

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.10666 OF 2014

PRAKASH S/O TARACHAND THAKUR
AND ANOTHER

PETITIONERS

VERSUS

KISHANRAO S/O MANIKRAO KHOPDE
AND OTHERS

RESPONDENTS

Mr.S.B.Talekar, Advocate for the petitioners.
Mr.S.D.Kulkarni, Advocate for respondent No.1.
Mr.S.G.Sangle, AGP for respondent Nos. 2 and 3.

(CORAM : RAVINDRA V. GHUGE, J.)

DATE : 16/09/2015

PER COURT :

1. The petitioners seek to challenge the order dated 01/08/2014 delivered by the Trial Court in Reg.Civil Suit No.103/2014 below Exh.5 and the judgment of the Appeal Court dated 01/11/2014 delivered in Misc.Civil Appeal No.54/2014. By the impugned judgment of the Trial Court, injunction has been clamped upon the petitioners under Order 39 Rule 1 of the CPC in the form of a temporary injunction. The Appeal Court has dismissed the appeal filed by the petitioners thereby confirming the injunction.

2. The contentions of Mr.Talekar, learned Advocate on behalf of

the petitioners can be summarized as follows :-

- (a) Respondent No.1 herein is said to have purchased the suit land on 21/10/1971.
- (b) He obtained NA permission on 15/07/1972.
- (c) Respondent No.1 sold most of the plots in the said land.
- (d) Respondent No.1 has not paid the NA Assessment charges as well as certain taxes.
- (e) The appropriate Department issued a notice dated 08/02/1988 to respondent No.1 informing him about the default in payment of NA charges and sought payment of Rs.24,342/- to clear the dues payable to the Government.
- (f) By reply dated 28/02/1988, respondent No.1 denied any liability to pay the said amount.
- (g) The Government, by its order dated 25/03/1988, directed the forfeiture of the said plot.
- (h) The possession of the plot was taken over by the Government on 28/03/1988 under Section 72(3) of the MLR Code, 1966.
- (i) Immediately pursuant thereto, a mutation entry bearing No.455 AA was taken in the name of the State of Maharashtra indicating that the State has the ownership of the said plot.
- (j) The petitioners applied for obtaining the said plot on 29/11/2011.
- (k) Under Rule 20(A) of the Rules framed under the MLR Code, the plot was allotted to the petitioners at a value of Rs.11,39,309/-.
- (l) By order dated 04/12/2013, the competent authority has permitted the petitioners to commence construction of his residence on the said plot.
- (m) On 24/03/2014, the building permission was granted.
- (n) In April 2014, the petitioners were granted an electricity

connection on the said plot.

- (o) The petitioners have paid their municipal taxes and thereafter have commenced construction.
- (p) On 29/03/2014, respondent No.1 preferred Reg.Civil Suit No.103/2014 before the Trial Court.
- (q) By the impugned order dated 01/08/2014, the Trial Court has allowed application Exh.5 and has imposed an injunction upon the petitioners thereby preventing them from resorting to further construction on the suit property till the disposal of the suit.
- (r) The petitioners claim to have constructed their compound wall, septic tank and have commenced the construction of the residence which could be said to have reached the plinth level.
- (s) The petitioners preferred Misc.Civil Appeal No.54/2014 for challenging the injunction dated 01/08/2014.
- (t) By judgment and order dated 01/11/2014, the learned Principal District Judge, Dhule has dismissed the appeal with costs. However, the suit has been expedited.
- (u) Section 11 of the Maharashtra Revenue Jurisdiction Act (MRJA) does not permit the Trial Court to entertain any suit against the Government on account of any act or omission of any Revenue Officer unless right to appeal has been exhausted by the aggrieved party.
- (v) Preliminary objection regarding maintainability of the suit was raised u/s 9 of the CPC r/w Section 9-A which is the Maharashtra Amendment, which mandates that the Civil Court should consider the objection touching the jurisdiction issue while hearing an application relating to interim relief in a suit, as a preliminary issue. Yet, the Trial Court has allowed

application Exh.5.

