

CIVIL APPELLATE JURISDICTION

City and Industrial Development Corporation

...Appellant

Versus

Dosu Aardeshir Bhiwandiwalla & Ors.

...Respondent

With

CIVIL APPEAL NO. 6653 OF 2008
[Arising out of SLP(c) No. 27475 of 2008
(CC No. 2044/08)]

JUDGMENT

B.SUDERSHAN REDDY,J.

1. Delay condoned in SLP(c) No. _____ of 2008 (CC No. 2044/08).
2. Leave granted.

3. On 20.04.2005 the first respondent herein filed a writ petition claiming the following reliefs:

"A) The impugned action of using the land without acquisition is unconstitutional and contrary to the provisions of Article 300-A of the Constitution of India. No state or any Authority of the State is entitled to deprive any citizen of India of property without following due process of law and without acquiring such property in accordance with law. Since the land in question is being used for CIDCO without payment of any compensation or without acquiring the same, the entire action is illegal.

B) The respondent no. 1 is being a corporation owned by the respondent no. 2 is not expected to usurp and illegally take over private land owned by the said Trust of which the petitioner is a Trustee. For such unauthorized user, the respondent no. 1 is liable to pay compensation to the Trust.

C). In the alternative, if the respondent no. 1 is not in a position to return the land, it is liable to allot alternate land to the Trust on freehold tenure."

4. The appellant herein and as well as the State of Maharashtra through its Secretary to the Ministry of Revenue and the Collector, Raigad have been impleaded as party respondents in the said Writ Petition. The first respondent/writ petitioner claims to be one of the Trustees of Sir Khan Bahadur Hormasji Bhiwandiwalla Trust (hereinafter referred to as 'the said Trust') and the writ petition itself has been filed in his capacity as Trustee. The first respondent in his writ petition pleaded that the said Trust is the owner of land bearing Gat No. 8/0 of village Belpada, Taluka Panvel, District Raigad admeasuring 19 Acres 26.4 gunthas which presently bears Survey No. 465 of village Kharghar Taluka Panvel, District Raigad admeasuring 9 Hectors 96 Aars. The entries in the revenue records according to him disclose the ownership of the said Trust in respect of the land in

question. For the purposes of implementation of New Bombay Project vast extent of lands from Panvel Taluka of Raigad district and Thane district were acquired in the year 1972 or thereabout but so far as the land in question is concerned the Trust continued to be the owner since the same were not acquired by the Government at any point of time.

5. The complaint in the writ petition was "that the CIDCO has been illegally and unauthorisedly using the said land without acquiring the same or without paying any compensation thereof." Reliance in this regard was placed upon internal correspondence between CIDCO and Government of Maharashtra and the Collector, Raigad. He is stated to have sent a representation dated 16.8.2004 to Tehsildar requiring the Tehsildar to record his name as an "heir". Having failed to receive any response from the concerned authorities he filed the

writ petition in the High Court of Bombay. The *summum bonum* of the case set up by the first respondent in the writ petition was that the appellant herein used the said land without acquiring the same depriving the Trust of its ownership and possession of the land.

6. The appellant herein filed its affidavit in reply opposing the admission of the writ petition in the High Court. In the reply affidavit the appellant inter alia pleaded that the writ petitioner has kept silent for more than 35 years and has chosen to file the writ petition with inordinate delay which itself constitutes a ground to dismiss the writ petition summarily. It was also pleaded that several disputed questions of facts are involved which cannot be satisfactorily adjudicated in a proceeding under Article 226 of the Constitution of India. In para 11 of the said reply affidavit the appellant took the plea that the land is required for the Navi Mumbai

Project. The land continued to be in its possession for the last more than 35 years. However, having taken those pleas it was also stated in the affidavit that the CIDCO "has come to know from the Government letter that this is a private land and since it is a private land, in possession of CIDCO and is required for the Navi Mumbai Project, the CIDCO is requesting to (sic;) the Government to acquire it by following due process of law."

7. The State of Maharashtra and the Collector Raigad not only failed to file their reply affidavits but their officers who were present in the court instructed the learned A.G.P., who in turn made an oral statement which is para phrased by the High Court in its judgment to the effect "the learned A.G.P. Mr. Malvankar on instructions from Mrs. Revathi A. Gaikar, Special Land Acquisition Officer, Panvel and Mr. M.N. Sanap,

Tahsildar, Panvel who are present in the court makes a statement that on consideration of the documents in their possession that except for 93 Ars they have no documentary evidence to show that rest of the land was acquired."

