

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO. 245 OF 2016
(Arising out of SLP (C) No.16442 of 2013)

State of Maharashtra & Anr. ... Appellants

VERSUS

Bhausahab Baban Barate & Ors. ... Respondent

O R D E R

Leave granted.

Grieved by the order dated 20.12.2011 passed by the Division Bench of the High Court of Judicature at Bombay in Writ Petition No.7418 of 2010, the State of Maharashtra has approached this Court in appeal by way of special leave.

The factual matrix lies in a narrow compass. Certain land belonging to the respondents was declared surplus. Thereafter, an application was filed under sub-section (1) of Section 20 of the Urban Land (Ceiling and Regulation) Act, 1976 (for brevity, 'the Act') for development of the land under a scheme. Later on, an application was filed for exemption under Section 20(1)(a) of the Act for development of the land which comes within the ambit and sweep of the said provision. In column 5 of the schedule to the said scheme, the following Khata properties were mentioned :-

"Pune Haveli Warje
11/2/2/, 140/4, 81/3(pt.),
81/2, 116/10/1, 116/8/1,

140/3."

After the exemption order was passed, the respondents filed an application before the Pune Municipal Corporation seeking development permission in relation to survey numbers, namely 81/2 and 81/3(pt.) along with another survey numbers which do not belong to the respondents. The Corporation declined to grant the permission.

After the Corporation declined the grant of permission, the respondents filed an application before the State Government to release Khata No.81/2 and 81/3(pt.) from the surplus land on the ground that it is a no access to the land. The Government, vide order dated 02.08.2010, declined the prayer.

Being grieved by the aforesaid, the respondent preferred the writ petition. The High Court took note of the fact that there is no access to the land and in that background opined that it has to be treated as such land which is not liable for vesting and accordingly set aside the order passed by the Government and directed that the land in question should be released in favour of the respondent by treating them as not surplus lands.

It is submitted by Mr. Nishant Katneshwarkar, learned counsel appearing for the State that the respondents have filed exemption under Section 20(1)(a) of the Act and, therefore, it was obligatory on their part to comply with the terms and conditions stipulated by the State Government while granting exemption. It is urged by him that the determination of the surplus land was not assailed by the

respondents at any point of time and, therefore, they are not entitled in law to raise the point of the status and character of the land after availing exemption under Section 20(1)(a) of the Act.

Mr. V. Giri, learned senior counsel appearing for the respondents would submit that the order passed by the High Court is absolutely justified and there is no warrant for interference for the land in question is really land locked and, therefore, cannot be declared as surplus.

The core issue that really emerges for consideration is whether after the availing the benefit of exemption by indicating that the respondents are land holders and would develop the land formulating a scheme detailing certain plots, can put forth the claim for the land to be released. The availing of exemption was on the basis of a particular factual basis and, therefore, the respondents could not have changed the factual foundation. That apart, the issue of raising the status of the land, in our considered opinion cannot be taken recourse to after availing the exemption. Therefore, we find that the High Court, having not taken note of these aspects, has committed error in law and hence, the order passed by the High Court is set aside.

In course of hearing, we have been apprised that the exemption granted in favour of the respondents is still in vogue. The only impediment on the part of the respondents is to avail the access land to the land covered under the scheme. We think in fitness of

things, adequate time should be granted to the respondents to make the scheme operative by getting the access land. We may hasten to clarify that he may add his own land or purchase land or otherwise make available from any other adjacent or nearby owners of the lands. The real purpose is that the scheme is to be worked out and there has to be access of land. We are inclined to think so as the State Government has not yet taken any action under Section 20(2) of the Act. To enable the respondents to make the land available and to workout the scheme, we grant time till the end of December 2017.

The date fixed by us is to make the land available and to apply to the Corporation for permission for development. If the situation so demands, the State Government can further extend the time. Needless to emphasise, if within the time frame, appropriate action is not taken, the State Government is at liberty to take steps as advised in law.

The appeal is allowed to the extent indicated above. There shall be no order as to costs.

.....,J.
(Dipak Misra)

.....,J.
(Uday Umesh Lalit)

New Delhi;
January 12, 2016.

ITEM NO.21

COURT NO.4

SECTION IX

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (C) No(s). 16442/2013

(Arising out of impugned final judgment and order dated 20/12/2011
in WP No. 7418/2010 passed by the High Court of Bombay)

STATE OF MAHARASHTRA & ANR.

Petitioner(s)

VERSUS

BHAUSAHEB BABAN BARATE & ORS.

Respondent(s)

(With interim relief and office report)
(For Final Disposal)

Date : 12/01/2016 This petition was called on for hearing today.

CORAM : HON'BLE MR. JUSTICE DIPAK MISRA
HON'BLE MR. JUSTICE UDAY UMESH LALIT

For Petitioner(s) Mr. Nishant Ramakantrao Katneshwarkar, AOR
Mr. Arpit Rai, Adv.

For Respondent(s) Mr. V. Giri, Sr. Adv.
Mr. M.D. Adkar, Adv.
Mr. Braj K. Mishra, Adv.
Mr. Dhaval Deshpande, Adv.
Mr. Abhijat P. Medh, Adv.

UPON hearing the counsel the Court made the following
O R D E R

Leave granted.

The appeal is allowed to the extent indicated in the signed
order. There shall be no order as to costs.

(Gulshan Kumar Arora)
Court Master

(H.S. Parasher)
Court Master

(Signed order is placed on the file)