

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

WRIT PETITION (L) NO. 165 OF 2019

Sanskriti Co-op. Housing Soc. Ltd, ...Petitioner.

Vs.

State of Maharashtra and ors. ...Respondents.

Mr. Milind Sathe with Advocate Suraj Mehta, Kunal Mehta, Suraj Iyer,
Rickin Dang I/by Ganesh & Co. for the Petitioner.

Mr. A.L. Patki, Addl G.P. for the State.

CORAM : R.M.BORDE AND V.L. ACHLIYA, JJ.

DATE : 23rd January, 2019

JUDGMENT : (Per R.M. Borde, J.)

1 Heard learned counsel for the parties.

2 Rule. Rule made returnable forthwith and petition taken up for final disposal by consent of the parties at the admission stage.

3 The petitioner is objecting to the Order dated 26th March 2018 directing recovery of unearned income of Rs.4,14,00,279/- inclusive of interest and the communication issued by respondent No.4 dated 2nd August 2018 rejecting the application for mutating the name of the petitioner in the property register on account of his failure to file 'No objection Certificate' of the Collector and the demand notice dated 24th October, 2018, and notice of proclamation issued by respondent No.3 on 3rd December 2018.

4 It is not a matter of dispute that, a piece of land has been granted in favour of M/s. J.A. Littlewood on 8th May 1958. The agreement appears to have been recorded in Form HH read with Form KK between the parties at relevant time. There is no condition

incorporated in letter of allotment facilitating imposition of any restriction on the transfer or prescribing liability in respect of unearned income in the event of occurrence of such eventuality. It does appear that at the stage of grant of permission of transfer in favour of the builder and developer, such a condition was imposed in the year 2006. The petitioner before us is a society consisting of seven members who have purchased the flats in the building constructed by the developer on the subject land. The Collector, Mumbai, by an Order dated 26th March 2018 directed to levy unearned income in respect of the subject property. It is also pointed out that, the conveyance in respect of the appurtenant land and the building has been executed in favour of the society by the builders and as such, the society is the owner and occupier of the land and the building. The Collector, Mumbai on 26th March, 2018 issued an Order and directed the society to pay a sum of Rs.4,14,00,279/-

(Rs.3,16,21,370/- towards unearned income and amount of Rs.97,78,909/- towards interest). It is recorded in the order that, since the transfer of land has taken place in the year 2014, the computation of unearned income was calculated as per the ready reckoner rate prescribed in the year 2014 and the amount of 75% of the unearned income was calculated as detailed above. In order to ensure enforcement of the recovery, a demand notice was issued by the Tahsildar on 24th October 2018, which was followed by action of attachment of the property on 3.12.2018.

5 The petitioner contends that the Order passed by the Collector prescribing the recovery of amount of Rs.4,14,00,279/- ought not to have been issued without extending an opportunity of hearing to the petitioner. It is contended that, *prima facie*, the order is not sustainable since the document of grant of Government land in the year 1958 does not stipulate any condition for its transferability. The

agreement executed in Form HH, annexed at Exh. 3 to the petition does not contain such stipulation. Relying on the Judgment of the Single Judge of this Court in Writ Petition No. 2476 of 2003 decided on 20.7.2006, it is contended that, since there is no stipulation in the agreement putting on restraint of any nature whatsoever on the transfer of the land it was impermissible for the respondents to raise a demand towards the unearned income and proceed to claim interest on the unpaid amount. It is further contended that the restrictions imposed under Section 37A of the Act cannot be enforced since the land has been granted in the year 1958 much prior to raising of the claim of amount towards unearned income. In this context, reliance has been placed on the Judgment delivered by this Court in Writ Petition No. 122 of 2018, decided on 3.5.2018.

6 It would not be necessary at this stage to consider the merits of the contentions raised by the petitioner. Since the order impugned in

the petition was passed by the Collector on 26th March 2018 is found to have been passed without extending an opportunity of hearing to the petitioner society, it would be appropriate to relegate the petitioner to concerned revenue authority i.e. the Collector, Mumbai with liberty to raise all the contentions those are raised in the instant petition. The order passed by the Collector on 26th March 2018 shall not be enforced and shall be kept in abeyance until the petitioner has been extended an opportunity of hearing and the Collector Mumbai applies his mind to the record and the case as well as the contentions of the petitioner and passes a fresh order in accordance with law. It will be open for the petitioner to appear before the Collector and submit representation/application setting forth the grievance, as expeditiously as possible within a period of three months from today. If the petitioner tenders such representation/application within the time stipulated above, the Collector shall pass appropriate order after

extending an opportunity of hearing to the petitioner as expeditiously as possible and preferably within a period of further three months from the date of tendering of representation/application by the petitioner. The Collector shall pass a speaking order considering the contentions of the petitioner. In the meanwhile, the action of attachment of the property under the order of the Tahsildar dated 3.12.2018 shall continue to remain in force and no further coercive steps be taken. Appropriate steps can be taken depending upon order of Collector and subject to its confirmation by appellate authority. All the grounds raised in the petition are specifically kept open for consideration of Collector. In view of the Judgment delivered by this Court in the matter of *Shrikant R. Sankanwar and others vs. Krishna Balu Naukudkar reported in 2003(3) Bombay C.R. Page 45*, it would be open for the City Survey Officer to process the application tendered by the applicant for mutating the name of the

petitioner-society without insisting upon securing 'No Objection Certificate' from the Collector and pass appropriate order.

7 In view of the directions as above, writ petition is disposed of.

8 Rule is made absolute to the extent as stated above. No costs.

(V.L. ACHLIYA, J.)

(R.M. BORDE, J.)