



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 5151 OF 2005

Estate Cooperative Housing Society]
Limited, a Cooperative Socceity,]
duly registered under the M.C.S. Act, 1960]
bearing Registration No.NSK (NSK)]
HSG (AC) 2084/1991 having its]
office at Ram Leela Uday Colony]
Makhmalabad Naka, Panchavati,]
Nashik through its Secretary,]
Rajendra Bunage].. Petitioner

versus

The State of Maharashtra]
through its Secretary to the]
Ministry of Urban Development]
Deptment, having office at]
Mantrayala, Mumbai 400032]
(Copy for the Respondent]
to be served on A.G.P.]
Writ Cell, High Court (AS) Bombay].. Respondent.

Mr. G S Godbole for the Petitioner.
Mr. C R Sonawane AGP for the Respondent/State.

CORAM : P B MAJMUDAR &
R M SAVANT, JJ.
DATE : 18th June 2010

ORAL JUDGMENT : [PER R M SAVANT, J]

1 The lands in question in the instant Petition were of the ownership of one Khatib family. Out of the large area owned by the said

Khatib family the land admeasuring 14 H 64 R from out of Survey No. 750 was allowed to be transferred by the Collector to the Petitioners by an order dated 31st December 1993 on payment of Nazrana. The said Nazrana was paid by the Petitioners through the developer. The branches of the said Khatib family on the Urban Land (Ceiling & Regulation) Act, 1976 (for brevities sake referred to as “the said Act”) having come into force, filed statements under Section 6(1) of the said Act. In respect of holding of Gulam Gaus Khatib an order came to be passed under Section 8(4) of the said Act. In so far as holding of Gulam Jauddin Khatib is concerned, an order under Section 8(4) of the said Act came to be passed, that the said Gulam did not hold any excess vacant land and so far as branch of Mohammed Hasansaheb Khatib is concerned, an area admeasuring 3956.99 sq.mtr from out of Survey No.751 (Pt.) declared as excess vacant land vide order dated 1st November 1993. In so far as branch of Peersaheb Abdul Rehman Khatib is concerned, an order came to be passed under Section 8(4) of the said Act that the said branch did not hold any excess vacant land. There are various intervening events which had taken place, which in our view, are not relevant for the purpose of adjudication of the above petition. In so far as proceedings under ULC Act are concerned, the said orders under section 8(4) came to be modified by the fresh orders passed by the Additional Collector and

Competent Authority recomputing the case of the excess vacant lands. This was done on 11th January 1995, 13th June 1995 and 21st January 1998 and 25th May 1998 in respect of the lands held by the various branches of the said Khatib family.

2 It is the case of the Petitioners that they purchased various portions of the lands from out of the said Survey Nos.750, 751 and 755 from the original owners by the registered sale deeds pursuant to which the Petitioners were put in possession. The said purchases, according to the Petitioners were effected between 1992 and 1998. It is the case of the Petitioners that they had paid total consideration of 6,63,18,741.98 from time to time to the said land owners. It would be relevant to mention at this stage that the substantial portion of the land from the said Survey Nos.750, 751 and 755 were reserved in the final development plan of Nashik which came into force in 1993 for various public purposes. It appears that in respect of some portion of the said land, a layout was prepared and the Petitioner had obtained development permission for Plot No.22B in Final Plot No. 541 T.P.S. II Nashik. It appears that A.D.T.P. Of Nashik Municipal Corporation was pleased to grant permission for relocation of reservation No.364 for market and shop centre and reservation No.365 for primary school within final plot

No.541. It is the case of the Petitioner that it had paid substantial amount to the Nashik Municipal Corporation towards the development charges and other fees for sanctioning of the layouts. The State of Maharashtra has also granted extension to the Petitioners in the implementation of Exemption Scheme under section 20 of the ULC Act in respect of the area admeasuring 6261.16 sq.mtr from survey No.750 (part) of village Nasik to one Shri Chiraguddin Mohammedsaheb Khatib and an area admeasuring 1642.65 sq.mtr. From survey No.755 Part to Rahakbegum Mohammedsaheb Khatib. However, in the above Petition, we are not called upon to consider as to whether the said scheme under section 20 of the said Act sanctioned by the State Government survives or not in the light of the repeal of the ULC Act, as no issue arises for consideration in the present Petition as regards the said schemes.

