

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 9797 OF 2014

The Raver Municipal Council,
Taluka Raver District Jalgaon,
Through its Chief Officer,
Prashant s/o Vasant Sarode,
Age: 32 years, Occ: Service,
At present Incharge Chief Officer,
Raver Municipal Council Raver,
District Jalgaon

...PETITIONER
(Original Plaintiff)

VERSUS

- 1) The State of Maharashtra
- 2) The District Commissioner,
Animal Husbandry Jalgaon,
District Jalgaon
- 3) The Assistant Commissioner,
Taluka Animal Husbandry,
Taluka Raver, District Jalgaon
- 4) The Executive Engineer,
Public Works Department,
North Division, Jalgaon,
District Jalgaon

...RESPONDENTS
(Original defendants)

Mr Amol N. Kakade, Advocate for petitioner;

Mr S.P. Daund, Asstt. Govt. Pleader for respondents

CORAM : N.W. SAMBRE, J.

DATE : 20th January, 2015

ORAL ORDER

By the instant writ petition, the petitioner/original plaintiff seeks to challenge the order dated 5th April, 2014, passed by District Judge-1, Bhusawal, in Misc. Civil Appeal No.102 of 2014, thereby confirming the order dated 23rd January, 2014, passed by Joint Civil Judge Senior Division, Jalgaon, below Exh.6, in Regular Civil Suit No.474 of 2013.

2. The petitioner/plaintiff has filed Regular Civil Suit No.474 of 2013 for perpetual injunction, restraining the respondents/original defendants – authorities of the State, from carrying out construction on property being C.T.S. No.364, situated at Raver, which according to the plaintiff is owned by it by virtue of vesting of the land in accordance with the provisions of the Land Acquisition Act. In the said suit, the petitioner moved an application Exh.6 for temporary injunction, seeking therein an order of restraintment against the respondents herein not to carry out any construction over the suit property. The said application for injunction was contested by the defendants/respondents – authorities of the State, claiming that the land stood vested in the Government and the Government is utilizing the said land since past couple of years. The respondents have relied upon revenue entries so as to support their contention.

3. Learned Joint Civil Judge Senior Division, Jalgaon, by order dated 23rd November, 2014, rejected the injunction application and vacated the

order of *status quo* by a reasoned order. Misc. Civil Appeal No.102 of 2014, at the behest of the petitioner herein, before the District Judge-1, Bhusawal, also suffered the same fate, by an order dated 5th April, 2014. As such, present petition.

4. Heard Mr Kakade, learned Counsel appearing on behalf of the petitioner and learned Asstt. Govt. Pleader appearing on behalf of the respondents.

5. Mr Kakade has strenuously urged that once the property was acquired for and stood mutated in the present petitioner's name, there is no occasion for the respondents herein to change the nature of property by carrying out construction and destroy the same. According to him, the revenue entries are for fiscal purpose and cannot be read to the detriment of the real owner of the property, i.e. the petitioner herein. He has further urged that the petitioner - Municipal Council intends to use the property in question for the public purpose, i.e. for erecting a water tank for giving effect to the provisions of the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965.

6. Mr Kakade, learned Counsel appearing on behalf of the petitioner has further urged that both the Courts below have over-looked the factual position that initially the petitioner was operating a veterinary hospital over

suit property, which subsequently stood transferred to the Zilla Parishad and after lapse of certain time, it was the Government who took over the said Department.

7. So far as the above contentions of Mr Kakade are concerned, the same are based on the factual submission, which is required to be appreciated by the Trial Court at the time of recording of evidence. In my opinion, so far as earlier two submissions of the learned Counsel are concerned, the same were given appropriate consideration by the Trial Court and the Appellate Court. The Trial Court has taken into account the documents filed by the petitioner and respondents herein and what prevailed upon the Court is the entry made in the users column as "Government". The said entry relegates back to the year 1980.

8. Learned Lower Appellate Court, has taken into account the recording of the name of the holder of the land as on 3rd December, 1967 and further dwelt upon other documents which are filed by the respondents herein. The Lower Appellate Court has taken into account an entry in the name of the present petitioner and has recorded that, so far as the source of ownership of the present petitioner is concerned, the same was not established. The Lower Appellate Court, in my opinion, has rightly inferred that the day/date on which the Municipal Council came into existence was neither brought before the Court nor the vesting of the

property in the Municipal Council. In that view of the matter, the Lower Appellate Court has also confirmed the order passed by the Trial Court.

9. In the light of above, no illegality or material irregularity, in exercise of extra-ordinary jurisdiction, is noticed in the impugned order. Thus, the writ petition fails and the same stands rejected with no order as to costs.

10. It is made clear that the learned Trial Court should not get influenced by the observations made herein-above as the same are *prima facie* in nature.

(N.W. SAMBRE, J.)

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