

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.8353 OF 2019

Late Hussainbhai Bandeali Bhojabhai (since deceased)
through LRs ... Petitioners
Vs.
State of Maharashtra and others ... Respondents

WITH
WRIT PETITION NO.8546 OF 2019

Ali Mohammad Husseinbhai Bhojabhai (since deceased)
through LRs ... Petitioners
Vs.
State of Maharashtra and others ... Respondents

Mr. Manoj Harit a/w. Mr. Akhil Kupade i/b. Manoj Harit and Company
for Petitioners in both the Petitions.

Mr. C. D. Mali, AGP for Respondents-State in W.P.No.8353 of 2019.

Mr. A. B. Kadam, AGP for Respondents-State in W.P.No.8546 of 2019.

CORAM : UJJAL BHUYAN, J.

DATE : JANUARY 15, 2020

P.C. :

This order will dispose of both the writ petitions.

2. Heard Mr. Harit, learned counsel for the petitioners and Mr. Mali, learned AGP, learned counsel for respondent Nos.1 and 2-State in both the petitions.

3. The remaining respondents i.e., respondent Nos.3 to 31 in Writ Petition No.8353 of 2019 and respondent Nos.3 to 10 in Writ Petition No.8546 of 2019 have been struck off pursuant to order of this Court.

3.1. Notice in these matters was issued on 14.03.2019.

4. In these petitions filed under Article 227 of the Constitution of India, petitioners have assailed legality and correctness of order dated

21.12.2018 passed by the Sub-Divisional Officer, Panvel i.e., respondent No.2 dismissing all the appeals filed by the petitioners, however giving liberty to them to move the civil court.

5. The three petitioners in Writ Petition No.8353 of 2019 are legal heirs of late Hussainbhai Bandeali Bhojabhai whereas the two petitioners in Writ Petition No.8546 of 2019 are legal heirs of late Ali Mohammad Husseinbhai Bhojabhai, who it is stated were owners of the lands in question.

6. It appears that certain orders were passed by the *mamlatdar* under Sections 32-G, 32-P and 32-M of the Maharashtra Tenancy and Agricultural Lands Act, 1948 (briefly 'the Act' hereinafter) declaring certain persons as protected tenants of the lands in question.

7. It is stated that taking advantage of the absence of the petitioners who resided outside the country at that particular point of time, the aforesaid mischief was committed, that too, on the eve of land acquisition.

8. When the petitioners came to know about the same, they filed altogether 37 appeals before respondent No.2 under Section 74 of the Act. By a common order dated 21.12.2018, respondent No.2 noted that the lands in question have been acquired by the City and Industrial Development Corporation (CIDCO) whereafter awards have been passed. The name of CIDCO has been mutated in the land record of the lands in question. Therefore, view was taken by respondent No.2 that no change in the land record was possible in the appeals and thus declined to entertain the said appeals. However, liberty was granted to the petitioners to approach the civil court.

9. Learned counsel for the petitioners submits that respondent No.2 committed a fundamental error in as much as he had construed the

appeals filed by the petitioners as appeals under Section 247 of the Maharashtra Land Revenue Code, 1966 whereas the appeals were filed under Section 74 of the Act.

9.1. He further submits that orders passed by the *mamlatdar* under Sections 32-G, 32-P and 32-M of the Act are appealable under Section 74 of the said Act. That apart, to decline adjudication of the appeals of the petitioners on the ground of subsequent development i.e., acquisition of land was not at all justified as it amounted to failure to exercise jurisdiction lawfully vested in the appellate authority. He, therefore, submits that the matter may be remanded back to the appellate authority for a fresh decision in accordance with law.

10. On the other hand Mr. Mali, learned AGP submits that under Section 76 of the aforesaid Act, there is a provision for revision. Application for revision may be made to the Maharashtra Revenue Tribunal. He, therefore, submits that since there is adequate and efficacious alternative remedy available, writ court may not entertain the writ petition.

11. Submissions made by learned counsel for the parties have been considered.

12. At the outset, objection of the learned AGP may be considered.

13. It is no doubt true that when a statute provides a remedy, a person aggrieved should avail such a remedy before invoking the writ jurisdiction. However, the rule of not invoking writ jurisdiction in the face of availability of alternative remedy is not an absolute one and is basically a self-imposed limitation by a writ court. In an appropriate case, where the authority exercises jurisdiction not vested in it or there is violation of principles of natural justice, or there is fundamental error etc., notwithstanding availability of alternative remedy, the writ court may still exercise its jurisdiction.

14. Reverting back to the facts of the present case, it is seen that respondent No.2 failed to consider that the appeals filed by the petitioners were under Section 74 of the Act which in fact provides for such remedy. In such circumstances, declining to adjudicate the appeals on the ground that the lands in question have been acquired by CIDCO whose name has been mutated in the land record in respect of the lands in question would not be justified as depending upon the outcome of the appeals, legal consequences will follow. Therefore, failure of respondent No.2 to exercise jurisdiction which was vested on him by law has clearly vitiated the impugned order dated 21.12.2018 which therefore, cannot be sustained.

15. Accordingly, impugned order dated 21.12.2018 is hereby set aside. Matter is remanded back to respondent No.2 who shall re-hear all the 37 appeals filed by the petitioners under Section 74 of the Act in accordance with law within a period of 6 months from the date of receipt of an authenticated copy of this order.

16. Needless to say, no opinion is expressed on merit and all contentions are kept open.

17. Writ petitions are disposed of.

(UJJAL BHUYAN, J.)

Minal Parab