- (w) Specific objection with regard to the maintainability of the suit under section 11 of the MRJA and Section 9A of the CPC, have not been looked into by the Trial Court as well as the Appeal Court.
- (x) Section 36 of the MLRC, 1966 with regard to deemed heritable title and occupancy subject to the provisions of Section 72, have been disregarded by the Courts below.
- (y) The mutation entry No.455AA carried out in 1988 in favour of the State of Maharashtra has not been challenged by respondent No.1 / Original Plaintiff and the appeal provision u/s 247, 248 and 249 have not been exhausted by respondent No.1 before filing a suit before the Trial Court.
- (z) To show his bonafides, the petitioners have filed an affidavit dated 21/08/2015 stating therein that if the petitioners are permitted to resort to further construction over the suit land and in the event the trial goes against the petitioners and it is finally held that they have no right over the suit plot, they shall return the land either with the construction or by removing the entire construction.
- (aa) The cost of construction is rising day by day and respondent No.1 / plaintiff is causing an irreparable harm, serious prejudice and manifest inconvenience to the petitioners.
- (bb) Recently, the building material purchased by the petitioners has been stolen.
- (cc) The petitioners have invested more than Rs.20,00,000/- on construction
- (dd) Respondent No.1 / plaintiff deserves to be directed to deposit Rs.40,00,000/- before the Trial Court in the light of the fact

situation to show his bonafides.

- (ee) No loss or harm would be caused to respondent No.1, if the petitioners are permitted to commence the construction in the light of the undertaking filed before this Court.
- (ff) The petitioners make a request that the Trial Court be directed to decide the jurisdictional issue u/s 9A (Maharashtra Amendment) peremptorily within a period of a week or two.
- (gg) They further request that the plaintiff be directed to submit an undertaking before the Trial Court that he shall compensate the petitioners for the loss caused to him on account of the staying of the construction by filing an affidavit.

3. Reliance is placed upon the following judgments by learned Advocate Mr.S.B.Talekar :-

- [1] Hazrat Surat Shah Urdu Education Society Vs. Abdul Saheb, 1988(14) ALR 776,
- [2] Best Sellers Retail (India) Private Ltd., Vs.Aditya Birla Nuvo Limited and others, 2012(6) SCC 792,
- [3] Ganesh Shesho Deshpande Vs. The Secretary of State for India, BLR Vol.XXII, page no.212.

4. Mr.S.D.Kulkarni, learned Advocate submits on behalf of the respondents/plaintiffs as follows :-

- (a) The plaintiffs have preferred the civil suit for seeking injunction against the petitioners / defendant and for a declaration of ownership and title over the suit property.
- (b) In the prayer clause to the suit below paragraph No.12, various

orders passed by the competent authorities from 1985 onwards till the order of the State Government dated 28/08/2013 are sought to be set aside in the said suit.

- (c) Respondent No.1 / plaintiff is in possession of the suit property.
- (d) The construction commenced which was subsequently stopped from 01/08/2014 amounts to an illegal construction.
- (e) Both the Courts below have arrived at a concurrent prima facie finding that the plaintiff is in possession of the suit property.
- (f) If the affidavit of the petitioner is accepted and he is permitted to proceed with the construction, it would amount to dispossessing the plaintiff and handing over the suit plot to the petitioners.
- (g) Unless both the impugned order and judgment of the Trial Court and the Appeal Court are held to be perverse and erroneous, this Court cannot cause any interference in the impugned orders in its supervisory jurisdiction.
- (h) The construction, which was just commenced by the petitioners, has been halted from 01/08/2014.
- (i) The suit can be decided by 31/12/2015 and respondent No.1 / plaintiff shall not seek any adjournments and would extend co-operation to the Trial Court.
- (j) This petition seeks to challenge an interlocutory order.

5. Mr.Kulkarni has relied upon the following judgments :-

- [1] Khalil Ahmed Bashir Ahmed Vs.Tufelhussein Samasbhai Sarangpurwala in Civil Appeal No.1377/1982, decided on 13/11/1987.
- [2] State of Haryana and others Vs.Manoj Kumar in Civil Appeal No.2226/2010, decided on 09/03/2010.

- [3] Managing Committee, JAMA MAS.R.B., Aurangabad Vs. Abdul Gani and others in Civil Appeal No.13422/2012, dated 13/08/2012,
- [4] Abdul Gani Abdul Reheman Vs. The Managing Committee, and others in AO No.94/2011 dated 23/12/2011.
- [5] Makers Development Services Pvt.Ltd., Vs. M.Visvesvaraya Industrial Research and Development Centre in Civil Appeal No.9709/2011, dated 14/11/2011.

6. The learned AGP appearing on behalf of respondent Nos.2 and 3 has adopted the submissions of Mr.Talekar and has prayed for allowing of this petition.

7. I have considered the submissions of the learned Advocates as have been recorded hereinabove.

8. During the course of the submissions of Mr.Talekar, the petitioners tried to impress upon this Court that the possession of the suit plot was taken by the Government on 28/03/1988 and has thereafter handed over the possession of the plot to the petitioners.

