

Shephali

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1900 OF 2009

Balu Sidhu Bhosale, since deceased, through LR
Son Mr. Krishna Balu Sidhu Bhosale,
Age – 40 years, Occu.: Business,
residing at 27/9, Ravivar Peth, Solapur-413 005 ...Petitioner

Versus

1. **The State of Maharashtra**
through Secretary, Housing & Special
Assistance Department, Government of
Maharashtra, Mantralaya, Mumbai 400 032
2. **The Secretary,**
Revenue Department, Government of
Maharashtra, Mantralaya, Mumbai 400 032
3. **The Collector of Solapur,**
Solapur 413 001
4. **The Chief Officer,**
Pune Housing and Area Development
Board, Agarkar Nagar, Pune – 1
5. **The Chief Executive Officer,**
Maharashtra Housing and Area
Development Authority, Grihanirman
Bhavan, Bandra – (East), Mumbai 400 051
6. **The Solapur Municipal Corporation**
Solapur 413 001 ...Respondents

Mr. Ramdas P. Sabban for the Petitioner.
Mr. V. S. Gokhale, AGP for the Respondent Nos. 1 to 3.
Mr. Nitin P. Deshpande, for the Respondent Nos. 4 and 5.
Mr. I. M. Kairdi for the Respondent No. 6.

CORAM: A. S. OKA & G.S. PATEL, JJ.
DATED: 15th December 2015

ORAL JUDGMENT: (Per A. S. Oka, J.)

1. Heard the learned counsel appearing for the Petitioner. The Petitioner is Krishna Balu Sidhu Bhosale in his capacity as the son and Legal Representative of Balu Sidhu Bhosale (since deceased). Paragraph 2 of this Petition shows that this Petition is in respect of the land bearing Survey No. 115/6 at Solapur, Taluka and District Solapur. The first challenge in this Petition under Article 226 of the Constitution of India is to the Order of Requisition dated 9th July 1987 passed by the Collector under Sub Section (1) of Section 5 of the Bombay Land Requisition Act, 1948. The said order is in respect of the area of 2000 sq. mtrs. (20 Ares) out of the land bearing Gat No. 115/6 for construction of a Nalla. The said order also relates to an area of 100 sq. mtrs (1 Are) out of Survey No. 115/6. The first prayer in the Petition is for issuing a Writ of Mandamus directing the Respondents to restore back vacant and peaceful possession of the area of 20 Ares (2000 Sq. Metre), which was requisitioned for construction of Nalla and an area of 1 Are (100 Sq. Metre) requisitioned for construction of a 20 Metre wide road out of Survey No. 115/6. Prayer (b) seeks a Writ of Mandamus directing the Respondents to acquire the said portions totally admeasuring 21 Ares (2100 Sq. Metres) respectively under the provisions of Land Acquisition Act, 1894. The third prayer again is for restoration of the possession of the aforesaid land. There is

another prayer added as prayer (c-1) seeking compensation on the ground that the requisition continued after lapse of 19 years.

2. On the earlier date, the learned counsel appearing for the Maharashtra Housing and Area Development Authority (for short “MHADA”), the Respondent Nos. 4 and 5 pointed out that in respect of the very land bearing Survey No. 115/6, Writ Petition No. 4198 of 1997 was filed by the Petitioner which was dismissed by the Judgment and Order dated 31st January 2012 to which one of us (A. S. Oka, J.) is a party.

3. In view of the submission made by the learned counsel appearing for the Respondent Nos. 4 and 5, we called for the files of the disposed Writ Petition No. 4198 of 1997. We have perused the record of the said Writ Petition. The said Writ Petition was filed by the said Balu Sidhu Bhosale who died during the pendency of the Petition. His heirs were brought on record. The present Petitioner Krishna is one of the Legal Representatives who was brought on record. The subject matter of the said Writ Petition as seen from paragraph 1 thereof is the lands bearing Survey No. 113/3 and Survey No. 115/6 of Solapur. In the said Writ Petition, initially the challenge was to the order passed under Sub Section (4) of Section 8 of the Urban Land (Ceiling and Regulation) Act, 1976 (for short “ULC Act”). The order dated 2nd December 1981 passed by the Competent Authority under Sub Section (4) of Section 8 of the ULC Act has been annexed to the Petition as Exhibit “A”, which

shows that total area of Survey No. 115/6 held by the predecessor of the Petitioner (Balu Siddhu Bhosale) was 2 Hectare and 50 Ares and of Survey No. 113/3 was 2 Hectare and 03 Ares. Thus, out of total area of 4.53 Hectare, an area of 4.38 Hectare including the area of 2 Hectares and 35 Ares of Survey No. 115/6 was declared as excess vacant land held in excess of the ceiling limit. Perusal of the record in Writ Petition No. 4198 of 1997 shows that under the orders of the Court, prayer clauses (c) and (d) in relation to the order under Sub Section (4) of Section 8 of the ULC Act were deleted. The prayers which are material are prayer clauses (e) and (i) in Writ Petition No. 4198 of 1997, which read thus:

“(e) to quash and set aside all the acquisition proceedings and orders passed by the Respondents No. 1, 4 and 5 acquiring the lands of the Petitioner situated at Survey No. 113/3 and 115/6 of Solapur passed under the provisions of the Maharashtra Housing and Area Development Act, 1976;

(i) to quash and set aside the sale deed dated 20.05.1991 and other transactions for 2.35 hectares of land of the petitioner situated at the Survey No. 115/6 of Solapur made with the Respondent No. 6;”

4. As far as prayer (i) is concerned, in ground “H” of the said Petition, there are specific averments. Ground “H” of Writ Petition No. 4198 of 1997 reads thus:

“(H) The Petitioner submits that the Respondent No. 6 induced fraudulently in 1991 the Petitioner to sell the lands at Survey No. 115/6 of Solapur admeasuring 2.35 hectares for Rs.65,000/- to him by taking disadvantage of the illiteracy. The Respondent No. 6 has been selling the land to number of purchasers, which is void under Section-5 of the Urban Land (Ceiling and Regulation) Act, 1976 which is liable to be set aside.”

(underline added)

5. Thus, there is a specific averment made in that Petition that an area of 2 Hectare and 35 Ares out of Survey No. 115/6 was sold by the said Balu Siddhu Bhosale to the Respondent No. 6 in the said Petition. It is pertinent to note that during the pendency of the said earlier Petition, which was filed by Balu Siddhu Bhosale, the original Petitioner expired and his legal representatives were brought on record, including Krishna Balu Bhosale, who has filed the present Petition. The present Petition has been affirmed on 17th January 2009. The learned counsel appearing for the Petitioner accepted that in the present Petition there is not even a reference to the Sale Deed executed by Balu Siddhu Bhosale in respect of the said land bearing Survey No. 115, Hissa No. 6 in favour of the 6th Respondent in Writ Petition No. 4198 of 1997. There is one more important aspect. On 26th November 2007, in Writ Petition No. 4198 of 1997, on the prayer made by the Petitioners therein leave to amend was granted. A specific leave was granted to delete the name of Respondent No. 6 and that is how prayer clause (i) where there

was a challenge to the Sale Deed executed by Balu Siddhu Bhosale in respect of Respondent No. 6 was not pressed. Prayer clause (i) specifically refers to the Sale Deed dated 20th May 1991 executed by Balu Siddhu Bhosale in favour of Respondent No. 6. Thus, as of today, the Sale Deed executed way back on 20th May 1991 by the predecessor of the Petitioner in favour of Respondent No. 6, Narsappa Ramdas Ippakayal in Writ Petition No. 4198 of 1997, is valid and subsisting. The said sale deed in in respect of the area of 2 Hectare 35 Ares out of the total area of 2 Hectare 50 Ares of Survey No. 115/6. In the present Petition, a relief is claimed in respect of an area of 21 Ares out of the same land.

6. Therefore, it was the duty of the present Petitioner while filing the present Petition to disclose that an area of 2.35 Hectare out of Survey No. 115/6 was sold by his predecessor Balu Siddhu Bhosale to the said Narsappa under a Sale Deed dated 20th May 1991. We may note here that the present Petitioner, Krishna Balu Bhosale is the son of Balu Siddhu Bhosale. Moreover, in ground “H” of the earlier Writ Petition No. 4198 of 1997, there is a specific averment that the Respondent No. 6 therein, Narsappa, has made further transfers of the land bearing Survey No. 115 Hissa No. 6 to the number of purchasers. Even in the said earlier Petition, the names of those purchasers have not been disclosed.

7. When all this was brought to the notice of the learned counsel appearing for the Petitioner, firstly he tried to justify the

conduct of not disclosing the Sale Deed dated 20th May 1991 in the present Petition. Secondly, he submitted that considering the reliefs claimed in the Petition, the disclosure of the Sale Deed was not necessary. Thirdly, he pointed out that the relief claimed in the present Petition was confined only to a small portion of Survey No. 115/6.