8. The High Court relying upon the oral statement made by the learned A.G.P. and the reply affidavit of the appellant disposed of the Writ Petition directing Collector, Raigad to take steps to acquire the land by following due procedure and complete the acquisition proceedings within one year of receiving the requisition from the appellant. The question as to whether the first respondent/writ petitioner was entitled to payment of any compensation from the appellant for occupation of the land for over a period of 35 years was left open to be agitated in appropriate proceedings.

9. Aggrieved by the order passed by the High Court dated 07.02.2006 the appellant filed Special Leave Petition (c) No./2007 (CC 2080/2007) but withdrew the same with the permission to move in review before the High Court. This Court vide order dated 08.03.2007 dismissed the Special leave Petition as withdrawn. Thereafter review petition was filed on various grounds which was also dismissed vide order dated 10.08.2007.

Hence these appeals by special leave.

10. Shri Ranjit Kumar, learned senior counsel appearing on behalf of the appellant strenuously contended that the High Court ought to have summarily dismissed the writ petition on the ground of laches and delay in as much as the respondent/writ petitioner approached the court after a period of more than 35 years of losing possession of the land. It was also submitted that number of disputed questions concerning the title of the

land in question arise for consideration which cannot be decided in a proceeding under Article 226 of the Constitution of India. The learned counsel further contended that the first respondent is guilty of suppression of material facts which itself is sufficient to dismiss the writ petition. It was submitted that the respondent was not the owner of the land at any point of time and therefore no relief could have been granted in the Writ Petition.

11. Shri R.F. Nariman, learned senior counsel appearing on behalf of the respondent contended that there is no dispute as regards the title of the respondent inasmuch as State of Maharashtra and District Collector through their officers made a statement in the open court that the land in question was not earlier acquired and the same continued to be a private land. Shri Nariman also relied on the averments made by the appellant herein in

the reply affidavit opposing the writ petition in the High Court stating that CIDCO has come to know from the Government letter that the land is a private land and therefore, it had requested the Government to acquire the land by following the due process of law.

12. We have carefully considered the rival submissions.

13. The High Court in its decision appears to have mostly relied upon the oral statement made through the learned A.G.P. and also some vague averments made by the appellant in its reply affidavit and accordingly disposed of the Writ Petition directing the acquisition of the land. The High Court did not consider as to what is the effect of the said oral statement and the averments made by the appellant in its reply affidavit. Whether such an oral statement coupled with the averments made to the effect that the land is a private land by

themselves would amount to recognising the title of the respondent? The fact remains that there is no whisper in the impugned order that Sir Khan Bahadur Hormasji Bhiwandiwalla Trust continued to be the true and absolute owner of the land possessing valid and subsisting title as on the date of the filing of the writ petition. Nor there is any finding by the High Court as regards the nature of the land which is one of the most important factor that may have a vital bearing on the issue as to the entitlement of the respondent to get any relief in the writ petition. There is also no finding that the writ petitioner who filed the Writ Petition as an individual is the trustee of the said trust and thus entitled to prosecute the litigation on behalf of the trust. The High Court did not consider as to what is the effect of filing of the Writ Petition claiming to be a trustee without impleading the trust as the petitioner. The High Court ignored the statement made by the respondent in

his Writ Petition about his representation to Tehsildar requiring to record his name as an "heir". How can an individual's name be recorded in the revenue records to be an "heir" of a trust property? The High Court never considered the effect of such a statement made by the writ petitioner in the writ petition itself. The High Court also did not consider whether the reliefs claimed could at all be granted in a public law remedy under Article 226 of the Constitution of India.

14. The High Court obviously relied upon the oral statement purported to have been made by the officers present in the court through the learned A.G.P. and considered the same to be concession as regards the title/ownership of the land in question. The appellant in its reply affidavit merely referred to a letter received by it from the Government informing it the land in question to be a private land. We fail to appreciate as to how the said statement and the averments made in the reply

affidavit amount to concession recognising the title/ownership of the land in question in favour of the respondent. Such a statement by itself cannot confer title in respect of immovable properties on any individual. The courts are not relieved of their burden to weigh and evaluate the relevancy and effect of such statements in adjudicating the lis between the parties.

