessor-in-title were having B-1 tenure. These

¹ 2003(5) Bom.C.R.85

questions are kept open and the petitioners are at liberty to take out appropriate proceedings for seeking a declaration that the petitioners are the owners of the land.

The writ petitions accordingly are allowed and respondent No. 3 is directed to register the documents which are presented to him as per the provisions of the Registration Act in accordance with law. Under these circumstances there shall be no order as to costs.”

5. Despite this court declaring the action to be illegal and allowing the writ petitions to the extent indicated above, the original petitioners were aggrieved and dissatisfied with a part of the order. They challenged the same by filing a special leave petition before the Hon'ble Supreme Court. On leave being granted, this petition was numbered as Civil Appeal No. 3276 of 2009. The Hon'ble Supreme Court has disposed of that appeal on 23rd November, 2017 with the following order:-

“It was urged by the learned counsel appearing for the appellants that in spite of there being no restriction on alienation with respect to the property held by them, in the impugned order, it was observed that in case it was considered proper action may be initiated on receipt of application. It is clear that circular of 31st October, 2001 regarding issue of NOC has been held to be without authority of law. Such action can only be initiated when there is violation of condition of alienation not otherwise as and when such action is initiated, it would be open to the appellants to question it in accordance with law. When an application is received it has to be dealt with in accordance with law. Obviously, before taking any adverse action, authority has to *prima facie* satisfy itself that there is violation of the conditions imposed by the Government, while making alienation only in that case adverse action has to be taken not otherwise. Therefore, we are of the view that no modification of order is required.

When any adverse action is initiated, all the questions are left open to be agitated, as to its legality to be raised

before appropriate forum/authority, in accordance with law.

Accordingly, the appeal is disposed of.”

6. Both sides concede that in terms of the above liberty of the Hon'ble Supreme Court, the controversy stands concluded in favour of the petitioners and against the respondents. We are of the opinion, therefore, that in the event the authorities deem it fit and proper to take action as permitted and within the four corners of law, they shall do so within a period of eight weeks from the date of receipt of a copy of this order, failing which and after that duration/period comes to an end, the amounts paid by the petitioners shall be refunded to them. In any event, the amount should be refunded within four weeks from the period as aforesaid comes to an end and in the event it is not paid, the same shall carry interest at the rate of 8% from the date the same has been collected till the date of payment/realisation.

7. With the aforesaid directions, the writ petitions are disposed of. Rule is made absolute in terms of the aforesaid directions in each of these petitions.

(PRAKASH.D.NAIK, J.) (S.C.DHARMADHIKARI, J.)