

The Collector, Mumbai City vs M/S Redstone Realtors . Through Its ... on 22 January, 2020

Author: Hrishikesh Roy

Bench: R. Banumathi, A.S. Bopanna, Hrishikesh Roy

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IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.577 OF 2020
(Arising out of SLP(C) NO.5319 OF 2017)

THE COLLECTOR, MUMBAI CITY

VERSUS

M/S REDSTONE REALTORS
THROUGH ITS DIRECTOR & ANR.

O R D E R

HRISHIKESH ROY,J.

Leave granted.

2. The challenge in this appeal is limited to the adverse remarks recorded against the Collector, Mumbai, city in the Writ Petition (L) No. 3086 of 2016 where the appellant was the respondent no. 2 before the High Court of Judicature at Bombay. The writ petition filed by the respondent M/s. Redstone Realtors challenged the Collector's letter dated 10.5.2016 (Annexure P-4) restraining registration of documents of certain Government land in Mumbai city and also the demand letter dated 15.10.2016 (P-5) seeking to recover alleged unearned income, by M/s. Redstone Realtors through assignment of land leased out by the Government. The property at survey no. 412 in Mazagaon area, Mumbai was leased out for 99 years with effect from 01.09.1903 to Shri Aga Shamsuddin Shah and Reason: Ors. The original lease expired on 31.08.2002. At that stage, the property was in possession of M/s. Steelage Industries Ltd. (formerly M/s. Gunnebo India Ltd.). After lease had expired M/s. Gunnebo India Limited executed a deed of assignment in favour of M/s. Redstone Realtors and registered the assignment deed on 13.09.2006, for consideration of Rs.22.00 crores. The transaction of assignment and registration of the assignment deed was concluded, without the necessary approval from the Government.

3. During audit scrutiny of the file (No. LND 2647) relating to the above transaction, it was noticed that the deed of assignment in favour of M/s. Redstone Realtors was registered on 13.9.2006 after lease had expired on 31.8.2002. In the process, the assignee had secured unearned income. Considering the transaction value of Rs.22.00 crores, recovery of Rs.16.50 crore (75% of Rs.22 crore) was found justified in the audit report (P-3).

4. The appellant after joining as Collector Mumbai city on 02.05.2016, learnt of the audit report which prompted her to initiate action. She then issued the communication dated 10.05.2016 where it was noticed that in Mumbai City, around 691 government properties leased out to various bodies/groups/individuals, have been re-assigned without permission of the authorities. Accordingly, the Collector issued a general order to the Revenue Authorities to decline registration of documents relating to such properties. In the second communication on 15.10.2016, the Collector sought to recover Rs.16.50 crores from the respondent/assignee.

5. Aggrieved by the above communication(s) of the Collector, the respondent(s) filed writ petition in Bombay High Court. The Division Bench even while noticing the basis of the impugned action found that the Collector was over-enthusiastic in directing the registering authorities to stay registration of documents and making revenue demand upon the assignee. The Division Bench while commenting on the action of the Collector used disparaging words impacting the dignity and the reputation of the government officer and that is how the present appeal is filed to expunge the damaging comments in paragraph 15 and the suggested action against the appellant in paragraphs 17 and 18 of the impugned judgment.

6. Mr. Sidharth Bhatnagar, learned senior counsel appearing on behalf of the appellant submits that the Collector had acted within her executive power on the basis of the Audit Report dated 13.01.2012 (Annexure P-3) and she never had any mala fide intention in proceeding against the beneficiary of the subsequent assignment. He contends that the High Court should have exercised self-restraint in commenting on the conduct of the appellant as such comments will irreparably harm and damage the reputation of the honest officer.

7. Mr. Huzefa Ahmadi, learned senior counsel appearing on behalf of the respondents at the outset clarifies that while the initial 99 year lease had expired on 31.08.2002, a right of renewal was available and subsequently the lease on the land was extended by the Revenue Minister on 06.09.2007. He however submits that the strong remarks against the Collector could have been avoided by the bench and those can be deleted.

8. The State of Maharashtra is also a respondent in this appeal. Representing them Mr. Rahul Chitnis, learned counsel submits that since the primary concern of the State is to seek recovery of the escaped revenue, from the respondent the State has filed the SLP(C) No. 8357/2017 challenging the merit of the judgment dated 18.01.2017 in Writ Petition No. 3086 of 2016. On the disparaging remark recorded against the Collector, Mr. Chitnis submits that those can be expunged.

