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Omprakash V. Dube Vs State Of Maharashtra Through Government Pleader And 3 Ors

Court: Bombay High Court

Date of Decision: April 4, 2019

Acts Referred: Maharashtra Slum Areas (Improvement, Clearance And Redevelopment) Act, 1971 â€" Section 3C, 3C(1), 3C(2), 35
Securities And Exchange Board Of India Act, 1992 â€" Section 15Z, 24, 26

Hon'ble Judges: S.C. Gupte, J

Bench: Single Bench

Advocate: Milind Sathe, Mayur Khandeparkar, Hamid Mir, Ashutosh Malvankar, S.B. Gore, Shankar P. Thorat, Arun Panicker

Final Decision: Dismissed

Judgement

S.C. Gupte, J

1. This writ petition challenges an order passed by Slum Tribunal (Ã¢â‚¬Å“TribunalÃ¢â‚¬) constituted under Maharashtra Slum Areas (Improvement,

Clearance and Redevelopment) Act, 1971 (Ã¢â‚¬Å“Slum ActÃ¢â‚¬). By the impugned order, the Tribunal rejected the application of the Petitioner

(Respondent No.2 before it) filed in an appeal of Respondent No.3 to the present petition, who is the owner of the property, which is declared as a

slum, challenging its jurisdiction to hear the appeal under Section 3C(2) of the Slum Act.

2. The petition raises a pure question of law, namely, whether an appeal filed by any person aggrieved by an order of Chief Executive Officer, SRA

declaring any land as a slum rehabilitation area under Section 3C(1) of the Slum Act, which is pending on the date of the Amending Act, namely,

Maharashtra Act No.XXXVIII of 2018, is liable to be transferred to, and heard by, Grievance Redressal Committee constituted under Section 35 of

the amended Slum Act.

3. The Petitioner is the Chief Promoter of Sahyog SRA Cooperative Housing Society (Proposed). He had originally filed an application before CEO,

SRA for declaration of the lands bearing CTS Nos. 355(Part), 355/267 to 307, 355/352 to 356, 355/411 to 355/443, 491(Part), 491/1 to 4, 512(Part),

512/62, and 512/63 at Borivali in Mumbai, admeasuring about 5214.2 sq.mtrs., as a slum area under Section 3C(1) of the Slum Act. By his order dated

17 June 2017, CEO, SRA made the requisite declaration. Respondent No.3 herein, who claims to be the owner of the property, filed an appeal,

bearing Appeal No.9 of 2017, before the Tribunal. The Petitioner filed an application in that appeal raising objection to the jurisdiction of the Tribunal

citing amendment to the Slum Act by Maharashtra Act No.XXXVIII of 2018, by which Section 3C was substituted. The amended Section provided

for appellate powers of Grievance Redressal Committee, in substitution of the Tribunal, over a declaration issued by the Chief Executive Officer under

Section 3C(1). The Tribunal, by its impugned order passed on 10 December 2018, rejected the Petitioner's application concluding inter alia that the

Tribunal had jurisdiction to entertain and try the appeal. Being aggrieved, the present writ petition is preferred by the Petitioner.

4. Dr. Sathe, learned Senior Counsel appearing for the Petitioner, submits that change of forum for entertaining an appeal under Section 3C(2) of the

Slum Act, being a mere procedural change, has retrospective application. Learned Counsel submits that every procedural amendment is presumed to

be retrospective in nature unless the amending statute expressly or impliedly provides otherwise. Learned Counsel contends that though generally

Ã¢â‚¬Å“change of forumÃ¢â‚¬ is procedural and formal, it is more so in the present case; there is every indication in the amending statute, read as a whole in

the present case, that the amendment was merely procedural. Learned Counsel, in the premises, submits that though there are no transitory provisions

requiring transfer of pending appeals from the Tribunal to the Grievance Redressal Committee, the new appellate forum under Section 3C(2) of the

Slum Act, by the very force of the Amending Act, the pending appeal cannot be heard by the Tribunal and would have to be necessarily transferred to

the Grievance Redressal Committee. On the other hand, learned Counsel for the contesting Respondent (Respondent No.3) as well as learned

Counsel for Respondent No.2 (SRA) submits that even if this amendment, bringing about a change of forum, were to be treated as procedural, since

the remedy has already been availed of by the aggrieved party by filing an appeal, the right of appeal ought to be treated as a crystallized or vested

substantive right and the forum entertaining the appeal under the unamended law, namely, the Tribunal, would continue to have jurisdiction.

