

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 6764 OF 2019

M/s. Rajmudra Real Estate Pvt. Ltd.
Company duly constituted under the
provisions of The Company Act, and
having its registered office at B-701,
Building No. 29, Geetanjali, Kher Nagar,
Near Post Office, Bandra (E), Mumbai,
and Branch Office at Khandesh Mill
Main Gate, Station road, Jalgaon,
Through its Authorized Mr. Jitendra
Subhash Wani, Age 40 years, Occ.
Service, R/o. Yashwant Nagar, Jalgaon.

... **Petitioner.**

VERSUS

- 1) The Residential Deputy Collector,
Collector Officer, Jalgaon.
- 2) The City Survey Officer,
Tahsildar Office, Jalgaon.
- 3) The Tahsildar, Tahsildar office, Jalgaon.
- 4) Suryakant Ramdas Patil,
Age 63 years, Occ. Nil.
R/o. Jalgaon, Tq. And Dist.
Jalgaon, 302, Baliram Peth District Jalgaon.
- 5) The Director,
Khandesh Spinning and Weaving
Mills Co.Ltd. Jalgaon, Dist. Jalgaon.
- 6) Digambar Ramchandra Shevale,
Age Major, Occ. Business,
R/o. Bharat Bhushan Hotel,
Jalgaon, Tq. & Dist. Jalgaon.
- 7) Bhawani Prasad Sharma,
Age Major, Occ. Business,
R/o. Sanjay Raswanti, Jalgaon,
Tq. & Dist. Jalgaon.

- 8) Premchand Babulal Oswal,
Age Major, occ. Business,
R/o. Bhavani Peth, Jalgaon,
Tq. & Dist. Jalgaon.
- 9) The Manager,
Navanagar Sadavart Trust,
Moolji Jetha Building, Mumbai.

... Respondents.

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Advocate for the Petitioner Mr. Satyajit S. Bora.
A.G.P for the Respondent Nos. 1 to 3 : Mr. K.B. Jadhavar.
Advocate for the Respondent No. 4 : Mr. N.S. Tekale.

CORAM	:	MANGESH S. PATIL, J.
RESERVED ON	:	07.10.2021.
PRONOUNCED ON	:	21.10.2021.

JUDGMENT :

Heard. Rule. The Rule is made returnable forthwith. Learned A.G.P. waives service for the respondent Nos. 1 to 3. Learned advocate Mr. Tekale waives service for the respondent No. 4. At the request of the parties the matter is heard finally at the stage of admission.

2. The petitioner is the respondent No. 5 from proceeding initiated by the respondent No. 4 herein under Section 4 and 5 of the Maharashtra Government Premises (Eviction) Act, 1956 (hereinafter 'the Act'). He is aggrieved and dissatisfied by the judgment and order passed by the learned Principal District Judge (hereinafter 'P.D.J.') in an appeal under Section 7 of the Act thereby quashing and setting aside the order of the Competent Authority refusing to order eviction and remanding the matter for decision afresh.

3. The sum and substance of the facts and circumstances leading up to filing of this Writ Petition may be summarized as under :

The respondent No. 4 asserting himself to be the General Secretary of a Trade Union named and styled as 'Rashtriya Girani Kamgar Sangh' has

filed the proceeding under Section 4 and 5 of the Act before the Competent Authority against the petitioner and respondent Nos. 5 to 9 herein *inter alia* alleging that the properties bearing City Survey Nos. 2124 to 2131 and 2628 of Jalgaon are the Government premises within the meaning of Section 2(b) of the Act and they are in unauthorized occupation and sought a direction for their eviction. After conducting necessary hearing the Competent Authority by his order dated 13.04.2009 refused to issue any direction under Section 4 and 5 of the Act. Aggrieved thereby the respondent No. 4 preferred an appeal under Section 7 of the Act. By the impugned judgment and order the learned P.D.J. has remanded the matter back for decision afresh.

4. The learned advocate Mr. Bora for the petitioner would emphasize that it is a Private Limited Company. The respondent No. 5 was also a company which owned and possessed these properties except City Survey No. 2124. Its name appeared in the City Survey Record when it was conducted for the first time in the year 1915-1916. Since the respondent No. 5 was indebted to a bank, the petitioner purchased it from it in a proceeding initiated before the Debt Recovery Tribunal on 17.02.2003. A Sale Certificate dated 28.02.2003 was also issued in its favour. The respondent No. 4 had raised the issue, which he is now being putting up in the present proceeding up to the Supreme Court, asserting that the erstwhile owner that is the respondent No. 5 company was under liquidation and owed huge money to the employees. The petitioner agreed to and settled all these dues with the intervention of the Supreme Court. He would refer to the different orders of the Supreme Court in Civil Appeal No. 5987/2004 dated 06.03.2013, Contempt Petition (Civil) No. 407/2013 in Civil Appeal No. 5987/2004 dated 20.02.2015, another order in same Contempt Petition dated 13.05.2015 and the order in Intervention Application No. 1 and 2 in the same contempt proceeding dated 17.11.2015 (Exh. 'B' collectively).

