

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION (L) NO.344 OF 2019

Omprakash V. Dube

....Petitioner

vs

State of Maharashtra Through Government
Pleader And 3 Ors.

...Respondents

.....

Mr. Milind Sathe, Senior Advocate, a/w. Mr. Mayur Khandeparkar, Mr. Hamid Mir and Mr. Ashutosh Malvankar, i/b. Diamondwala & Co., for the Petitioner.

Mr. S.B. Gore, AGP, for Respondent No.1/State.

Mr. Shankar P. Thorat, for Respondent No.2.

Mr. Arun Panicker, for Respondent No.3.

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CORAM : S.C. GUPTE, J.

DATED: 4 APRIL 2019

(ORAL JUDGEMENT):

. This writ petition challenges an order passed by Slum Tribunal ("Tribunal") constituted under Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971 ("Slum Act"). By the impugned order, the Tribunal rejected the application of the Petitioner (Respondent No.2 before it) filed in an appeal of Respondent No.3 to the present petition, who is the owner of the property, which is declared as a slum, challenging its jurisdiction to hear the appeal under Section 3C(2) of the Slum Act.

2. The petition raises a pure question of law, namely, whether

an appeal filed by any person aggrieved by an order of Chief Executive Officer, SRA declaring any land as a slum rehabilitation area under Section 3C(1) of the Slum Act, which is pending on the date of the Amending Act, namely, Maharashtra Act No.XXXVIII of 2018, is liable to be transferred to, and heard by, Grievance Redressal Committee constituted under Section 35 of the amended Slum Act.

3. The Petitioner is the Chief Promoter of Sahyog SRA Cooperative Housing Society (Proposed). He had originally filed an application before CEO, SRA for declaration of the lands bearing CTS Nos. 355(Part), 355/267 to 307, 355/352 to 356, 355/411 to 355/443, 491(Part), 491/1 to 4, 512(Part), 512/62, and 512/63 at Borivali in Mumbai, admeasuring about 5214.2 sq.mtrs., as a slum area under Section 3C(1) of the Slum Act. By his order dated 17 June 2017, CEO, SRA made the requisite declaration. Respondent No.3 herein, who claims to be the owner of the property, filed an appeal, bearing Appeal No.9 of 2017, before the Tribunal. The Petitioner filed an application in that appeal raising objection to the jurisdiction of the Tribunal citing amendment to the Slum Act by Maharashtra Act No.XXXVIII of 2018, by which Section 3C was substituted. The amended Section provided for appellate powers of Grievance Redressal Committee, in substitution of the Tribunal, over a declaration issued by the Chief Executive Officer under Section 3C(1). The Tribunal, by its impugned order passed on 10 December 2018, rejected the Petitioner's application concluding *inter alia* that the Tribunal had jurisdiction to entertain and try the appeal. Being aggrieved, the present writ petition is preferred by the Petitioner.

4. Dr. Sathe, learned Senior Counsel appearing for the Petitioner, submits that change of forum for entertaining an appeal under Section 3C(2) of the Slum Act, being a mere procedural change, has retrospective application. Learned Counsel submits that every procedural amendment is presumed to be retrospective in nature unless the amending statute expressly or impliedly provides otherwise. Learned Counsel contends that though generally “change of forum” is procedural and formal, it is more so in the present case; there is every indication in the amending statute, read as a whole in the present case, that the amendment was merely procedural. Learned Counsel, in the premises, submits that though there are no transitory provisions requiring transfer of pending appeals from the Tribunal to the Grievance Redressal Committee, the new appellate forum under Section 3C(2) of the Slum Act, by the very force of the Amending Act, the pending appeal cannot be heard by the Tribunal and would have to be necessarily transferred to the Grievance Redressal Committee. On the other hand, learned Counsel for the contesting Respondent (Respondent No.3) as well as learned Counsel for Respondent No.2 (SRA) submits that even if this amendment, bringing about a change of forum, were to be treated as procedural, since the remedy has already been availed of by the aggrieved party by filing an appeal, the right of appeal ought to be treated as a crystallized or vested substantive right and the forum entertaining the appeal under the unamended law, namely, the Tribunal, would continue to have jurisdiction.

