

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION (L) NO. 2769 OF 2018

Raghuleela Builders Pvt Ltd ..Petitioner
Vs.
Income Tax Settlement Commission,
Mumbai and Others ..Respondents

WITH
WRIT PETITION (L)NO.2770 OF 2018

Radius Estates and Developers
Pvt Ltd ..Petitioner
Vs.
Income Tax Settlement Commission,
Mumbai and Others ..Respondents

Mr. R. V. Easwar, Senior Counsel a/w Mr. K. Gopal and Mr.
Jitendra Singh, for the Petitioner.
Mr. N. C. Mohanty, for the Respondents.

CORAM:-S. C. DHARMADHIKARI &
B. P. COLABAWALLA, JJ.
DATE :- AUGUST 21, 2018.

P. C.:

The apprehension of the Petitioner in Writ Petition (L)
No. 2769 of 2018 and Writ Petition (L) No. 2770 of 2018 is that
they would not be treated fairly by the Settlement Commission in

the pending proceedings, more-so in the light of the events that have transpired pursuant to a visit by the Chairman of the Settlement Commission in Mumbai on 2nd August, 2018.

2 It is argued that the two Settlement Applications in these Petitions were in normal and ordinary course listed before a Bench comprising two members of this Commission. They proceeded with the matter and post admission after due compliance was made with the procedural and substantive provisions, these two Settlement Applications were scheduled for hearing and final disposal. In normal course they ought to have been disposed of before 31st August, 2018. However, there is a curious development, according to the learned Senior counsel for the Petitioners and that is a communication from the Chairman, copy of which is at page 28 of the paper book in the first Petition. That communication addressed to the Secretary of the Additional Bench of the Income Tax Settlement Commission, Mumbai, inter alia says that the Chairman would like to peruse the papers and final orders in the cases of MAAD Realtors. Though the nomenclature and words “final orders” have been used but this communication clearly says that the cases in relation to MAAD

Realtors and M/s Ahuja builders are pending. The Chairman desired a discussion in relation to these pending cases with the members of the Settlement Commission or the Bench dealing with them. This is ordinarily not done and even if the person is higher in hierarchy and is the Chairman of the Settlement Commission, he should not have interfered with pending judicial proceedings before the other members of the Commission. That would set a wrong precedent and raise a serious apprehension in the minds of the litigants whose cases are pending particularly involving several similar issues that now the Settlement Commission would go by the command from this Chairman and not deal with the cases strictly in accordance with law. This undue and uncalled for interference in pending judicial proceeding sends a wrong message, according to the learned Senior Counsel. Therefore, it is submitted that these Petitions be entertained.

3 According to Shri Easwar, the matter is not in the realm of mere suspicion or doubt for on the day subsequent to the visit of the Chairman the Revenue made an application in the pending cases pertaining to the Petitioners, and which may have issues common to the issues of MAAD Realtors and M/s. Ahuja Builders, that a larger Bench of the Commission be set up to deal

with the Petitioners' application. Promptly that application was granted. A larger Bench has been set up and the Petitioners are called upon to appear before that Bench. Though the Petitioners have appeared but they are not precluded from questioning this mode or manner of dealing with the cases for the basic tenet is that justice should not only to be done but seen to be done. Hence, these Writ Petitions be entertained and appropriate orders be passed, is the request of the learned Senior Counsel for the Petitioners.

4 In both the Petitions, Mr. Mohanty has appeared for the Respondents on notice from the Petitioners' advocate and he states on instructions that it is erroneous to presume that the cases of MAAD Realtors and M/s Ahuja Builders are pending. They have been disposed of. There is nothing wrong if the Chairman visits Mumbai and peruses case papers in these disposed of matters including the final orders therein. That would have no bearing much less that would necessarily influence the out-come of the proceedings relating to the Petitioners. The apprehension of the Petitioners that justice would not be done to them or they would not be dealt with fairly, is without any basis.

Hence, the Writ Petitions be dismissed.

5 After hearing both sides and perusing the Communications dated 1st August, 2018, we find that the Petitioners are not precluded from challenging the manner in which the Chairman intervened in this matter at a later stage. We would not like to interfere with the pending proceedings for then we would commit the same mistake, if at all, committed by the learned Chairman. It would not be proper to presume at this stage that the Proceedings are necessarily going to an end, with final orders, but adverse to the Petitioners' interests. For all we know the settlement may go through to the satisfaction of all parties before the Settlement Commission. In the event the apprehension comes true and the Chairman's meeting and discussion with the members of the Commission results in an adverse order as apprehended, then, while challenging such final orders and if they are found to be influenced by the Chairman's alleged uncalled for and undue intervention, the Petitioners can raise appropriate pleas and urge before this Court that they have not been dealt with fairly by the Settlement Commission. There is a uncalled for interference in judicial proceedings and none including the

Chairman can direct a particular course of action to be taken or a particular order being passed in pending judicial proceedings. Thus, the out-come of judicial proceedings cannot be controlled in this manner. We keep open all such pleas of the Petitioners, despite their participation in the hearing before the larger Bench. In the event the final orders are adverse, then, amongst other grounds to challenge them, the Petitioners can raise appropriate pleas in relation to the impugned Communications.

