

(2015) 6 ABR 671 : (2016) 1 BomCR 93

Bombay High Court (Nagpur Bench)

Case No: Writ Petition No. 4179 of 2015

Jai Industrial
Corporation and Others

APPELLANT

Vs

The State of
Maharashtra and
Others

RESPONDENT

Date of Decision: Oct. 14, 2015

Acts Referred:

Urban Land (Ceiling and Regulation) Act, 1976 - Section 10(1), 10(3), 10(5), 10(6), 20(1)

Citation: (2015) 6 ABR 671 : (2016) 1 BomCR 93

Hon'ble Judges: B.P. Dharmadhikari and P.N. Deshmukh, JJ.

Bench: Division Bench

Advocate: Sunil Manohar, Sr. Advocate and A.A. Naik, Advocate, for the Appellant; S.M. Uke, AGP, for the Respondent

Judgement

B.P. Dharmadhikari, J.

After hearing the respective Counsel on 27-08-2015, we have passed the following order :-

Heard Shri Sunil Manohar, Senior Advocate with Shri A.A. Naik, learned counsel for the petitioners, Shri Rao, learned AGP for respondent

Nos. 1 & 2, Shri Samarth, learned counsel for respondent Nos. 3 & 4 and Shri Kasat, learned counsel for respondent No. 5.

The learned AGP is seeking time to obtain instructions in view of the amendment carried out in the petition.

The learned Senior Advocate for the petitioners and Shri Samarth, learned counsel for respondent Nos. 3 & 4 state that the petitioners have

submitted a proposal for slight change in road alignment so that the existing plot is not divided into two separate parts. The copy of proposal

submitted on 27.07.2015 is shown to the Court by Shri Samarth, learned counsel. A map accompanying it is handed over by the learned Senior

Advocate. It is taken on record and marked as Exh."X".

The learned Senior Advocate, upon instructions, states that looking to the acute/sharp turn on left side for entry on said road after change in its

alignment, a provision for slight curve so as to smoothen it, will be considered and finalized in consultation with Nagpur Improvement Trust.

In view of the statement, we continue interim orders for a further period of two weeks. The State Government to file its reply, if any, in the

meanwhile.

The continuation of interim order is opposed by Shri Samarth, learned counsel, who states that work of road laying till the land in dispute is already

over and if the interim order is modified, the road laying can continue further with changed alignment.

We are not in a position to eclipse the defence of the State Government in any way at this stage. Hence, we continue the interim order till next

date.

2. Thereafter, the matter was adjourned from time to time to find out whether the possession of land in dispute is actually taken by respondent nos.

1 and 2 after issuance of notice under Section 10(3) of the Urban Land (Ceiling and Regulation) Act, 1976 [for short, "the said Act"].

3. It is to be noted that the learned Counsel appearing for respondent nos. 3 and 4 stated that if the possession is already taken by the State

Government the respondent nos. 3 and 4 are not required to change the alignment of public road. If the possession is not taken, the road can be

allowed to be constructed from the boundary of land in dispute as suggested and accepted by the petitioners and recorded by this Court in its

order reproduced supra.

4. Thus, only controversy to be looked into is whether before 29-11-2007 the possession of land in dispute is taken over by the State Government

after completing the formalities as contemplated by Section 10(5) of the said Act.

5. Shri Manohar, the learned Senior Counsel with Shri A.A. Naik, Advocate has pointed out from the record of the State Government that as per

the last order-sheet dated 01-11-2007, the notification under Section 10(3) was published on that day. He, however, adds that the order-sheets

from 1979 till 04-07-1989 are meticulously maintained and regularly recorded. He also invites attention to the order-sheet recorded, thereafter, to

urge that there is possibility of some interpolation. According to him, the alleged possession receipt nowhere shows that the petitioners or their

representatives have refused to hand over the possession and no panchanama was drawn. He points out that there is no notice to the petitioners to

remain present on spot for handing over the possession on any particular date and the possession receipt itself is undated. He invites attention to

the pleadings to show that non service of notice under Section 10(5) of the said Act has been specifically pleaded and there is no denial to it.

6. The learned Assistant Government Pleader has, however, relied upon the very same record and the judgment of the Division Bench of this

Court in case of Francis Joseph Ferreira and others v Additional Collector and Competent Authority and another, reported in , 2010(7) Mh.L.J.

474 , in order to demonstrate that as disputed questions of fact arise the Court should not interfere and the petitioners herein should be asked to

approach the Civil Court where the said questions can be adjudicated upon. He has also taken us through the relevant record.

7. In the judgment in case of Francis Joseph Ferreira and others (supra) on which the learned Assistant Government Pleader has placed reliance in

paragraph 3 the Division Bench has noted that on 17-03-2006, a notice was issued under Section 10(5) of the said Act to hand over the

possession of surplus vacant land on 17-04-2006, at 2.30 p.m. The petitioners therein claimed that they did not receive any such notice and the

copy of same was never pasted on their land. They procured its copy under the Right to Information Act. They pointed out that in absence of

notice neither the petitioners nor their representatives were present at site on 17-04-2006 at 2.30 p.m. when ex-parte possession was taken.

Paragraph 4 shows that on 17-04-2006 while taking ex-parte possession a panchanama was also drawn and the panchanama was executed in

presence of the witnesses.