3 It appears that much after the development as mentioned herein above had taken place that the Additional Collector and Competent Authority, ULC Nasik sent a notice to the erstwhile land owners dated 4th February 2005 indicating that the State Government has decided to take up the cases of original land owners in which orders had been passed under Section 8(4) of the said Act in revision and hence the State Government has granted stay to the various orders passed under

Section 8(4) of the Act. The communication received by the Additional Collector and Competent Authority dated 7th January 2005 addressed by the State Government to the Additional Collector was enclosed with the letter dated 4th February 2005. It appears that thereafter the State Government vide a fax message sent on 9th June 2005 to the Additional Collector and Competent Authority, Nasik, intimated that an urgent hearing has fixed before the Hon'ble Chief Minister on 14th June 2005. It is on the basis of the said fax message that the Additional Collector and Competent Authority sent a notice to some of the erstwhile owners of the lands bearing Survey Nos.750, 751 and 755 calling upon them to remain present before the Hon'bel Chief Minister on 14th June 2005 at 12.30 pm Aggrieved by initiation of the said suo moto revisional proceedings that the Petitioner has filed the above Writ Petition.

4 The principal ground on which initiation of the said proceedings under Section 34 of the said Act has been challenged is that there has been an inordinate delay in exercising revisional jurisdiction and, therefore, on the said ground the said proceedings are required to be quashed. The above writ petition had come up for admission before the Division Bench of this Court on 1st February 2006 on which date the Petition came to be admitted and interim relief in terms of prayer clause

(d) of the Petition came to be granted which is undisputedly in operation till this date. In the interregnum the Urban Land (Ceiling & Regulation) Act has been repealed by the Urban Land (Ceiling & Regulation) Repeal Act, 1999 and the said repeal Act has come into operation on 29th November 2007. In view of the fact that the said Act has been repealed, the revisional proceedings which were pending with the State Government at the relevant time now cannot be decided and therefore in view of the repeal it would have to be held that the said proceedings have abated.

5 It would be significant to note that pursuant to the order dated 9th April 2010, an affidavit has been filed by Shri Prakash Thube, Additional Collector and Competent Authority, Nashik in which affidavit in para 3 it has been stated in categorical terms that no notifications under section 10(1) and 10(3) of the said Act were issued in respect of the land in question.

6 In so far as issue as regards inordinate delay in taking recourse to the provisions relating to revision and consequential vitiation of the said proceedings on that score is concerned, the said issue is no more res-integra and is covered by the unreported judgment of a Division Bench of this Court in Writ Petition No.8571 of 2007 and companion

matters dated 12th June 2008. In the more or less identical facts where revisional powers were sought to be exercised after a considerable period of time. The Division Bench relying upon another judgment of a Division Bench of this Court in the case of Automotive Research Association of India v/s. State of Maharashtra and ors held that powers under section 34 are to be exercised by the Revisional Authority within a reasonable period and this court has held that three years would be reasonable period. The Division Bench further held that in view of the repeal of the ULC Act, no order can now be made by the Government. In the instant case as can be seen the said revisional powers were sought to be exercised after a period of 7 to 10 years of the 8(4) orders.

7 In the light of what has been held by the Division Bench as above, the instant Petition is required to be allowed and is accordingly allowed in terms of prayer clause (a).

8 Though we have allowed the Petition as above, in the intervening period certain events have occurred which we are required to deal with. In so far as portion out of survey No.750, presently forming part of final plot No.541, TDS, Nashik, an area of 2400 sq.mtrs, according to the Petitioner, was wrongly taken possession of by the Nashik

Municipal Corporation and tenements for the weaker section have been constructed on the said plot of land by the Regional Board of the Maharashtra Housing Area Development Authority. It is the case of the Petitioner that the said land was taken over without acquisition and constructed upon. This resulted in the Petitioner filing Writ Petition No. 2192 of 2007 in this Court challenging the said action of the Nashik Municipal Corporation. The said Writ Petition came to be disposed of by a Division Bench by an order dated 11th August 2008. By the said order it was directed that the Nashik Municipal Corporation would submit a proposal for acquisition of the said land which it had taken over and on such proposal being submitted, the Collector shall inform the Corporation, the approximate amount which is required to be deposited by the Corporation so that the Collector/Land Acquisition Officer shall proceed further. It appears that in terms of the said directions, the amount was deposited by the Nashik Municipal Corporation with the Collector, Nashik. Thereafter a Civil Application came to be filed being Civil Application No.520 of 2010 on behalf of the Collector, Nashik in which an order came to be passed directing the Corporation to deposit the said amount in this Court to be deposited in the above Writ Petition No.5151/2005. Accordingly the Collector has deposited the said amount in this Court in the account of the above writ petition. It is the case of

the Petitioner that in the light of our decision as above, the said amount should be directed to be given to the Petitioner.

9 In our view, it would be appropriate to remit the amount back with accrued interest to the Collector, Nashik. We accordingly direct the office to remit the amount back to the Collector, Nashik forthwith.

10 The Petitioner would be at liberty to make an application to the Collector, Nashik for claiming the said amount within a period of two weeks from date. If such an application is made by the Petitioner, the Collector, Nashik or the concerned Special Land Acquisition Officer, after carrying out enquiry, would disburse the amount in accordance with law.

11 Rule is accordingly made absolute with parties to bear their respective costs.

[R.M.SAVANT, J]

[P.B.MAJMUDAR, J]