5. Section 3C, as it stood prior to its amendment, and as it now stands, post the amendment by Maharashtra Act No.XXXVIII of 2018, is quoted

below :

PreÃ‚â€‹amendment Section 3C:

(1) As soon as may be, after the publication of the Slum Rehabilitation Scheme, the Chief Executive Officer on being satisfied that circumstances in

respect of any area, justifying its declaration as slum rehabilitation area under the said scheme, may by an order published in the Official Gazette,

declare such area to be a Ã¢â‚¬Å“slum rehabilitation areaÃ¢â‚¬. The order declaring slum rehabilitation area (hereinafter referred to as Ã¢â‚¬Å“the slum

rehabilitation orderÃ¢â‚¬â€‹) shall also be given wide publicity in such manner as may be specified by the Slum Rehabilitation Authority.

(2) Any person aggrieved by the slum rehabilitation order may, within four weeks of the publication of such order prefer an appeal to the Special

Tribunal; and the decision of the Special Tribunal shall be final.

Post Amendment Section 3C:

(1) As soon as may be, after the publication of any Slum Rehabilitation Scheme, the Chief Executive Officer on being satisfied about the

circumstances in respect of any land, whether or not previously declared as slum area, justifying its declaration as the Slum Rehabilitation Area which

may include community economic activity area, for implementing the Slum Rehabilitation Scheme, shall after giving the land owners, including any

public authorities or local bodies under the State Government constituted under any law enacted by the State Legislature, thirty days notice and after

giving a reasonable opportunity of being heard, by an order published in the Official Gazette, and thereafter within fortyÃ‚five days, declare such land

to be a Ã¢â‚¬Å“Slum Rehabilitation AreaÃ¢â‚¬. The order declaring the Slum Rehabilitation Area (hereinafter referred to as Ã¢â‚¬Å“the slum rehabilitation

orderÃ¢â‚¬), shall also be given wide publicity in such manner as may be specified by the Chief Executive Officer of the Slum Rehabilitation Authority.

Thereafter, notwithstanding anything contained in any law for the time being in force, in such Slum Rehabilitation Area, the permission or the No

Objection Certificate of the land owning authority or agency shall not be required :

Provided that, only in respect of any land which is required for Vital Public Project purpose, as per orders of the State Government and where the

State Government either directly or through any public authority has undertaken the responsibility of relocation and rehabilitation of the protected and

other occupiers of the building, then the Chief Executive Officer shall, exclude the land required for Vital Public Project from the Slum Rehabilitation

Area and issue an order to omit such land from the Slum Rehabilitation Area. Where the State Government either directly or through any public

authority has undertaken the responsibility of relocation and rehabilitation of the protected and other occupiers of the building, such public authority

shall prepare the Scheme of such rehabilitation or relocation and get it approved by the Chief Executive Officer within the period specified in the

Scheme which shall not be more than ninety days.

(2) Any person aggrieved by the order of the Chief Executive Officer may, within thirty days of the publication of such slum rehabilitation order,

prefer an appeal to the Grievance Redressal Committee. The decision of the Grievance Redressal Committee in such appeal shall be final.

6. The argument of Dr. Sathe is that several important amendments have been brought to the Slum Act by the 2018 Amendment. Learned Counsel

submits that the meaning of the expression Ã¢â‚¬Å“slum clearanceÃ¢â‚¬ has itself undergone a substantial change under the Amendment of 2018. Learned

Counsel submits that having regard to these amendments, and particularly, the amendment to Section 3C, as it stood prior to 2018, it is clear that the

remedies thereunder have to be in accordance with the provisions of the amended law. It is in this light that learned Counsel advances the argument of

change of forum being a procedural alteration introduced by the Amending Act.

7. The Supreme Court as well as various High Courts in India have discussed the nature of amendments to statutes, whether substantive or

procedural, and their effect on the remedies, both yet to be availed of and those already availed of, in several judgments. As the Supreme Court has

explained in the case of Videocon International Ltd. vs. SEBI (2015) 4 SCC 214 w, hilst dealing with amended Section 15Ã‚Z of SEBI Act, by which

appellate remedy before the High Court of an aggrieved person against an order passed by the Securities Appellate Tribunal was altered by providing

an appeal before the Supreme Court, right of appeal can only be availed of when it is expressly conferred. In that sense, the provision for appeal is

always substantive, though forum of such appeal may be a matter of procedure. As observed in New India Assurance Co. Ltd. vs. Shanti Misra

(1975) 2 SCC 840, the provision of appeal being a substantive provision, an aggrieved party may have a Ã¢â‚¬Å“vested right of actionÃ¢â‚¬, but there is no

Ã¢â‚¬Å“vested right of forumÃ¢â‚¬; unless by express words the new forum is available only for causes of action arising after the change of forum, the

general rule is to apply such change retrospectively. The aggrieved party, after such change of law, must go before the new forum, even if the cause

of action has arisen before the change of forum. There is, however, one exception. In case the change of law does not simply introduce a change of

forum, but substantially alters the nature or extent of the remedy, it may be possible to treat the change as a whole (i.e. including the change of forum)

as a substantive change and apply it prospectively, unless, of course, a contrary intention is found in the amending law either expressly or by necessary

implication. This has been explained by the Supreme Court in Videocon International's case.