6 We clarify that we have not expressed any opinion on the merit of such Communications. Both sides can argue their respective cases when the final orders are challenged by the Petitioners in the event they are adverse to them.

7 However, while disposing of these Petitions with the above clarifications, we may note that these Petitions have been filed challenging a somewhat curious and unforeseen development. We do not know in what circumstances the Chairman flew down to Mumbai and invited the members for discussion in relation to some cases or related issues. It would be highly risky if such discussions in relation to judicial orders and

judicial matters are held in a close-door meeting or in the privacy of the chambers of the members of the Settlement Commission. Eventually, the guarantee of justice is ensured when there are public hearings and open sittings. In judicial matters and proceedings of that nature, the discussion in open Court, after questioning the respective parties/their advocates or their representatives ensures not only fairness but purity and sanctity of Judicial process. It is not that everybody gets an opportunity to preside over as a Judge or Member of quasi judicial/judicial Commission. The more the power, the greater the responsibility. Here the power comes with a trust. Litigants and Parties trust the Judges and Members of judicial bodies and Commissions only because they are sure that they will not decide cases going by somebody's interference or influence. Members of Judicial bodies have to act without fear or favour, affection or illwill. They have to uphold the Constitution and the Laws. The guarantee or assurance of justice is above everything and that is ensured by the Constitution of India. If independence and impartiality of a Judge is questioned, then, that sets the above guarantee and assurance at naught. We would remind all concerned of these salutary principles emerging from the Judgments of the Hon'ble Supreme

Court. They have been summarised and referred in a recent order of this Court passed on 8th March, 2018 in three Writ Petitions being Writ Petition No. 13488 of 2017 (Suresh Hareshwar Naik & Ors. Vs. The State of Maharashtra & Ors.); Writ Petition No. 13353 of 2016 (Robert Marsalin Dias & Ors. Vs. The State of Maharashtra & Ors.) and Writ Petition No.2759 of 2011 (Jagannath Kusaji Sawant Vs. State of Maharashtra & Ors.). The relevant paras of this Order read as under:-

“15. In several decisions of the Hon'ble Supreme Court right from the case of **The State of Uttar Pradesh Vs. Mohammad Naim**, reported in AIR 1964 SC 703 and earlier or later, the principle enshrined is that not even the highest authority/Court or Tribunal can control and interfere with a discretion vesting in a subordinate authority who exercises quasi-judicial and judicial powers. In **Mohammad Naim** (supra) the Hon'ble Supreme Court in para 10, at page 707, held that there is one principle of cardinal importance in the administration of Justice. That is that the proper freedom and independence of Judges and Magistrates must be maintained and they must be allowed to perform their functions freely and fearlessly and without undue interference by anybody, even by the Supreme Court. They cannot be commanded to act in a particular way. No such command is binding on them.

16. What applies to Judges and Magistrates, equally

applies to other statutory functionaries and Public Officials. Even their discretionary power has to be exercised by them by ignoring the interventions and directions of their superiors.

17. If any authoritative pronouncement is necessary, then, the observations of the Hon'ble Supreme Court in the case of **Narendra Madivalapa Kheni Vs. Manikrao Patil and Ors.**, reported in **AIR 1977 SC 2171** are enough. In para 29, this is what the Hon'ble Supreme Court held:-

“29. There is a finding by the High Court that an influential candidate had interfered with officials to adulterate an electoral roll. We have vacated the finding but must warn that the civil services have a high commitment to the rule of law, regardless of covert commands and indirect importunities of bosses inside and outside government. Lord Chesham said in the House of Lords in 1958: “He is answerable to law alone and not to any public authority.” A suppliant, obsequious, satellite public service – or one that responds to allurements, promotional or pecuniary – is a danger to a democratic polity and to the supremacy of the rule of law. The courage and probity of the hierarchical election machinery and its engineers, even when handsome temptation entices or huffy higher power brow-beats, is the guarantee of electoral purity. To conclude, we are unhappy that such aspersions against public servants affect the integrity and morale of the services but where the easy virtue of an election official or political power-wielder has distorted the assembly-line operations, he will suffer one day.”

18. In a more direct and forthright pronouncement, the Hon'ble Supreme Court held [*Pancham Chand and Ors. vs. State of Himachal Pradesh and Ors.*, reported in **(2008) 7 SCC 117**] that even highest political functionary, namely, the Chief Minister has no power to direct a statutory authority not to act in terms of the statutory provisions, but in ignorance thereof. In paras 17, 18, 19

and 20, the Hon'ble Supreme Court held as under:-

“17. Section 67 of the Act empowers the State Government to control road transport having regard to the factors enumerated therein. Section 68 provides for constitution of the State Transport Authority. An application for grant of stage carriage permit, as envisaged under Section 69 of the Act, is to be filed in terms of Section 70 thereof, detailing the particulars specified therein. Section 71 provides for the procedures to be followed by the Regional Transport Authority in considering application for stage carriage permit. Section 72 empowers the Regional Transport Authority to grant stage carriage permit in respect of any route or the area specified in the application. The other provisions contained in the said Chapter provide for the mode and manner for dealing with the applications for grant of other types of permits.

