

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 3826 OF 2024

M/s. Eastern Machinery and Trading Company ... Petitioner

Versus

The State of Maharashtra, Throught Principal ... Respondents
Secretary, Revenue & Forest Department & Ors.

Mr. G. S. Godbole, Sr. Advocate a/w Ms. Anita Bhaktwani, for the
Petitioner.

Ms. S. S. Bhende, AGP for State.

CORAM: G. S. KULKARNI &
FIRDOSH P. POONIWALLA, JJ.
DATED: 15 MARCH, 2024

P.C.

1. We have heard Mr. Godbole, learned senior advocate for the petitioner and Mrs. Bhende, learned Assistant Government Pleader.
2. This petition under Article 226 of the Constitution is filed praying for the following reliefs:

“(a) That this Hon’ble Court by an appropriate Writ, Order or direction be pleased to quash and set aside the proceedings bearing Application No.45 of 2018, registered by Respondent No.4 purportedly under Section 33 of the repealed Act being Displaced Person (Compensation & Rehabilitation) Act 1954 being illegal and without authority and the same be quashed and set aside;

(b) Pending the hearing and final disposal of the Petition further proceedings in Application No. 45 of 2018 before Respondent No.4 be stayed;

(c) Such other reliefs a the nature and circumstances of the case may require;

(d) cost of proceedings be awarded to the Petitioners;”

3. The petitioner claims to be the owner of the land in question Plot No.3 adm. 19751 sq. yards and plot No.4 Adm. 11826 sq. yards in medium scale Industries Area, Shahad Railway Station, Ulhasnagar, 48 Ulhas Nagar. The said plot is stated to be conveyed in favour of the petitioner by the President of India under Displaced Persons (Compensation & Rehabilitation) Act, 1954 by a deed of conveyance dated 9 March 1962, a copy of which is annexed at **Exhibit-A2.**

4. It is the case of the petitioner that the petitioner thereafter had entered into a development agreement with one M/s. Kunal Residency and a development was undertaken as per the plan sanctioned by the planning authority. It is contended that under such development third party rights are created in the commercial and residential tenements so constructed. Such agreements with the purchasers are duly registered.

5. Mr. Godbole has submitted that on 5 March 2018 the Sub-Divisional Officer-Cum-Managing Officer, Ulhasnagar Division, Ulhasnagar-3 Dist. Thane, had passed an order directing that the land in question be taken under the category of Government Land and the possession of the same be taken over. The operative portion of the said order reads thus:

“ORDER

The property viz. Industrial Plots No. 3 and 4 i.e. Plot No.3, admeasuring 19,751 Sq. Yards and Plot No.4, admeasuring 11,826 Sq. Yards, ‘in the medium scale industries area’, located near Shahad Railway Station, Ulhasnagar-1 in Village – Ulhasnagar-1 is vested in the Government. The City Survey Officer, Ulhasnagar and Tahasildar – Ulhasnagar shall draw Panchanama in respect of the possession of the said property as per the points mentioned hereinabove and shall take an action to vest the said property in the Government and shall submit a report in respect thereof together with Possession Receipt to this Office.

Sd/- x x x x

*Administrative Officer and Sub Divisional Officer,
Ulhasnagar Division, Ulhasnagar.”*

6. It is submitted that in pursuance of the said order, a “notice” board was also put up by the said officer that no third party rights be created and/or no purchases in respect of tenements be made by any person in regard to the constructions which has undertaken. In these circumstances, the petitioner along with the developer had approached this Court in Writ Petition No. 3381 of 2018 which came to be disposed of in terms of order dated 21 March 2018, whereby, the Division Bench of this Court observed that although the order dated 5 March 2018 is not being quashed and set aside, in the absence of any legal sanction, merely on the strength of the impugned order, the Sub-Divisional Officer-Cum-Administrator could not have entered upon the property, caused the board to be displayed, as also, sealed the shops and took over the club house area and accordingly, it was accordingly directed that board be removed as also the seal of the shops be also removed. The said order passed by the Court reads thus:

“1. Heard both sides.