The Court noted in that case that generally, when a statute confers a right of appeal, it also lays down parameters of such right. The right may be

absolute, that is to say, without any limitation, or it may be a limited right. In this sense, appeals are a matter of a package. If whilst altering the

package, what is changed is merely the forum for entertaining the appeal, the change may be considered merely procedural. If, on the other hand, not

merely the forum but the limitations provided for such appeal are altered, the change would be a substantive change. In such a case, the right of

appeal may be treated as a vested substantive right. In Videocon International (supra), the Supreme Court was concerned with amended Section 15Ã‚â€‹â€■

Z of SEBI Act. Section 15Ã‚Z, as it originally stood, provided for the right of an aggrieved party to challenge any decision or order of Securities

Appellate Tribunal before the High Court on any question of fact or law arising out of such order. SEBI Amendment Act, 2002 amended Section

15Ã‚Z so as to provide for appellate remedy before the Supreme Court from any decision or order of SAT only on any question of law arising out of

such order. The Supreme Court was called upon to consider not just the maintainability of appeals pending before the High Court as of the date of the

Amendment Act, 2002, but even appeals filed thereafter before the High Court. In its order impugned before the Supreme Court, the High Court had

held that only the pending appeals before the High Court (i.e. pending as at the date of the amending statute) were maintainable, but not the appeals

filed subsequently. The Supreme Court held that even in the absence of a saving clause, not only were appeals pending before the High Court as on

the date of the amendment, but even appeals to be filed thereafter were saved. The Court held that the amendment to Section 15Ã‚Z, having not just

introduced a change of forum, but in fact reduced the appellate package (the appellate right now being limited only to questions of law), adversely

affected the vested appellate right of the aggrieved party; the right of appeal being a vested right, the appellate package, as was available at the

commencement of proceedings, would continue to vest in the parties engaged in a lis till the eventual termination of the proceedings.

8. That is, however, one aspect of the matter. The other aspect is, what happens in a case where the remedy has already been availed of before the

change in law occurred. Whether or not the appeal provision has been altered as a matter of package or whether it is altered simply in terms of

change of forum, once the appellate forum under the old law has been approached by the aggrieved party, it becomes a vested right in such party and

unless there are clear indications in the statute to the contrary, either in the repeal or the saving clause or in the amended provision itself, the appellate

forum under the unamended provisions would continue to exercise jurisdiction.

9. This was explained by the Supreme Court in the case of Securities And Exchange Board of India vs. Classic Credit Limited

(2018) 13 Supreme Court Cases 1. That was a case, where the Court was considering the amended provisions of Sections 24 and 26 of the Securities

and Exchange Board of India Act, 1992, which, respectively, provided for offences under that Act and their cognizance by courts. Section 26 inter alia

provided that no court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of First Class shall try any offence punishable under the

Act. Before the particular trial could commence in the case before the Supreme Court, Sections 24 and 26 were amended. Amended Section 26 inter

alia provided that no court interior to that of a Court of Session could try any offence punishable under the Act. The Court was concerned with an

offence committed under the Act prior to the amendment of Sections 24 and 26, and of which cognizance was taken but trial had not commenced.

The Supreme Court held that the legal position expounded by it in a large number of cases, including New India Insurance Co. Ltd. vs. Shanti

Misra (1975) 2 SCC 840, Securities and Exchange Board of India vs. Ajay Agarwal (2010) 3 SCC 765, and Ramesh Kumar Soni vs. State of Madhya

Pradesh (2013) 14 SCC 696, was clear and ambiguous, namely, that every procedural amendment was presumed to be retrospective in nature unless

the amending statute expressly or impliedly provided otherwise; and also that change of forum for a trial was procedural, and normally, following the

above proposition, it would be presumed to be retrospective in nature unless the amending statute provided otherwise. Dr. Sathe places heavy reliance

on these observations of the Supreme Court. However, it is important to note that these observations are in the context of amended provisions of law,

which provided that no court inferior to a court of session would try an offence punishable under the Act. The trial not having commenced, the court

was of the view that alteration in the procedural provisions concerning a trial of an offence was retrospective and applied to offences already

committed prior to the amendment. So far as remedies availed of prior to the amendment are concerned, the Supreme Court made important

observations in paragraphs 54 to 56 in the following words:

Ã¢â‚¬Å“54. From a perusal of the conclusions drawn in the above judgments, we are inclined to accept the contention that change of Ã¢â‚¬Å“forumÃ¢â‚¬ could

be substantive or procedural. It may well be procedural when the remedy was yet to be availed of but where the remedy had already been availed of

(under an existing statutory provision), the right may be treated as having crystallised into a vested substantive right.

55. In the latter situation referred to (and debated) in the preceding paragraph, where the remedy had been availed of prior to the amendment, even

according to learned counsel for the private parties, unless the amending provision by express words, or by necessary implication, mandates the

transfer of proceedings to the Ã¢â‚¬Å“forumÃ¢â‚¬ introduced by the amendment, the Ã¢â‚¬Å“Ã¢â‚¬Ëœforum Ã¢â‚¬ postulated by the unamended provision, would continue

to have the jurisdiction to adjudicate upon pending matters (matters filed before amendment). In view of the above, we are of the considered view,

that no vested right can be claimed with reference to Ã¢â‚¬Å“forumÃ¢â‚¬, where the concerned court, had not taken cognizance and commenced trial

proceedings, in consonance with the unamended provision.

56. Insofar as the matters where proceedings had already commenced before the amendment, change of Ã¢â‚¬Å“forumÃ¢â‚¬ for trial came into effect, it is

apparent from the judgments referred to in the preceding paragraph, that the general principle is that a law which brings about a change in the

Ã¢â‚¬Å“forumÃ¢â‚¬, does not affect pending actions, unless intention to the contrary is clearly shown. What needs to be determined with reference to the

2002 Amendment Act, as well as, with reference to the 2014 Amendment Act is whether an intention to the contrary was expressed therein so as to

alter the Ã¢â‚¬Å“forumÃ¢â‚¬â€‹, where proceedings were pending. And to bring such proceedings to the Ã¢â‚¬Å“forumÃ¢â‚¬â€‹ contemplated by the amendment.Ã¢â‚¬â€‹

10. The aforesaid exposition of law makes it abundantly clear that the question whether a change of forum is substantive or procedural, is not to be

considered in a vacuum. The nature of the change, whether substantive or procedural, would depend on availment of the remedy. If a remedy is yet to

be availed of, the change of forum may be treated as purely procedural but where the remedy has already been availed of under an existing statutory

provision, the right may be treated as crystallized into a vested substantive right. Unless the law, which brings about a change in the forum pending an

action, clearly expresses a contrary intention in it, the forum under the existing law, before which the remedy has been availed by the aggrieved party,

continues to have jurisdiction.

11. There is nothing in the amending law in the present case (neither in a saving or repeal clause nor in any other provision) to suggest that the

intention of the legislature whilst introducing the amendment of change of forum in Section 3C was to make the amendment applicable even to pending

appeals. If anything, the intention is to the contrary. SubÃ‚section (2) of Section 3C provides for preferring of an appeal. Under subÃ‚section (2), an

aggrieved person may prefer an appeal to the forum named therein within thirty days of the publication of declaration of the slum rehabilitation area

under subÃ‚â€‹section (1) of Section 3C. It is not possible to suggest that an appeal should be preferred before the new forum provided in amended subÃ‚â€‹â€■

section (2) within thirty days of the order passed under subÃ‚section(1) of the old provision. In case there is no appeal preferred under subÃ‚section (2)

by the time the law was amended, the remedy of an aggrieved person would be before the new forum. In that sense, the amendment is procedural. It

does not create any vested right in the aggrieved party to go before the earlier forum. But once an aggrieved person files an appeal before the original

forum, availing of his remedy under the unamended law, his right gets crystallized into a vested right of appeal and is only to be agitated before that

forum, there being nothing in the amending statute to suggest a contrary intention.

12. In the premises, there is nothing wrong with the impugned order of the Tribunal. The Tribunal continues to have jurisdiction insofar as the appeal

filed by Respondent No.3 is concerned. The writ petition is, accordingly, rejected. No order as to costs.

13. Since the appeal has been pending before the Slum Tribunal from July 2017, the Tribunal is requested to dispose of the appeal as expeditiously as

possible and preferably within a period of three months from this order being pointed out to it. Either party may bring this order to the notice of the

Slum Tribunal.