5. The learned advocate would emphasize that the Supreme Court ones

for all, has concluded in favour of the petitioner holding it to have become rightful owner of these properties purchased under the sale certificate. It also gave a specific direction that the respondent No. 4's Union would not indulge in any further litigation questioning the petitioner's title. He would further point out that even a proxy litigation at the instance of the respondent No. 4 was specifically prohibited. He would, therefore, submit that in spite of such emphatic decision, the respondent No. 4 has continued the present proceeding and has made an attempt to harass the petitioner and any such attempt should be nipped in the bud. He would submit that the learned P.D.J. in the impugned judgment has overlooked all these aspects while directing a remand.

6. Learned advocate Mr.Bora would then submit that the learned Competent Authority had indeed undertaken a detailed enquiry and in the absence of any material has rightly concluded that there was not sufficient material to show that the respondent No. 5 was not the owner of the properties. Therefore, there was no perversity or arbitrariness in reaching such conclusion and the learned P.D.J. ought not to have likely interfered with the decision of the Competent Authority.

7. Per contra, the learned A.G.P. referring to the affidavit in reply filed by the present Tahsildar of Jalgaon would vehemently submit that the learned P.D.J. has elaborately considered the matter in controversy and has rightly remanded the matter for decision afresh. Though the petitioner has purchased the properties under the provisions of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interests Act, 2002 and even though the sale certificate had been issued in favour of the petitioner, the State Government was not a party to that litigation and the decision would not bind it. If it is a matter of the interest of the State, no such sale would affect its right and interest in the properties. If the respondent No. 5 itself was found not to be the rightful owner, it could not have transfer any right and title to the petitioner. The learned A.G.P. would

submit that even up to 1932 the City Survey record of the properties referred to the source of possession of the respondent No. 5 as the State Government. If that is the case, it was for the Competent Authority to have gone into and probed such record for reaching any conclusion. Even now such record is available and is produced in the record of this Writ Petition along with the affidavit in reply at Exh. 'R1' (collectively). The Competent Authority had shirked its responsibility by cursorily observing that the record was not available to be seen. The learned P.D.J. having noticed that the enquiry was not conducted properly has merely remanded the matter for decision afresh. No prejudice is likely to be caused to the petitioner if the enquiry is conducted afresh.

8. The learned advocate Mr. Tekale for the respondent No. 4 referring to the latter's affidavit in reply would adopt the arguments of the learned A.G.P. He would submit that there was ample record before the Competent Authority demonstrating that the properties vested in the Government and were leased out to the respondent No. 5. The petitioner and the respondent NO. 5 had failed to rebut such record. The order was indeed perverse and arbitrary and has been rightly interfered with in the appeal under Section 7 of the Act. Lastly, the learned advocate Mr. Tekale would refer to the Constitution Bench decision of the Supreme Court in the case of **Maganlal Chhaganlal (P) Ltd. Vs. The Municipal Corporation of Greater Bombay and others; (1974) 2 Supreme Court Cases 402** and **The State of Maharashtra Vs. Marwanjee F. Desai and others; (2002) 2 Supreme Court cases 318**.

9. I have carefully considered the rival submissions and perused the record. Suffice for the purpose to observe at the outset that in exercise of the writ jurisdiction this Court should be loath in entering into and deciding the factual disputes. It is a matter of record that the parties are at two poles as to the title to the properties in dispute. Needless to state that being a pure question of fact, it is for the Competent Authority deciding the proceeding under Section 4 and 5 of the Act and the Appellate Authority

under Section 7 of the Act to undertake that exercise. The only question that needs to be addressed in the present Writ Petition is as to whether the decision of the Competent Authority was sustainable in law and as to whether the Appellate Court has committed any error or illegality in directing the remand.