9. In the context of the damaging comments recorded in the impugned judgment, it needs to be said that service of justice would be better served in avoiding intemperate and unnecessary comments on

the conduct of the parties appearing in the court. In similar circumstance, in P.K. Dave vs. Peoples' Union of Civil Liberties (Delhi)& Ors.¹ this Court had made the following relevant observations:

“9.....
It is also a cardinal principle that a Judge should take special care in making disparaging remarks against a person or authority whose conduct comes in for consideration before him in any case to be decided by him and should not make any uncalled for remarks which would be against the judicial discipline. If the relief sought for can be given to the applicant without dubbing the conduct of the person concerned to be mala fide then the court should refrain from coming to any conclusion on mere assertions inasmuch as the allegations of mala fides have to be specifically made and would have to be established by the person who seeks relief on that ground. To avoid harsh words and intemperate language and to have self-restraint is a part of judicial training of a Judge and, therefore, a Judge should be extremely careful while commenting upon the conduct of another individual particularly when that individual is not before the court.
.....”

1 (1996) 4 SCC 262

10. In the instant case, the Collector, Mumbai City decided to act on the basis of the Auditor's Report (Annexure P-3). The Division Bench however found that the Collector failed to adhere to the principles of natural justice while proceeding against the respondent. For this reason principally, the Collector, who is the custodian and trustee of public land, was found to have fallen into an error. This was the basis to adversely comment on the conduct of the Collector. But in doing so, the court failed to appreciate the impact of their castigation on the career and reputation of the officer who was simply discharging her responsibility.

11. It must also be noted that the registration of the assignment of the leased land in favour of the respondent was done on 13.09.2006, whereas the Minister's order extending the lease came to be passed only on 6.09.2007, well after expiry of the 99 years lease on 31.08.2002. When we consider the totality of the circumstances and more particularly the Audit Report (Annexure P-3), it is quite apparent that the Collector as the custodian was trying to protect Government property and was making effort to recover Government revenue and she had no malafide intention. The appellant had exercised her executive power and the High Court should have been conscious that inaction of the Collector in the face of the Audit Report, would have shown her to have abdicated her responsibility. Therefore, in the absence of any dishonest intention or extraneous motive, the High Court could have avoided the damaging comments on the appellant's conduct. When inaction of the Collector in the face of the audit report could be perceived as abdication of responsibility, the Collector should not have been ordered to be made personally responsible for interest on the refund to be made over to the respondent.

12. In view of the foregoing, we are of the considered view that the adverse remarks recorded in paragraphs 15 against the Collector and the action proposed against her in paragraphs 17 and 18, would merit interference. Those offending portions touching on the conduct of the appellant is

ordered to be struck down and expunged. But even while allowing this appeal, it is made clear that we are not expressing any opinion on the merits of the litigation between the respondents-writ petitioners and the State of Maharashtra.

13. The appeal stands disposed of in the above terms.

.....J. [R. BANUMATHI]J. [A.S. BOPANNA]J. [HRISHIKESH ROY] NEW DELHI 22ND JANUARY, 2020 ITEM NO.1 COURT NO.5 SECTION IX S U P R E M E C O U R T O F I N D I A RECORD OF PROCEEDINGS Petition(s) for Special Leave to Appeal (C) No(s). 5319/2017 (Arising out of impugned final judgment and order dated 18-01-2017 in WP No. 3086/2016 passed by the High Court Of Judicature At Bombay) THE COLLECTOR, MUMBAI CITY Petitioner(s) VERSUS M/S REDSTONE REALTORS THROUGH ITS DIRECTOR & ANR.Respondent(s) WITH SLP(C) No. 8357/2017 (IX) Date : 22-01-2020 This petition was called on for hearing today. CORAM :

HON'BLE MRS. JUSTICE R. BANUMATHI HON'BLE MR. JUSTICE A.S. BOPANNA
HON'BLE MR. JUSTICE HRISHIKESH ROY For Petitioner(s) Mr. Sidharth
Bhatnagar,Sr.Adv.

Mr. Makarand D. Adkar,Adv.

Mr. Vijay Kumar,Adv.

Ms. Aparna Jha, AOR Mr. Rahul Chitnis,Adv.

Mr. Aaditya A. Pande,Adv.

For Respondent(s) Mr. Huzefa Ahmadi,Sr.Adv.

Mr. Aman Vachher,Adv.

Mr. Yadunath Chaudhary,Adv.

Mr. Dhiraj,Adv.

Mr. Ashutosh Dubey,Adv.

Mr. Abhishek Chauhan,Adv.

Mr. P. N. Puri, AOR UPON hearing the counsel the Court made the following O R D E
R Leave granted.

The appeal is disposed of in terms of the signed order.

Pending application(s), if any, shall also stand disposed of.

We have heard the arguments of Mr. Rahul Chitnis, learned counsel for the State in part.

For continuation of arguments, list the matter on 25.02.2020.

Parties are permitted to file additional documents.

(MADHU BALA)
COURT MASTER (SH)
(Signed order is placed on the file)

(BEENA JOLLY)
BRANCH OFFICER