

SUPREME COURT OF INDIA

State of Maharashtra

Vs.

Narmada Estates Pvt. Ltd.

C.A.No.474 of 2010

(R V Raveendran J.)

15.01.2010

ORDER

1. Leave granted. Heard learned counsel.

2. First respondent claims to be the owner of property bearing No.1300-1303, Village Yerawada, Pune District.

“First respondent claims that the said property bearing Nos.1300-1303 as also adjoining property bearing Nos.1304-1305 were requisitioned by the State Government from the then owners on 20.9.1942. Thereafter the properties were allotted and handed over to Yerawada Mental Hospital on 1.4.1945.”

3. The Yerawada Mental Hospital found the area insufficient and shifted to a larger premises in or about 1990. Ever since then, property bearing No.1300-1303 is not in use. In fact the state government de-requisitioned and surrendered back the adjoining premises No.1304-1305 2 to its owners. On 27.2.1994, the first respondent purchased premises No.1300-1303 from the previous owners.

“The first respondent filed W.P.No.2310/1996 praying for a direction to the state government to derequisition the said property. However, the said writ petition was withdrawn on 23.7.1996 with liberty to file a suit.

Thereafter, the first respondent filed a civil suit (No.40 of 1997) in the Court of Small Causes Court, Pune, for possession against (i) the State Government, (ii) Dy. Director of Health Services, (iii) Yerawada Mental Hospital, and (iv) the Collector of Pune. The legal heirs of previous owners were also impleaded as defendants 5(a) to (f) and 6(a) to (e). The said suit is still pending.”

4. On 13.2.2004, the first respondent filed another writ petition (WP No.2206/2004) seeking a direction to the appellants to delivery back possession of property bearing Nos.1300 to

1303. There was however no prayer for derequisitioning the property. A Division Bench of the Bombay High Court allowed the said writ petition by the impugned order dated 17.2.2005 directing the appellants herein to issue an order of derequisition on or before 3.12.2005 and hand over possession of the property to the first respondent. The said order is challenged in this appeal by special leave.

5. The Appellants contend that the proceedings for eviction initiated by the first respondent are still pending and therefore, a writ petition for possession was not maintainable. It is submitted that having regard to Section 27 of the Maharashtra Rent Control Act, 1999, on the date of coming into force of the Bombay Rents, Hotel and Lodging Houses Rates Control, Bombay Land Requisition and Bombay Government Premises (Eviction) Amendment Act, 1996, that is on 7.12.1996, the State Government or the Government allottee (in cases where the requisitioned premises was allotted to someone) was deemed to have become the tenant of the landlord for the purposes of the Rent Control Act and therefore, the remedy of the owners of such property was to seek eviction under the Rent Control Act; and that in the absence of any prayer in the writ petition for derequisition of the property, and the withdrawal of the earlier writ petition for derequisition, the High Court could not have directed derequisition nor issue a consequential direction for delivery of the requisitioned property.

6. The first respondent on the other hand contended that the premises is not being put to any use from 1990 and therefore, there was no justification for the appellants to continue in possession; that on account of non-occupation and neglect, the premises has become 4 dilapidated and some portions have even been unauthorisedly encroached; and that in spite of these facts, the appellants were unreasonably refusing to release and deliver back the property to the owner. It was alleged that the adjoining premises No.1304-1305 had been derequisitioned/released and therefore there was absolutely no justification for not derequisitioning/ vacating the premises No.1300-1303 belonging to the first respondent. It was also contended that Section 27 of the Rent Control Act was inapplicable to the said property.

“It was submitted that the prayer for possession in the writ petition necessarily includes a prayer for de- requisition.”

7. On a careful consideration of the averments in the writ petition (W.P.No.2206 of 2004) and the prayers therein, we find that the impugned order of the High Court cannot be sustained. The High Court assumed that the petition was for derequisitioning the property and has directed derequisitioning even though there was no prayer for derequisitioning. In the absence of such a prayer, the appellants did not have an opportunity to meet any claim for derequisition. The High Court did not also consider the effect of withdrawal of earlier writ petition for derequisitioning and the pendency of the civil court for possession. The impugned order of the 5 High Court did not also deal with several contentions of the first respondent including the contention based on release of premises Nos.1304-1305,

presumably because it was allowing the writ petition. There is a need for dealing with those contentions also. The impugned order therefore calls for interference.

8. In view of the above, we allow this appeal, set aside the impugned order dated 17.2.2005 and consequently writ petition will stand restored to file of the High Court. The High Court may grant an opportunity to the parties to amend their pleadings, if necessary, and then decide the matter in accordance with law. Having regard to the fact that the matter relates to a requisition made in 1942 and the submission that from 1990, the property has not been used and that the property is in a very dilapidated condition, we request the High Court to dispose of the matter expeditiously. All contentions are left open.