5. Section 3C, as it stood prior to its amendment, and as it now stands, post the amendment by Maharashtra Act No.XXXVIII of 2018, is

quoted below :

Pre-amendment Section 3C:

(1) As soon as may be, after the publication of the Slum Rehabilitation Scheme, the Chief Executive Officer on being satisfied that circumstances in respect of any area, justifying its declaration as slum rehabilitation area under the said scheme, may by an order published in the Official Gazette, declare such area to be a “slum rehabilitation area”. The order declaring slum rehabilitation area (hereinafter referred to as “the slum rehabilitation order”) shall also be given wide publicity in such manner as may be specified by the Slum Rehabilitation Authority.

(2) Any person aggrieved by the slum rehabilitation order may, within four weeks of the publication of such order prefer an appeal to the Special Tribunal; and the decision of the Special Tribunal shall be final.

Post Amendment Section 3C:

(1) As soon as may be, after the publication of any Slum Rehabilitation Scheme, the Chief Executive Officer on being satisfied about the circumstances in respect of any land, whether or not previously declared as slum area, justifying its declaration as the Slum Rehabilitation Area which may include community economic activity area, for implementing the Slum Rehabilitation Scheme, shall after giving the land owners, including any public authorities or local bodies under the State Government constituted under any law enacted by the State Legislature, thirty days notice and after giving a reasonable opportunity of being heard, by an order published in the Official Gazette, and thereafter within forty-five days, declare such land to be a “Slum Rehabilitation Area”. The order declaring the Slum Rehabilitation Area (hereinafter referred to as “the slum rehabilitation order”), shall also be given wide publicity in such manner as may be specified by the Chief Executive Officer of the Slum Rehabilitation Authority. Thereafter, notwithstanding anything contained in any law for the time being in force, in such Slum Rehabilitation Area, the permission or the No Objection Certificate of the land owning authority or agency shall not be required :

Provided that, only in respect of any land which is required for Vital Public Project purpose, as per orders of the State Government and where the State Government either directly or through any public authority has undertaken the responsibility of relocation and rehabilitation of the protected and other occupiers of the building, then the Chief Executive Officer shall, exclude the land required for Vital Public Project from the Slum Rehabilitation Area and issue an order to omit such land from the Slum Rehabilitation Area. Where the State Government either directly or through any public authority has undertaken the responsibility of relocation and rehabilitation of the protected and other occupiers of the building, such public authority shall prepare the Scheme of such rehabilitation or relocation and get it approved by the Chief Executive Officer within the period specified in the Scheme which shall not be more than ninety days.

(2) Any person aggrieved by the order of the Chief Executive Officer may, within thirty days of the publication of such slum rehabilitation order, prefer an appeal to the Grievance Redressal Committee. The decision of the Grievance Redressal Committee in such appeal shall be final.

6. The argument of Dr. Sathe is that several important amendments have been brought to the Slum Act by the 2018 Amendment. Learned Counsel submits that the meaning of the expression “slum clearance” has itself undergone a substantial change under the Amendment of 2018. Learned Counsel submits that having regard to these amendments, and particularly, the amendment to Section 3C, as it stood prior to 2018, it is clear that the remedies thereunder have to be in accordance with the provisions of the amended law. It is in this light that learned Counsel advances the argument of change of forum being a procedural alteration introduced by the Amending Act.

7. The Supreme Court as well as various High Courts in India

have discussed the nature of amendments to statutes, whether substantive or procedural, and their effect on the remedies, both yet to be availed of and those already availed of, in several judgments. As the Supreme Court has explained in the case of **Videocon International Ltd. vs. SEBI**¹, whilst dealing with amended Section 15-Z of SEBI Act, by which appellate remedy before the High Court of an aggrieved person against an order passed by the Securities Appellate Tribunal was altered by providing an appeal before the Supreme Court, right of appeal can only be availed of when it is expressly conferred. In that sense, the provision for appeal is always substantive, though forum of such appeal may be a matter of procedure. As observed in **New India Assurance Co. Ltd. vs. Shanti Misra**², the provision of appeal being a substantive provision, an aggrieved party may have a “vested right of action”, but there is no “vested right of forum”; unless by express words the new forum is available only for causes of action arising after the change of forum, the general rule is to apply such change retrospectively. The aggrieved party, after such change of law, must go before the new forum, even if the cause of action has arisen before the change of forum. There is, however, one exception. In case the change of law does not simply introduce a change of forum, but substantially alters the nature or extent of the remedy, it may be possible to treat the change as a whole (i.e. including the change of forum) as a substantive change and apply it prospectively, unless, of course, a contrary intention is found in the amending law either expressly or by necessary implication. This has been explained by the Supreme Court in **Videocon International's** case.