2. At the outset, Mr. Kamdar learned senior counsel appearing for the petitioners refers to para 24 of this petition and states that the petitioners withdraw the legal proceedings, particularly mentioned in para 24. We accept this statement, made on instructions, as an undertaking given to this court and proceed to pass the final orders on the petition.

3. At the further outset, we wish to clarify that we are not at all concerned with the competence, authority, power and jurisdiction of the statutory functionaries under the Displaced Persons (Compensation and Rehabilitation) Act, 1954, the Administration of Evacuee Properties Act, 1950 and the Maharashtra Land Revenue Code, 1966.

4. The petitioners have filed this petition challenging an order passed by the first respondent in respect of Plot Nos. 3 and 4, City Survey No. 1700-1701 situated at Sheet No. 97, Ulhasnagar - 421001 (hereinafter referred to as “the subject property”). 5. The petitioners claim that petitioner no. 1 is the absolute owner of the subject property having purchased it from the President of India under the provisions of the Displaced Persons (Compensation and Rehabilitation) Act, 1954 and Rules made thereunder. Petitioner nos. 2 and 3 are developers of the property and have put up a residential complex on a part of the subject property. After setting out the history and in relation to the statute, the allotment and referring to the

requisite documents, it is stated that petitioner no. 1 has set up a machine tool industry on a part of the land/property and part of it was used for residential purpose and further part thereof was lying vacant, on which, certain structures, which are slum like, have come into existence. The petitioners refer to a development plan for Ulhasnagar City and state that the subject property is reserved for residential user partly and partly for industrial purpose. It is stated that the petitioner no. 1 entered into a development agreement with petitioner no. 2 to develop a part of the subject land for constructing buildings of units/flats and to the extent of 13931.58 square meters. A proposal was put up for construction of eight buildings and the planning authority issued Commencement Certificate dated 4th April, 2013. Thereafter, a proposal was put up to change the user and it is stated that from 2013 to 2015, the third petitioner, as a sub-developer, constructed eight buildings and three shops and a club house. There is also a recreation ground on a part of the plot. The six buildings are of stilt plus seven floors with each building having 28 flats. Two buildings are of stilt plus seven floors with each building having 42 flats and two buildings of stilt plus one floor are complete with revised sanction obtained on 17th August, 2015. Three shops of ground plus one floor are lying ready. The club house is completed and was being used till recently. The flats in the eight buildings have been sold under the agreement styled as MOFA (Maharashtra Ownership of Flat Act) Agreement. The purchasers have occupied the flats after the application for occupation certificate has been made and according to the petitioners, there is a deemed grant of such certificate. The petitioners claim that there is no violation of any statutory rules and regulations. The petitioners have also complied with the conditions, based on which, the permission for development was granted. Then, there is a reference made to certain political developments in para 13 of the petition and in para 14, there is a reference made to a notice dated 30th November, 2017 issued by respondent no. 1 alleging breach of the terms and conditions of an order of December, 1960. There was a Sanad issued and which incorporates the terms and conditions and they have been also breached allegedly by the petitioners. Thus, after issuance of what is styled as a notice, according to the petitioners and not yet adjudicated upon, but pending, suddenly, the authority, particularly respondent no. 1 took up the case with the Sub-Registrar of Assurances by directing him not to register any documents. So far so good, the petitioners refer to both, the show cause notice dated 30th November, 2017 calling upon them to appear before the first respondent on 6th December, 2017 and this prior letter to the Sub-Registrar of Assurances. However, in paras 19 to 21 of this petition, the petitioners allege as under:-

“19. The Petitioners state that in the meanwhile also, the Respondent no. 1 has caused to be placed on the property of the Petitioners, a Board that no one should purchase the flat and the buildings are illegal although they were knowing that the buildings have been constructed as per the building plans and as per the title deed conveyed to Petitioner No. 1 by the President of India. The photograph of board is marked Exhibit 20. The

Petitioners state that with undue haste, Respondent No. 1 passed the order dated 5th March, 2018, confiscating the properties of the Petitioners to the State Government. On the very next day, the Respondent No. 1 directed his subordinates to go, attach and seal the Club and thereby preventing the members from using the pool and gym facilities. It also put up notice board that the entire property is confiscated. The copy of the order dated 5th March, 2018, is annexed hereto and marked Exhibit – J.