8. We must note here that even according to the case of the Petitioner, the total area of the land bearing Survey No. 115/6 was 2.50 Hectare out of which 2.35 Hectare has been sold to the Respondent No. 6 (in the earlier Writ Petition) on 20th May 1991 by way of a Sale Deed. Perusal of the prayers (a) and (b) in the present Petition shows that a relief is claimed in respect of total area of 21 Ares of Survey No. 115 Hissa No. 6. Thus, it is crystal clear that the Petitioner has claimed the reliefs in respect of the land already sold by Krishna to Narsappa under the Sale Deed dated 20th May 1991. Thus, it follows that the Petitioner does not have any right, title or interest in respect of the entire land in respect of which the relief is claimed in this Petition under Article 226 of the Constitution of India. Thus, the suppression of the sale deed amounts to suppression of material and vital facts. This Court could notice that only because the record of the earlier Writ Petition filed by the Petitioner was called for. If the fact of the execution of the sale deed would have been mentioned, this Court would not have admitted this Petition. Not only that the Petition

was admitted, but even interim relief was granted on 16th April 2009.

9. As stated earlier, the Petitioner cannot plead ignorance about the execution of the Sale Deed as he himself was a Petitioner in the earlier Writ Petition No. 4198 of 1997, in which the Sale Deed was specifically assailed by contending that the same was fraudulently obtained by Narsappa.

10. We must also note here that in the earlier Writ Petition, a relief was specifically claimed in respect of Survey No. 115/6 which is apparent from the Judgment and Order dated 31st January 2012. We must also note here that in the earlier Writ Petition to challenge to the order under Sub Section (4) of Section 8 of the ULC Act was given up by deleting prayer clauses (b), (c) and (d). Prayer clause (e) of the earlier Petition reads thus:

“(e) to quash and set aside all the acquisition proceedings and orders passed by the Respondents No. 1, 4 and 5 acquiring the lands of the Petitioner situated at Survey No. 113/3 and 115/6 of Solapur passed under the provisions of the Maharashtra Housing and Area Development Act, 1976;”

11. This shows that a relief was claimed in respect of Survey No. 115/6 against Respondent Nos. 4 and 5 herein by praying for

quashing and setting aside of the acquisition proceedings in respect of the said land.

12. In the present Petition, which was filed by the Petitioner during the pendency of the Writ Petition No. 4198 of 1997, there is no reference to the relief sought in Writ Petition No.4198 of 1997 which was pending.

13. We most also note here a very important factor that at all relevant times, from the date of filing of Writ Petition No. 4198 of 1997 till its disposal, the Petitioners therein were represented by the same Advocate who is representing the Petitioner in the present Petition. The same Advocate argued this Petition at the admission stage. Thus, it follows that perhaps this is one of the worst possible cases of suppression of material fact. The execution of the sale deed by Krishna has been completely suppressed in the present Petition. When we gave an opportunity to the learned counsel appearing for the Petitioner to consider his position, not only that he had justified the same but has over simplified the matter by submitting that the entire issue can be resolved by impleading the purchaser Narasappa as a party-Respondent. We may thus record here that an opportunity was given to the Petitioner to consider whether the Petition should be prosecuted any further. The Petition was adjourned on the last two dates for that purpose. The Petitioner has persisted with the Petition and he has justified the act of suppression. Therefore, this is perhaps one of the worst cases of

suppression of material and vital facts. Therefore, this is a fit case where the Petitioner will have to be saddled with an exemplary costs.

14. Considering the extent of suppression and the conduct of the Petitioner, we propose to impose on the Petitioner costs quantified at Rs. 5,00,000/-. Accordingly, we pass the following order:

- (a) The Writ Petition is rejected;
- (b) We direct the Petitioner to pay costs quantified at Rs. 5,00,000/- within a period of two months from today. A sum of Rs. 2,50,000/- shall be payable to the State Government and the balance sum of Rs. 2,50,000/- shall be paid to the Chief Minister's Relief Fund;
- (c) For reporting compliance regarding order of payment of costs, the Petition shall be listed on 16th February 2016 under the caption of directions;
- (d) The files of Writ Petition No. 4198 of 1997 shall be forwarded to the Record Department after the Judgment in this Petition is uploaded on the server.

(G. S. PATEL, J.)

(A. S. OKA, J.)