

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

PUBLIC INTEREST LITIGATION NO. 203 OF 2013

Mr.Bhupal Mahipati Shete and another. ... Petitioners.
V/s.
Kolhapur Municipal Corporation and others. ... Respondents.

Yuvraj P. Narvankar for the petitioners.

Ajay Magdum i/b. S.S.Patwardhan for respondent Nos.1,2,4 & 5.

A.S.Kulkarni for respondent No.3.

VN.Sagare, AGP for respondent No.6.

Amit B. Borkar for respondent No.7.

I.M.Khairdi for respondent No.9.

**CORAM : NARESH H. PATIL AND
A.S. GADKARI, JJ.**

DATED : 28th January 2015.

PC.

The petitioner No.1 is the sitting Corporator of respondent No.1- Kolhapur Municipal Corporation. The petitioners pray for declaration that the Development Rights Certificates (DCRs) mentioned in prayer clause (a) be cancelled and thorough inquiry be ordered in the scam of forged and altered revenue records and grant of DRCs. The learned counsel for the petitioners submits that there are conflicting

revenue records (7/12 extracts) from where it can be demonstrated that before the land was returned or vest with the State, DRCs were issued by the Corporation. Under the rules, unless the title is transferred to the Corporation, DRCs cannot be issued. It is submitted that though in the reply stand is taken by the Corporation that subject lands are in possession of the corporation but in view of the conflicting revenue records or 7/12 extracts indicating different entries, the DRCs issued in favour of certain persons shall be cancelled. Learned counsel submitted that though there is no revenue loss to the Corporation but on the basis of forged revenue records benefits have been obtained by certain persons in connivance with the corporation officials. A chart at Exh.D, page-182 of the paper book demonstrates area in sq.meters and the details of such lands. The learned counsel further submitted that this Court can verify 7/12 extracts placed on record for reaching conclusion that they are forged ones and direct the Corporation to cancel such DRCs. Learned counsel further submitted that the petitioner has exhausted all alternate remedies.

2. The respondent- Corporation has filed affidavit in reply. In para-5, the deponent contends as under:

5. Although the revenue record in respect of the disputed land is in question following are the admitted facts:

- a) That the disputed lands belong to respondent nos.7, 8 and 9 respectively. That there is no dispute about the title of respondent nos.7 8 and 9 over the suit property;
- b) That the lands are reserved for the Development Plan of the city of Kolhapur for the purpose of burial ground/ cremation area.

- c) That the said disputed lands are open and were in possession of their respective owners.
- d) That respondent nos.7 to 9 have surrendered possession of the said disputed land in favour of respondent no.1.
- e) That respondent nos.7 to 9 have constructed parts of compound wall as required by respondent no.1 in respect of their parts of the entire reserved property, out of which the disputed lands belonging to them are small parts.
- f) That after delivery of lands to respondent no.1 and transfer of title in favour of respondent no.1, respondent nos.7 to 9 have applied for issuance of the Development Rights Certificate.
- g) Such Development Rights Certificates have been issued in favour of respondent nos.7 to 9.
- h) Since the dispute has arisen about the grant of Development Right Certificate in favour of respondent nos.7 to 9 before this Hon'ble Court and also before the Revenue Authorities; presently the effect of the said Development Rights Certificate has been suspended by respondent no.1 Corporation.

3. It is submitted on behalf of the Corporation that there is no dispute about the title of the subject property. The subject lands are reserved for the purpose of burial ground/ cremation area. The lands are open and in possession of the respective owners. A statement is made on behalf of the Corporation that respondent Nos.7 to 9 have surrendered possession of the disputed lands in favour of respondent No.1. It is the case of the Corporation that after transfer of title in favour of respondent No.1, respondent Nos.7 to 9 applied for DRCs and such certificates have been issued. Learned counsel appearing for the Corporation submits that there is no revenue loss to the Corporation. The petitioners are trying to

make out case on the basis of some conflicting documents. It is not mandatory that unless title is transferred to the Corporation, DRC cannot be issued. Learned counsel submits that this is not a public interest litigation and is liable to be dismissed.

4. Respondent No.9 has also filed affidavit-in-reply. In para-6 of the affidavit it is contended that TDR in respect of property bearing Survey No.793/6 admeasuring 800 sq.meters is not yet granted in favour of respondent No.9, however, the name of the government is recorded in the revenue records. It is reserved for the purpose of burial ground/cremation area. According to the policy, the persons willing to surrender the lands are required to erect a compound wall around their respective portions of land so as to preserve and protect the property from encroachment. According to the deponent, constructions have been made by investing huge amount.

5. The petitioners have filed affidavit-in-rejoinder. They have denied the contentions made by the respondents in affidavit-in-reply. It is contended that requirement as laid down by the Collector with respect to 7/12 extract in favour of respondent No.1 was bypassed and bogus and fabricated 7/12 record was created.

6. We have perused the record and considered the submissions advanced. As to whether 7/12 extracts are genuine or not or whether the said extracts are bogus and fabricated is a matter of investigation and cannot be gone into in this petition. At the same time, the petitioners

have not approached the agency entrusted with the investigation. In absence of proper investigation, on the bare allegations made by the petitioner, it would be difficult to arrive at definite conclusion as to whether 7/12 extracts were forged or not. The petitioners are at liberty to resort to such remedy, if the petitioner has not exhausted the same. In future if it is found that fraud was played, then other options are open to the petitioners to resort to in accordance with law. We are not giving clean chit to any of the Corporation officials who have dealt with the files, made notings, and issued DRCs.

7. With the aforesaid observation, petition is disposed of.

(A.S. GADKARI, J.)

(NARESH H. PATIL, J.)