21. The Petitioners state that shockingly the Respondent No. 1 has passed the above cryptic order travelling beyond the scope of show cause notice and noticing that subject property is not the state property, has laid his hands on three statutes out of which two are central statutes which are repealed and on rules of state govt regarding disposal of lands which is not stated in show cause notice and ex facie is not applicable. The impugned order discloses errors apparent on the face of record and clearly show that Respondent No. 1 has acted malafide and to oblige his bosses by taking hasty action and without any justification and refused the petitioner by couching order in language that is not expected of quasi judicial authority. Further, the Respondent No. 1 has thrown temper and language of quasi judicial authority to the winds and called the petitioner as having committed crime for which there is no ground. Further, the Respondent No. 1 has displayed that Respondent No. 1 is not sure of his ground on which he intends to exercise his powers and shows his mind is fully confused. Thus, the order is without jurisdiction and without authority of law. The haste in which illegal order is sought to be executed without first serving the petitioners and giving them reasonable time to challenge the same, has been executed on the property and notice board of confiscation and sealing the club house is put up in flagrant disregard of discipline expected from quasi judicial authority exercising drastic power of confiscating properties of citizens. The Petitioner has therefore no other alternate remedy but to approach this Hon'ble Court on the following amongst other grounds and the said grounds are urged without prejudice to one another.”

6. It is only with regard to the above that this writ petition, which was mentioned yesterday, was placed “For Admission” today. We specifically inquired from Mr.Patel learned Additional Government Pleader appearing for the respondents as to how he justifies the above steps and actions. All that he would submit is that on 5th March, 2018, there is an order passed by the first respondent. He has adjudicated the show cause notice. He considered the arguments of the petitioners and has now proceeded to pass the final orders. Once these final orders are passed, then, the incidental directions, which can be and are issued, empower him to seal this property and to the extent sealed, he would also be empowered to

place a board, which informs the persons not to deal with the property any further and there was no intent to either take away the legal rights much less confiscate the property or forfeit it.

7. Once this was indicated to us and the learned AGP found it difficult to support the entering upon the property taking over the health club/gymnasium, sealing of the shops under a panchanama, particularly without giving any opportunity to the petitioners to challenge this order before a competent forum, then, we have no alternative but to allow this writ petition.

8. We do not proceed to quash and set aside the impugned order, but hold that in the absence of any legal sanction, merely on the strength of the impugned order, the first respondent could not have entered upon the property, caused the board to be displayed as also seal the shops and take over the club house area. We are informed now by Mr. Kamdar, on instructions, that when the petition was circulated for today, yesterday respondent no. 1 has removed his agents/officers and subordinates from the club house portion and permitted its usage. However, the shops continue to be sealed. We direct the first respondent, particularly in the light of the un-controverted factual allegations, to forthwith remove the seal on the shops and to cause removal of any board displayed on the property or any outside portion thereof. Both these shall be removed as expeditiously as possible and in any event on or before 23rd March, 2018.

9. We have also not been shown any justification for issuance of any letter to the Sub-Registrar of Assurances not to register any deeds in relation to the dealings and transaction about the subject property. We, therefore, direct that the Sub-Registrar of Assurances shall proceed strictly in accordance with the provisions of law, namely, the Registration Act, 1908 while registering the documents, if any, in relation to such transactions and by ignoring the contents of the letter dated 24th November, 2017. However, we clarify that our order and directions shall not preclude or prevent all concerned, including the authorities from proceeding in accordance with law. All contentions and issues in relation to such proceedings are kept open.