1 (2015) 4 SCC 214

2 (1975) 2 SCC 840

The Court noted in that case that generally, when a statute confers a right of appeal, it also lays down parameters of such right. The right may be absolute, that is to say, without any limitation, or it may be a limited right. In this sense, appeals are a matter of a package. If whilst altering the package, what is changed is merely the forum for entertaining the appeal, the change may be considered merely procedural. If, on the other hand, not merely the forum but the limitations provided for such appeal are altered, the change would be a substantive change. In such a case, the right of appeal may be treated as a vested substantive right. In **Videocon International** (supra), the Supreme Court was concerned with amended Section 15-Z of SEBI Act. Section 15-Z, as it originally stood, provided for the right of an aggrieved party to challenge any decision or order of Securities Appellate Tribunal before the High Court *on any question of fact or law arising out of such order*. SEBI Amendment Act, 2002 amended Section 15-Z so as to provide for appellate remedy before the Supreme Court from any decision or order of SAT only *on any question of law arising out of such order*. The Supreme Court was called upon to consider not just the maintainability of appeals pending before the High Court as of the date of the Amendment Act, 2002, but even appeals filed thereafter before the High Court. In its order impugned before the Supreme Court, the High Court had held that only the pending appeals before the High Court (i.e. pending as at the date of the amending statute) were maintainable, but not the appeals filed subsequently. The Supreme Court held that even in the absence of a saving clause, not only were appeals pending before the High Court as on the date of the amendment, but even appeals to be filed thereafter were saved. The Court held that the amendment to Section 15-Z, having

not just introduced a change of forum, but in fact reduced the appellate package (the appellate right now being limited only to questions of law), adversely affected the vested appellate right of the aggrieved party; the right of appeal being a vested right, the appellate package, as was available at the commencement of proceedings, would continue to vest in the parties engaged in a lis till the eventual termination of the proceedings.

8. That is, however, one aspect of the matter. The other aspect is, what happens in a case where the remedy has already been availed of before the change in law occurred. Whether or not the appeal provision has been altered as a matter of package or whether it is altered simply in terms of change of forum, once the appellate forum under the old law has been approached by the aggrieved party, it becomes a vested right in such party and unless there are clear indications in the statute to the contrary, either in the repeal or the saving clause or in the amended provision itself, the appellate forum under the unamended provisions would continue to exercise jurisdiction.

9. This was explained by the Supreme Court in the case of **Securities And Exchange Board of India vs. Classic Credit Limited**³. That was a case, where the Court was considering the amended provisions of Sections 24 and 26 of the Securities and Exchange Board of India Act, 1992, which, respectively, provided for offences under that Act and their cognizance by courts. Section 26 *inter alia* provided that no court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of First Class shall try any offence punishable under the Act.

³ (2018) 13 Supreme Court Cases 1

Before the particular trial could commence in the case before the Supreme Court, Sections 24 and 26 were amended. Amended Section 26 *inter alia* provided that no court interior to that of a Court of Session could try any offence punishable under the Act. The Court was concerned with an offence committed under the Act prior to the amendment of Sections 24 and 26, and of which cognizance was taken but trial had not commenced. The Supreme Court held that the legal position expounded by it in a large number of cases, including **New India Insurance Co. Ltd. vs. Shanti Misra**⁴, **Securities and Exchange Board of India vs. Ajay Agarwal**⁵, and **Ramesh Kumar Soni vs. State of Madhya Pradesh**⁶, was clear and ambiguous, namely, that every procedural amendment was presumed to be retrospective in nature unless the amending statute expressly or impliedly provided otherwise; and also that change of forum for a trial was procedural, and normally, following the above proposition, it would be presumed to be retrospective in nature unless the amending statute provided otherwise. Dr. Sathe places heavy reliance on these observations of the Supreme Court. However, it is important to note that these observations are in the context of amended provisions of law, which provided that no court inferior to a court of session would **try** an offence punishable under the Act. The trial not having commenced, the court was of the view that alteration in the procedural provisions concerning a trial of an offence was retrospective and applied to offences already committed prior to the amendment. So far as remedies availed of prior to the amendment are concerned, the Supreme Court made important observations in