10. The learned P.D.J. has described the conduct of enquiry by the Competent Authority as merely a half hearted attempt in the direction of probing into the issue regarding title. The respondent No. 4 who was the appellant had produced photo copies of the lease-deed purportedly executed on behalf of the Government in favour of the respondent No. 5. But the Competent Authority had not referred to those. The learned P.D.J. then referred to the fact that several documents were produced in the appeal which *prima facie* demonstrated that in the property card of these properties of the year 1932 the State Government was shown as the owner and if such was the state of affairs, it was incumbent on the part of the petitioner and the respondent No. 5 as also the other respondents to meet such strong record in favour of the State Government. The learned P.D.J. has then observed that the Competent Authority ought to have conducted detail enquiry which he failed to do. He also criticized the conduct of the Competent Authority in refusing to indulge into the enquiry by merely observing that the revenue authorities had not made him available the revenue record of the year 1916. The learned P.D.J. also observed that the Competent Authority could have exercised all his quasi judicial powers in procuring such record. He would, therefore, conclude that since there was a *prima facie* old record demonstrating that at some point of time the properties in dispute stood in the name of the State Government, the petitioner and the other respondents ought to have led sufficient evidence to rebut such record. By making such observations the learned P.D.J. lastly concluded that the Competent Authority was required to collect all such material but had failed to undertake the exercise and directed the matter to

be remanded.

11. As is mentioned herein above, even along with the affidavit in reply filed on behalf of the State Government of the present Tahsildar Jalgaon, copies of the property card of the properties in dispute have been produced (Exh. 'R1' collectively) *prima facie* showing that at some point of time the properties stood in the name of the Government. It is in view of such state of affairs, in my considered view, the Appellate Court was justified in pointing out the infirmities in the enquiry conducted by the Competent Authority, availability of the record and merely directed the matter to be decided afresh. The view taken by it is clearly a plausible view based on the peculiar facts and circumstances of the case. By no stretch of imagination can it be said to be either perverse, arbitrary or capricious so that this Court can interfere in it. Needless to state that no prejudice is likely to be caused to the petitioner merely because the matter has been remanded for fresh enquiry.

12. True it is, as has been pointed out by learned advocate Mr. Bora the fact that the petitioner has purchased these properties under a proceeding before the Debt Recovery Tribunal and it has received a sale certificate which is a conclusive proof and the dispute raised by the respondent No. 4 up to Supreme Court pressing for the dues of the employees to be cleared by the erstwhile i.e. respondent No. 5 has reached finality. It is also apparent that the respondent No. 4 has been specifically debarred from indulging in any litigation questioning the title of the petitioner as derived from the sale certificate. It is also apparent that even the Supreme Court went to the extent of prohibiting any proxy litigation at the instance of respondent No. 4 concerning the same subject matter. Consequently, the dispute as to the title vis a vis the petitioner and the respondent No. 4 has reached finality up to the Supreme Court.

13. But then, admittedly all such dispute up to the Supreme Court was

between the petitioner and the respondent No. 4 *inter se*. The State Government was not a party to that litigation and the directions of the Supreme Court do not debar it from deciding the issue under the Act. The decisions of the Supreme Court and the directions would not bind the State Government. It is not that there is absolutely no material and the State Government is acting at the behest of the respondent No. 4 albeit, he has acted as a good samiratin by initiating a proceeding under Section 4 and 5 of the Act. Even if he is bound by the directions of the Supreme Court, the Competent Authority under the Act can exercise the powers under Section 4 and 5 and can take any initiative and decide the issue arising under the provisions of that Act. In short the decisions/directions of the Supreme Court would not prohibit the enquiry by the Competent Authority under the Act.

14. The petitioner is therefore not entitled to bank upon the decision and directions while deciding the enquiry. Suffice for the purpose to observe that the constitutional validity of the provisions of this Act has been upheld by the Supreme Court in the case of **Manganlal Chhaganlal (P.) Ltd. (supra)**. It has been specifically observed that the enactment has come into being with the object that the premises belonging to the Government should be subject to speedy procedure in the matter of evicting unauthorized persons occupying them. When *prima facie*, in the matter in hand, there is some record demonstrating interest of the State Government in the properties in dispute, the enquiry needs to be conducted by the Competent Authority seriously. I do not find hesitation in subscribing to the observations and the conclusions of the Appellate Court criticizing the Competent Authority for conducting the enquiry only in a half hearted manner.

15. The Writ Petition is dismissed. The Rule is discharged.

16. Civil Application No. 8477/2020 is disposed of.

(MANGESH S. PATIL, J.)

17. After pronouncement of the judgment, the learned advocate Mr. Bora for the petitioner submits that interim relief is in operation till date and it may be extended for a reasonable time to enable the petitioner to challenge the order. The interim relief to continue for a period of five weeks.

(MANGESH S. PATIL, J.)

mkd/-