9. Mr.Kulkarni had submitted that if the petitioners are permitted to construct over the suit property, his pending suit would be rendered infructuous since once the construction is done, it would be

difficult to oust the petitioners from the suit property even if respondent No.1 / plaintiff succeeds in the suit.

10. To test the bonafides of the petitioners, it was put to the petitioners as to whether they could file an affidavit to indicate as to how they would compensate the plaintiff if the construction was permitted and if the plaintiff was to succeed in the suit. Mr.Talekar has, therefore, filed the affidavit dated 21/08/2015 through the petitioners to indicate that the petitioners would not claim equities on the basis of the construction carried out during the trial and during the litigation. The plot would be returned to the Government in the event the plaintiff succeeds in the trial.

11. The suit has been expedited by the Appeal Court vide its judgment dated 01/11/2014. The construction over the suit property has been halted under orders of the Trial Court since 01/08/2014, which is almost 14 months ago. This petition was filed on 18/11/2014 and was circulated on 31/03/2015.

12. The petitioners have placed reliance upon the judgments of the Apex Court in the case of Hazrat Surat Shah (supra) and Best Sellers Retail (supra) and the judgment of the Division Bench of this Court

in the matter of Ganesh Shesho Deshpande (supra).

13. The Apex Court has laid down the Law that an injunction could be granted if the plaintiff makes out a prima facie case, balance of convenience lies in his favour and the irreparable loss, if caused, would not be compensated in terms of money.

14. Having gone through the conclusions arrived at by the Trial Court while granting injunction, I find that the Trial Court has come to a conclusion that there was no evidence on record at the prima facie stage that the State had acquired the physical possession of the suit plot in accordance with the prescribed procedure laid down in Law. Prima facie, it appears to the Trial Court that there was no panchnama and issuance of “Tabe Pawati” so as to indicate that the suit plot was physically taken possession of by following the procedure laid down in Law.

15. The petitioners and the learned AGP have relied upon the mutation entry No.455 AA carried out in 1988. This Court has considered the purpose and object of a mutation entry in the case of Shrikant R.Sankanwar and others Vs.Krushna Balu Nowkundhar [2003(3) BCR 45] and has concluded that a mutation entry is merely

for the purpose of taxation and does not decide the right, title or interest in favour of any party. This could be done only by a Civil Court.

16. The Appeal Court has dealt with the entire controversy while considering the appeal preferred by the petitioners. It has arrived at a conclusion that forfeiture of the property on paper is distinct from the Collector actually taking the physical possession of the suit plot.

17. In the above backdrop, though the petitioners have strenuously canvassed that the suit is not maintainable and that the order of forfeiture dated 25/03/1988 cannot be challenged in 2014 by filing the suit after 26 years, I find that it would be just and proper to direct the Trial Court to decide the said suit as expeditiously as possible and preferably on or before 31/12/2015.

18. It cannot be overlooked that in the event the petitioners succeed and the suit of the plaintiff is dismissed or the plaintiff suffers adverse conclusions in the trial, the injunction imposed upon the petitioners is bound to result in a huge monetary loss since the cost of construction is rising and every passing day would result in an increase in the construction costs, which the petitioners would

have to bear at the end of the trial.

19. As such, I deem it appropriate to permit the petitioners to pray for exemplary costs before the Trial Court and in the event of such a request and in the event the suit of the plaintiff is dismissed, the Trial Court shall consider the aspect of imposing heavy costs on the plaintiff, after hearing the litigating sides.

20. In the light of the above, this petition is disposed of with the following directions :

- a. The trial Court shall decide RCS No.103/2014 as expeditiously as possible, on or before 31/12/2015.
- b. The plaintiff as well as the defendants shall fully co-operate with the Trial Court and shall refrain from seeking adjournments on unreasonable or trivial grounds.
- c. The Trial Court would be at liberty to reject any adjournment request if it is not convinced with the reasons cited.
- d. The Trial Court shall decide imposition of exemplary / heavy costs on the plaintiff in the eventuality as noted above in paragraph 19.
- e. The suit shall be decided on its own merits and the Trial Court shall not be influenced by any of its observations made in the impugned order dated 01/08/2014 or the observations of the appeal Court in the impugned judgment dated 01/11/2014.
- f. The Trial Court shall note that this Court has not observed

anything on the merits of the matter so as to avoid arriving at certain conclusions before the suit is finally decided. This Court has not interfered with the impugned orders only to facilitate a complete adjudication of the suit on its own merits.

- g. The issue of the maintainability of the suit and bar on the jurisdiction of the Trial Court as is raised by the petitioners / defendant, shall also be considered on its merits by the Trial Court.

(RAVINDRA V. GHUGE, J.)