

IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL, MUMBAI

REVIEW APPLICATION NO.04 OF 2020
IN
ORIGINAL APPLICATION NO.697 OF 2019

1. The Settlement Commissioner & Director of Land Records, M.S, Pune.)
)
2. The Dy. Director of Land Records, Pune Region, Pune.)
)
3. The State of Maharashtra.)
Through the Principal Secretary,)....Applicants
Revenue & Forest Department,)(Orig. Respondents)
Mantralaya, Mumbai - 400 032.)

Versus

- 1) Shri Vijaysing Ganpatrao Suryawanshi,)
Age-46 years, Occ. Maintenance Surveyor,)
R/at Plot No.22, Middle Income Housing Society,)
Near MSCB, Vishrambag, Sangli - 416416.)..Respondents
(Orig. Applicant)

Shri A. J. Chougule, learned Presenting Officer for the Applicants (Ori. Respondents.)

Shri M. B. Kadam, learned Counsel for the Respondent (Ori. Applicant)

CORAM : SHRI A.P. KURHEKAR, MEMBER(J)

DATE : 22.10.2020.

ORDER

1. Heard Shri A. J. Chougule, learned Presenting Officer for the Applicants (Ori. Respondents) and Shri M. B. Kadam, learned Counsel for the Respondent (Ori. Applicant).
2. In O.A.No.697/2019, the Applicant Shri Vijaysing Suryawanshi has challenged the transfer order dated 31.05.2019 on the ground that it is in contravention of provision of Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in



Discharge of Official Duties Act, 2005 (hereinafter referred to as 'Act 2005' for brevity). Original Application was heard on merit and allowed by judgment dated 18.11.2019 thereby quashing the transfer order.

3. O.A. was allowed on the ground that the Minutes of CSB were not placed on record and secondly there was no approval of Settlement Commissioner & Director of Land Records for such mid-term transfer. In Para No.15 and 16 of O.A.697/2019, the Tribunal while concluding the order has held as under:-

15. Here, significant to note that by letter dated 31.05.2019 (Page No.105 of P.B.) Shri Oprakash Deshmukh, Additional Settlement Commissioner and Additional Director of Land Record, Pune has forwarded the list of the employees allegedly approved by CSB and directed Deputy Director, Land Record, Pune to examine the matters and pass appropriate orders at his level. It is in response to this letter, the Deputy Director, Land Record has passed impugned order under his authority. Indeed, the file was required to be placed before Settlement Commissioner and Director of Land Record along with minutes of CSB and it is Settlement Commissioner and Director of Land Record, who was competent to pass appropriate orders about the transfer of the Applicant. However, no such course of action was adopted as instructed by G.R. dated 28.08.2017 and on the contrary, the Additional Settlement Commissioner forwarded file to Deputy Director of Land Record, Pune for passing orders at his level which is apparently illegal. When this aspect was noted by the Tribunal, the specific query was raised to the learned P.O. to point out the approval of Settlement Commissioner and Director of Land Record to the transfer of the Applicant. However, he failed to substantiate that there is prior approval of Settlement Commissioner and Director of Land Record to whom powers are purportedly delegated by G.R. dated 28.08.2017.

16. Thus, what emerges from the record that neither there is recommendation of CSB nor prior approval of Settlement Commissioner and Director of Land Record who is Competent Transferring Authority for mid-term transfer by virtue of G.R. dated 28.08.2017. In other words, there is no compliance of mandatory requirement of Section 4(5) of 'Transfer Act 2005'. The impugned transfer order is in blatant violation of Section 4(5) of 'Transfer Act 2005', and therefore, deserves to be quashed.

4. Now, Review Application is filed on the ground that Minutes of CSB as well as approval of Settlement Commissioner was already there with the department but the same could not be placed on record of O.A. during the course of hearing.

5. Shri A. J. Chougule, learned P.O. for the Applicants (Ori. Respondents) submits that due to unavoidable situation, Minutes of CSB as well as approval of Settlement

Commissioner could not be placed on record. He, therefore, submits that it be now considered and R.A. be allowed.

6. Per contra, Shri M.B. Kadam, learned Counsel for the Respondent (Ori. Applicant) submits that the powers of the Tribunal in R.A. are very limited and those are confined only to the grounds mentioned in Order 47 of CPC. He, therefore, submits that the department failed to produce the relevant record, and therefore, it cannot be said that there is any apparent error on the face of record so as to entertain the review.

7. As stated above, O.A. was allowed mainly on two grounds. First, the Minutes of CSB was not placed on record and secondly no approval of Settlement Commissioner was forthcoming which was condition precedent for mid-term transfer.

8. Now, along with R.A., the Minutes of CSB as well as approval of Settlement Commissioner is placed on record and review is sought.

9. Under Order 47 of CPC, the review is permissible on the discovery of new and important material which after exercise of due diligence was not within his knowledge or could not be produced by him at the time when the order in question has been passed or on account of some mistake or error apparent on the face of the record.

10. As such, the Applicant needs to satisfy the Tribunal that despite due diligence he could not produce the relevant record i.e. Minutes of CSB and the approval of Settlement Commissioner. However, all that Applicants (Ori. Respondents) in R.A. stated that due to some unavoidable circumstances, the record could not be produced. This can hardly be accepted so as to allow the Review.

11. The impugned transfer order dated 31.05.2019 was passed by the Deputy Director of Land Record. Significant to note that in O.A., there were three Respondents – State of Maharashtra, through Principal Secretary, Settlement Commissioner & Director of Land Records, Pune and Deputy Director of Land Records, Pune. O.A. was filed on 16.07.2019. Reply was filed on behalf of the Respondents along with affidavit sworn by Shri Suresh Reddy, City Survey Officer on 28.08.2019. In due course, the matter was heard and decided on 18.11.2019. During the course of hearing, the Tribunal has posed specific query to the learned P.O. about approval of Settlement



Commissioner in Para No.15 of order as reproduced above and specifically noted that learned P.O. has failed to substantiate that there is prior approval of Settlement Commissioner.

12. As such, apparently no care was taken by the Applicants (Ori. Respondents) while filing reply and they failed to produce important documents which was admittedly within their knowledge and custody. This being the position, it cannot be said that the Applicants (Ori. Respondents) had exercised due diligence but despite of it, were unable to produce the record or it was not within their knowledge. On the contrary, the record was within their knowledge as well as in their custody but they did not produce the same in O.A. Verge and general statement that the Applicants (Ori. Respondents) could not produce it due to unavoidable circumstances can hardly be accepted particularly from the Government servant who are in the rank of Principal Secretary, Settlement Commissioner and Deputy Director of Land Records. Lack of diligence is obvious.

13. As such, O.A. was decided on the basis of record made available and there is no such apparent error on the face of record produced before the Tribunal while deciding the O.A.

14. For the aforesaid reasons, I have no hesitation to sum up that R.A. does not fit within requisite conditions contemplated under Order 47 of CPC and the same is liable to be dismissed.

15. Review Application is accordingly dismissed with no order as to costs.

Sd/-

(A.P. KURHEKAR)
Member-J