10. When this matter was called out in the morning session, we expected Mr. Patel to take instructions and from respondent no. 1 whether on his own he would take the corrective steps as his action is clearly high handed and arbitrary. Mr. Patel, on instructions informed this court that though these actions have been initiated and completed, it is not open now for the first respondent to take any corrective steps. Meaning thereby, respondent no. 1 cannot remove the seal or the board placed on the property on his own and he would require an order from the court in that behalf. It is in these circumstances that we are compelled to pass the above order and directions. We are aghast that these officials and styling themselves as

public servants serve the public in this fashion. They are posted to subserve and safeguard the public interest, first and last. They have to act strictly in accordance with law. It is surprising that their superiors also ignore such high handed actions and do not proceed departmentally against the officers although indicted by this court. We, therefore, direct the Collector of the District to initiate disciplinary proceedings against the first respondent for having tried to takeover the property in the above high handed manner. He shall be proceeded against by treating his act as a misconduct punishable under the Discipline and Control Rules. We direct that such action be taken as expeditiously as possible and concluded within a period of three months from today.

11. With the aforesaid directions, the writ petition is disposed of.

7. Thus, the petitioner being aggrieved by the order dated 5 March 2018 filed a revision under Section 24 of the Displaced Persons Act, before the Chief Authorised Settlement Commissioner, being Revision Petition No.3 of 2018. The revisional authority considered the contentions of the petitioner on the legality of the order dated 5 March 2018 passed by the Sub-Divisional Officer-Cum-Managing Officer, Ulhasnagar Division, Ulhasnagar and considering the rival contentions, by an order dated 5 November 2018 allowed the revision petition filed by the petitioner whereby the order dated 5 March 2018 came to be set aside.

8. It appears from the record that although the revisional authority passed the order on 5 November 2018 setting aside the order dated 5 March 2018, the Sub-Divisional Officer immediately did not pray for a stay of the said order. He filed an application dated 29 November 2018 which was almost after 24 days of the revisional authority's order on the petitioner's revision whereby, he prayed for a stay of the said order for reasons as averred in the stay application. We, however, find that the tenor of the said application would not befit a public servant and more particularly considering that this Court in its order dated 21 March 2018 (supra) had made observations on the conduct of the said officer. We say so as we find from one of the paragraphs of the stay application

filed before the Commissioner, the said officer has made a statement making a grievance on the nature of the adjudication by the High Court. We do not appreciate that the said officer could have in any manner made such remarks against the High Court's order. However, we find that on such application, on 29 November 2018 the Revisional Authority Commissioner passed an order directing that "parties to maintain status quo". The said order appears to have continued although such order was communicated later on to the petitioner on 17 January 2019. The petitioner has now filed its say to the stay application filed by the SDO and the proceedings are now stated to be pending before the Commissioner.

9. It is in this circumstances, the present petition has been filed on the apprehension that the Revisional Authority Commissioner may proceed *ex-parte* as an *ex-parte* hearing was was conducted on the earlier occasion (on 1st & 5th March 2020), however, no order is stated to have been passed on the said day. The petitioner contends that the petitioner is required to be heard by the Commissioner, on any order he proposes to pass on the Revision as filed by the Sub-Divisional Officer-Cum-Administrative Officer, Ulhasnagar.

10. In our opinion, as the proceedings are subjudice, the Revisional Commissioner needs to proceed to adjudicate the appeal / revision filed by the Sub-Divisional Cum-Administration, Ulhasnagar. after granting an opportunity of hearing to the petitioner. Let, a notice of such hearing be issued to the petitioner which shall be a minimum seven days notice and only after an opportunity of a hearing is granted to the petitioner, the Divisional Commissioner /Revisional Authority shall proceed to pass final orders considering all the materials on the record of such Revision Application.

11. Needless to observe that in the event any order adverse to the petitioner is passed by the Divisional Commissioner in the revision proceedings, the same shall not be acted upon for a period of 15 days from the communication of the said order.

12. All contentions of the petitioner including on the jurisdiction of the said officer to pass appropriate orders, are expressly kept open.

13. The Petition would accordingly stands disposed of in the above orders.
No costs.

(FIRDOSH P. POONIWALLA, J.)

(G. S. KULKARNI, J.)