8. It is in this background the assertion of said petitioner that he did not receive the said notice and the contention of the respondents that such

notice was served upon the petitioners and an ex-parte possession was in fact taken on 17-04-2006 has been looked into by the Division Bench.

In the background of copy of notice and the copy of panchanama which was duly executed and attested by the witnesses, a finding that disputed

questions of fact arose has been recorded.

9. In the present matter, the petitioners have specifically pleaded that they did not receive any notice to handover the possession. The office copy

of said notice is at page no.177 of record produced by the learned Assistant Government Pleader for our perusal. It is claimed that it is dated 05-

11-2007.

10. The order-sheets which appear at the beginning of record run from page no.1 to page no.16. The first order-sheet at page no.1 is of March

1979 while last order-sheet is dated 04-07-1989. That order-sheet mentions that the notification under Section 10(1) of the said Act was

published on 15-06-1989.

11. After this order-sheet on very same page i.e page no.16 next order-sheet is dated 07-07-2005. Therein, it is mentioned, that the action under

Section 10(1) was already over and a letter to the Government Printing Press for publication of notification under Section 10(3) was put up for

signature with remark that exemption under Section 20(1) was not given to those lands. Page no.17 is a computerized order-sheet in Marathi and

on it date 29-10-2007 has been put and again it is mentioned that notification under Section 10(1) was published on 15-06-1989. It again

mentions that there was no objection to proceed under Section 10(3) and the letter accordingly was put up for signature. Thus, if the letter was put

up on 07-07-2005 for signature, exercise vide order-sheet dated 29-10-2007 appears to be unnecessary duplication. Thereafter at page no.19

there is one more computerized order-sheet. It is undated and it mentions that the notification under Section 10(3) has been published in the State

Government Gazette on 01-11-2007. The date on which this order-sheet is written is not apparent and after this, there are no other orders in the

file.

12. The notice allegedly served upon the petitioners by the respondent/State for taking possession is the document at page no. 77 of the record

produced by the learned Assistant Government Pleader (mentioned supra) for our perusal. In this background, the respondent nowhere specifically

states that the said notice was sent to the petitioners with particular outward numbers and it has been served on them on any particular date.

Because the respondents say that notice is dated 05-11-2007 it is treated as notice dated 05-11-2007. The space for date of vesting is left blank.

The date fixed for taking possession and to be communicated to the petitioners is also blank. The said notice at page no.177 is not a carbon copy

but it is original which bears original signature of the Additional Collector without any date at two places.

13. This notice is also to be forwarded to the Tahsildar, Nagpur for information and necessary action. The Tahsildar was requested to take over

the possession from the petitioners and to report the office of the Additional Collector immediately. There is no report of Tahsildar accordingly.

The respondents are not in a position to point out the date on which said notice dated 05-11-2007 was served upon the office of the Tahsildar.

14. Thereafter, at page no.179 there is ""final remark"" and at page no.181 there is a photocopy of said map which mentions the land as retained by

the petitioners and other details. At page no. 182 there is possession receipt. The possession receipt is a proforma receipt in which the name of the

petitioner is written by hand as person delivering the possession and the name of the Tahsildar, Nagpur (supra) is already printed as person taking

over the possession. The description of the land and its area is also mentioned in handwriting, however, it is not signed by the person taking over

the possession or person handing over the possession. There is no date upon it. At the bottom there is remark ""there is refusal to handover the

possession. Possession taken ex-parte. Sd/-"" The person who has signed this endorsement has not been identified by the respondents in the reply-

affidavit. The officer who has produced the record in Court is not in a position to identify that person. Said person also has not placed any date

below his signature.

15. The possession receipt mentions that it is as per the orders of the Additional Collector dated 16-10-2007. In entire record, file or order-sheet,

there is no reference to any such order of the Collector dated 16-10-2007. When notification under Section 10(3) was published on 01-11-2007,

it is apparent that there could not have been orders of the Collector on 16-10-2007 authorizing the Tahsildar to take possession.

16. We, therefore, find that the alleged possession receipt as also the alleged notice dated 05-11-2007 are not genuine and the contention that the

said notice was served upon the petitioner is not correct. The contention that the possession has been taken also is not correct. The stand of the

petitioners on affidavit before us that they have never lost the possession and even today enjoy the possession of the entire property is fortified. In

view of this finding, it is not necessary for us to consider the provisions of Section 10(6) of the said Act which contemplate the situation in which

the possession can be taken ex-parte. We find that the effort of the learned Assistant Government Pleader to urge that the disputed questions of

fact arise is without any merit. The reliance placed upon the above said judgment is unwarranted. In this situation, though we are inclined to

proceed further in the matter against the respondents, we grant request made by the learned Assistant Government Pleader and with caution that

such record or defence should not be put up casually, we close this aspect.

17. We accordingly, quash and set aside the notice dated 17-07-2015. Same is subject to the arrangement as noted in order dated 27-08-2015.

The petitioners state that respondent nos. 3 and 4 shall be placed in possession of land as pointed out in green line (Exhibit-X) on record of Writ

Petition by evening of 15-10-2015.

18. We have already made observations about sharp/acute turn in order dated 27-08-2015. We direct the petitioners as also the respondent nos.

3 and 4 to act as per those observations to avoid the sharp/acute turn and to reduce the angle thereof. Accordingly, subject to this, we make rule

absolute in terms of prayer clause (A1) of the Petition. No costs.