15. The Writ petition was filed on 20th April, 2005 but whereas the petitioner executed the Deed of Confirmation on 13th April, 2005 describing himself as vendor in favour of Ms. Hemlata Bedi and Urmish Udani as the purchasers of the land in question. The appellant in its review application filed in the High Court pointed out that as on the date of the filing of the Writ Petition the first respondent was not the owner of the land in as much as he executed the Deed of Confirmation on 13th April, 2005 itself. When the

appellant pointed out this in its review application the High Court brushed aside the same and dismissed the Review Petition relying on the explanation offered by the writ petitioner that the writ petition was drafted much earlier to 13th April, 2005 for filing in the court on 20th April, 2005. The fact remains that the respondent never brought this fact on record during the pendency of the writ petition. The High Court ought to have considered whether there was any suppression of material facts from the court. The High Court did not consider the effect of respondent describing himself as the vendor in the Confirmation Deed which is not in tune with the recitals in the Deed of Conveyance dated 26th August, 1982. The High Court did not address to itself as to whether such complex and disputed facts could be satisfactorily adjudicated in a proceeding under Article 226 of the Constitution. The Court was carried away by the fact that the relief had already been granted

inasmuch as the acquisition proceedings have commenced after the disposal of the Writ Petition. We are constrained to express our reservation about the manner and approach of the High Court in disposing of the Writ Petition and the Review Petition.

16. In our view, the High Court ought to have examined the contents of Deed of Confirmation as well as the Deed of Conveyance dated 26th August, 1982 before granting the relief as prayed for by the respondent. It is plainly evident from the Deed of Conveyance dated 26th August, 1982 that it was executed in favour of only one person namely Ms. Hemlata Bedi as the purchaser whereas in the Deed of Confirmation the name of Urmish Udani is also shown as the purchaser along with Ms. Hemlata Bedi. It is not clear from the document as to how all of a sudden Urmish Udani's name is shown as the purchaser. The

circumstances may lend credence to the submission made by learned senior counsel for the appellant that Urmish Udani did not purchase the land but the litigation. However, we do not wish to express any conclusive opinion on the question as to whether the parties are indulging in any speculative litigation. These are the aspects which ought to have been taken into consideration by the High Court before granting relief to the respondent.

In the absence of finding on the vital issue noticed herein above no relief could have been granted to the respondent.

17. Having regard to the magnitude and complexity of the case the High Court in all fairness ought to have directed the official respondents to file their detailed counter affidavits and produce the entire material and the records in their possession for its consideration. Be

it noted the reply affidavit filed by the appellant herein obviously was confined to opposing the admission of writ petition. The writ petition was disposed of at the admission stage, of course after issuing Rule as is evident from the order : "Rule. Heard forthwith...."

18. We are constrained to confess the case has left us perplexed. The stance adopted by the State of Maharashtra and the District Collector is stranger than fiction. It is difficult to discern as to why they remained silent spectators without effectively participating in the proceedings before the Court. No explanation is forthcoming as to why they have chosen not to file their replies to the Writ Petition in the High Court. However, in these appeals the State Government as well as the appellant filed detailed affidavits disputing each and every statement and assertion of the writ petitioner made in the Writ Petition opposing grant of any relief

whatsoever to the writ petitioner. But even in this court the State of Maharashtra having filed its affidavit did not participate in the proceedings and rendered any assistance in the matter.

19. It is well settled and needs no restatement at our hands that under Article 226 of the Constitution, the jurisdiction of a High Court to issue appropriate writs particularly a writ of Mandamus is highly discretionary. The relief cannot be claimed as of right. One of the grounds for refusing relief is that the person approaching the High Court is guilty of unexplained delay and the laches. Inordinate delay in moving the court for a Writ is an adequate ground for refusing a Writ. The principle is that courts exercising public law jurisdiction do not encourage agitation of stale claims and exhuming matters where the rights of third parties may have accrued in the interregnum.

