

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.1633 OF 2013

Shri Rajendra Manohardas Thakker and others ... Petitioners

V/s.

Nashik Municipal Corporation and others ... Respondents

Mr. R.A. Thorat and Ms. Pratibha Shelke, for the Petitioners.
Mr. R.S. Apte, Senior Advocate i/by Mr. V.P. Patankar, for the Respondent
Nos.1 and 2.
Mr. V.S. Gokhale, AGP, for Respondent Nos.3.

**CORAM : A.S. OKA &
S.C. GUPTE, JJ.**

DATE : 21st DECEMBER, 2013

PC.

. Heard the learned counsel appearing for the Petitioners. A Writ of Mandamus has been prayed for against the first Respondent which is the Planning Authority under the Maharashtra Regional and Town Planning Act, 1966 (hereinafter referred to as “the said Act”) enjoining the first Respondent to forthwith comply with its statutory obligations under Section 88 of the said Act.

2. The case of the Petitioners is that final town planning scheme was published on 28th November, 1985 which came into force on 1st January, 1986.

3. The Petitioners were holding the lands bearing Survey Nos.670/B/1 to 18 bearing CTS No.6240. Under the said Town Planning Scheme, Final Plot No.394 was allotted in lieu of the Original Plot held by the Petitioners. The grievance is that the vacant possession of the Final Plot No.394 has not been handed over to the Petitioners by the first Respondent in accordance with Section 88 of the said Act. The submission of the learned counsel for the Petitioners is that it is the statutory obligation of the first Respondent being the Planning Authority to hand over vacant possession of the Final Plot allotted to the Petitioners under the Town Planning Scheme.

4. The learned Senior Counsel appearing for the first Respondent has invited our attention to redistribution and valuation statement under the Town Planning Scheme. He pointed out that the area of original plot held by the Petitioners being Plot No.327 is 0.2359 Hectares and the same original plot has been renumbered as the Final Plot No.394 having the same area. He also invited our attention to certificate of Tenure and Title and in particular clause 2 thereof. He, therefore, submitted that as the original plot held by the Petitioners has been renumbered as the Final Plot, there is no obligation under Section 88 of the said Act to hand over vacant possession of the final plot. He relied upon the order dated 10th December, 2007 passed by this Court in

Writ Petition No.3640 of 2007 in the case of ***Vilas Narayan Khandge & Ors. Vs. Nashik Municipal Corporation & Ors.*** He, therefore, submitted that no interference is called for.

5. The Petitioners are claiming to be the purchasers of the Original Plot. There is no averment in the Petition that after reconstitution of the original plot held by the Petitioner, the Final Plot allotted to the Petitioners has been constituted. The Redistribution statement under the Town Planning Scheme shows that the Original Plot has been numbered as the Final Plot and there is no reconstitution. In fact, averments made in paragraph 6 of the affidavit support the submission made by the learned Senior Counsel appearing for the first Respondent that the Original Plot held by the predecessors of the Petitioners is the same as the Final Plot allotted to them.

6. As the final plot allotted under the Town Planning Scheme to the Petitioners is the same as the original plot held by them, the first Respondent is under no obligation to hand over the vacant possession of the Final Plot. The Petitioners are already in possession of the Original Plot. Hence, there is no merit in the Petition and the same is rejected.

(S.C. GUPTE, J)

(A.S.OKA, J)