4 (1975) 2 SCC 840

5 (2010) 3 SCC 765

6 (2013) 14 SCC 696

paragraphs 54 to 56 in the following words:

“54. From a perusal of the conclusions drawn in the above judgments, we are inclined to accept the contention that change of “forum” could be substantive or procedural. It may well be procedural when the remedy was yet to be availed of but where the remedy had already been availed of (under an existing statutory provision), the right may be treated as having crystallised into a vested substantive right.

55. In the latter situation referred to (and debated) in the preceding paragraph, where the remedy had been availed of prior to the amendment, even according to learned counsel for the private parties, unless the amending provision by express words, or by necessary implication, mandates the transfer of proceedings to the “forum” introduced by the amendment, the “forum” postulated by the unamended provision, would continue to have the jurisdiction to adjudicate upon pending matters (matters filed before amendment). In view of the above, we are of the considered view, that no vested right can be claimed with reference to “forum”, where the concerned court, had not taken cognizance and commenced trial proceedings, in consonance with the unamended provision.

56. Insofar as the matters where proceedings had already commenced before the amendment, change of “forum” for trial came into effect, it is apparent from the judgments referred to in the preceding paragraph, that the general principle is that a law which brings about a change in the “forum”, does not affect pending actions, unless intention to the contrary is clearly shown. What needs to be determined with reference to the 2002 Amendment Act, as well as, with reference to the 2014 Amendment Act is whether an intention to the contrary was expressed therein so as to alter the “forum”, where proceedings were pending. And to bring such proceedings to the “forum” contemplated by the amendment.”

10. The aforesaid exposition of law makes it abundantly clear that the question whether a change of forum is substantive or procedural,

is not to be considered in a vacuum. The nature of the change, whether substantive or procedural, would depend on availment of the remedy. If a remedy is yet to be availed of, the change of forum may be treated as purely procedural but where the remedy has already been availed of under an existing statutory provision, the right may be treated as crystallized into a vested substantive right. Unless the law, which brings about a change in the forum pending an action, clearly expresses a contrary intention in it, the forum under the existing law, before which the remedy has been availed by the aggrieved party, continues to have jurisdiction.

11. There is nothing in the amending law in the present case (neither in a saving or repeal clause nor in any other provision) to suggest that the intention of the legislature whilst introducing the amendment of change of forum in Section 3C was to make the amendment applicable even to pending appeals. If anything, the intention is to the contrary. Sub-section (2) of Section 3C provides for *preferring* of an appeal. Under sub-section (2), an aggrieved person may *prefer an appeal* to the forum named therein *within thirty days of the publication of declaration of the slum rehabilitation area* under sub-section (1) of Section 3C. It is not possible to suggest that an appeal should be preferred before the new forum provided in amended sub-section (2) within thirty days of the order passed under sub-section(1) of the old provision. In case there is no appeal preferred under sub-section (2) by the time the law was amended, the remedy of an aggrieved person would be before the new forum. In that sense, the amendment is procedural. It does not create any vested right in the aggrieved party to go before the

earlier forum. But once an aggrieved person files an appeal before the original forum, availing of his remedy under the unamended law, his right gets crystallized into a vested right of appeal and is only to be agitated before that forum, there being nothing in the amending statute to suggest a contrary intention.

12. In the premises, there is nothing wrong with the impugned order of the Tribunal. The Tribunal continues to have jurisdiction insofar as the appeal filed by Respondent No.3 is concerned. The writ petition is, accordingly, rejected. No order as to costs.

13. Since the appeal has been pending before the Slum Tribunal from July 2017, the Tribunal is requested to dispose of the appeal as expeditiously as possible and preferably within a period of three months from this order being pointed out to it. Either party may bring this order to the notice of the Slum Tribunal.

(S.C. GUPTE, J.)