20. The appellant in its reply opposing the admission of Writ Petition in clear and categorical terms pleaded that the writ petitioner has kept silent for more than 35 years and filed belated writ petition. It was asserted that on account of inordinate delay and laches the writ petition suffers from legal infirmities and therefore liable to be rejected in limine. The High Court did not record any finding whatsoever and ignored such a plea of far reaching consequence.

21. As noticed hereinabove the High Court obviously was impressed by the oral statement made during the course of the hearing of the writ petition and some vague and self defeating averments made in the affidavit filed by the appellant in the High Court.

22. In our opinion, the High Court while exercising its extraordinary jurisdiction under Article 226 of the

Constitution is duty bound to take all the relevant facts and circumstances into consideration and decide for itself even in the absence of proper affidavits from the State and its instrumentalities as to whether any case at all is made out requiring its interference on the basis of the material made available on record. There is nothing like issuing an ex-parte writ of Mandamus, order or direction in a public law remedy. Further, while considering validity of impugned action or inaction the court will not consider itself restricted to the pleadings of the State but would be free to satisfy itself whether any case as such is made out by a person invoking its extraordinary jurisdiction under Article 226 of the Constitution. The court while exercising its jurisdiction under Article 226 is duty bound to consider whether :

- (a) adjudication of writ petition involves any complex and disputed questions of facts and whether they can be satisfactorily resolved;

- (b) petition reveals all material facts;
- (c) the petitioner has any alternative or effective remedy for the resolution of the dispute;
- (d) person invoking the jurisdiction is guilty of unexplained delay and laches;
- (e) ex facie barred by any laws of Limitation;
- (f) grant of relief is against public policy or barred by any valid law; and host of other factors.

The court in appropriate cases in its discretion may direct the State or its instrumentalities as the case may be to file proper affidavits placing all the relevant facts truly and accurately for the consideration of the court and particularly in cases where public revenue and public interest are involved. Such directions always are required to be complied with by the State. No relief could be granted in a public law remedy as a matter of course only on the ground that the State did not file its counter affidavit opposing the writ petition. Further,

empty and self-defeating affidavits or statements of Government spokesmen by themselves do not form basis to grant any relief to a person in a public remedy to which he is not otherwise entitled to in law.

23. None of these parameters have been kept in view by the High Court while disposing of the Writ Petition and the Review Petition.

24. For the aforesaid reasons, we set aside the impugned orders and remit the matter for fresh consideration by the High Court on merits. Consequently, all the notifications issued under the provisions of the Land Acquisition Act, 1894 including the award passed and the reference made to the Civil Court are set aside.

25. During the course of hearing of these appeals not only affidavits and additional affidavits but also some documents which may have a vital bearing on the merits of the case are placed on record. These affidavits and the documents filed into this court shall form part of the writ proceedings. The matter requires fresh consideration by the High Court.

26. Parties are given liberty to supplement their respective pleadings if they so choose and file additional documents, if any, which shall be received by the High Court for its consideration. We may hasten to add that we have not expressed any opinion on the merits of the case. All the contentions of both sides are expressly kept open for their determination by the High Court.

27. It will not be appropriate to dispose of the matter without one word about the conduct of the State

Government reflecting highly unsatisfactory state of affairs. We express our grave concern as to the manner in which State has conducted in this case. It is the constitutional obligation and duty of the State to place true and relevant facts by filing proper affidavits enabling the court to discharge its constitutional duties. The State and other authorities are bound to produce the complete records relating to the case once Rule is issued by the court. It is needless to remind the Governments that they do not enjoy the same amount of discretion as that of a private party even in the matter of conduct of litigation. The Governments do not enjoy any unlimited discretion in this regard. No one need to remind the State that they represent the collective will of the society.

28. The State in the present case instead of filing its affidavit through higher officers of the Government

utilised the lower ones to make oral statements and that too through its A.G.P. in the High Court. This malady requires immediate remedy. We hope the Government shall conduct itself in a responsible manner and assist the High Court by placing the true and relevant facts by filing a proper affidavit and documents that may be available with it. We also hope and trust that the Legal Advisors of the Government will display greater competence and attention in drafting affidavits.

Let not the fence eat the grass.

29. With these observations, we allow the appeals accordingly.

.....J.
(S.H. Kapadia)

.....J.
(B. Sudershan Reddy)

New Delhi;
November 14, 2008