18. The Act is a self contained Code. All the authorities mentioned therein are statutory authorities. They are bound by the provisions of the Act. They must act within the four corners thereof. The State, although, has a general control but such control must be exercised strictly in terms of Article 162 of the Constitution of India. Having regard to the nature and the manner of the control specified therein, it may lay down a policy. Statutory authorities are bound to act in terms thereof, but per se the same does not authorize any Minister including the Chief Minister to Act in derogation of the statutory provisions. The Constitution of India does not envisage functioning of the Government through the Chief Minister alone. It speaks of a Council of Ministers. The duties or functions of the Council of Ministers are ordinarily governed by the provisions contained in the Rules of Business framed under Article 166 of the Constitution of India. All governmental orders must comply with the requirements of a statute as also the constitutional provisions. Our Constitution envisages a rule of law and not rule of men. It recognizes that, how so ever high one may be, he is under law and the Constitution. All the constitutional functionaries must, therefore, function within the constitutional limits.

19. Apart from the fact that nothing has been placed on record to show that the Chief Minister in his capacity even as a Member of the Cabinet was authorized to deal with the matter of transport in his official capacity, he had even otherwise absolutely no business to interfere with the functioning of the

Regional Transport Authority. The Regional Transport Authority being a statutory body is bound to act strictly in terms of the provisions thereof. It cannot act in derogation of the powers conferred upon it. While acting as a statutory authority it must act having regard to the procedures laid down in the Act. It cannot bypass or ignore the same.

20. *Factual matrix, as indicated hereinbefore, clearly goes to show that the fourth respondent filed the application before the Chief Minister straightaway. Office of the Chief Minister communicated the order of the Chief Minister, not once but twice. Respondent 2 acted thereupon. It advised the Regional Transport Authority to proceed, after obtaining a proper application from respondent 4 in that behalf. This itself goes to show that prior thereto no proper application was filed before the Regional Transport Authority. Such an interference on the part of any authority upon whom the Act does not confer any jurisdiction, is wholly unwarranted in law. It violates the constitutional scheme. It interferes with the independent functioning of a quasi-judicial authority. A permit, if granted, confers a valuable right. An applicant must earn the same.”*

19. In several judgments of the Hon'ble Supreme Court, it has been held that mere mistake or wrong interpretation of law may not be the basis for initiating disciplinary proceedings against those officers in whom quasi judicial powers are vested. If every error of law were to constitute a charge of misconduct, it would impinge upon the independent functioning of quasi judicial officers. The entire system of administrative, adjudication, whereunder quasi judicial powers are conferred on administrative authorities, would fall into disrepute if officers performing such functions are inhibited in performing their functions without fear or favour because of the constant threat of disciplinary proceedings. It is only in case of a deliberate act and actuated by mala fides that the disciplinary proceedings can be initiated and not otherwise. The Hon'ble Supreme Court has summarised this principle of law in the case of **Union of India and Ors. Vs. Duli**

Chand, reported in (2006) 5 SCC 680 (see paragraphs 5, 8 and 9). In that decision, the Hon'ble Supreme Court disapproved the reasoning enunciated in the case of **Zunjarrao Bhikaji Nagarkar Vs. Union of India**, reported in 1999 (7) SCC 409.

20. We are, therefore, of the firm opinion that the independent functionaries exercising quasi judicial powers, whether in terms of the circular or otherwise and particularly in terms of the Maharashtra Land Revenue Code, 1966 or allied laws, cannot be directed to condone the delay in all cases irrespective of the peculiar facts involved in each individual case. Thus, the delay will have to be condoned on case to case basis and there is no apprehension that unmindful of the facts, the peculiarities and only going by the circular, the delay will be condoned. There is a strong indictment by the Hon'ble Supreme Court and even the highest executive, statutory and political functionaries have been warned not to subvert the rule of law. If any further judgment is required, one can easily refer to the later judgment on the point in the case of **State of Maharashtra and Ors. Vs. Sarangdharsingh Shivdassingh Chavan and Anr.**, reported in (2011) 1 SCC 577. Following the law laid down in the case of *Pancham Chand* (supra), the Hon'ble Supreme Court reemphasised the above salutary principles in paras 55, 57, 58, 59, 60, 63 and 64 by concluding that it is the duty of public functionaries to enforce the law of the land. No interference in exercise of their power will, therefore, be tolerated even if that is by a Chief Minister of the State.

21. All authorities must decide the issue or *lis* before them in accordance with law and uninfluenced by any such interventions, directions or attempts to control the exercise of their power. We do not,

therefore, think that unless individual cases of abuse and misuse of discretionary power are brought before this Court or the Circular being applied to all cases irrespective of their peculiar facts and circumstances, that it is bound to be misused”.

8 To avoid an allegation of the nature made in these Writ Petitions, the Chairman would be well advised not to chart this course hereafter. We leave the matter entirely to his wisdom and say nothing more.

9 The Writ Petitions are disposed of.

(B. P. COLABAWALLA, J.) (S. C. DHARMADHIKARI, J.)