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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.6101 OF 2014

Dr.Pradeep Bhavan Pathak ...Petitioner
vs.
Vasai Virar Mahanagarpali
and others ...Respondents

Mr.A.J.Almeida for the petitioner
Mr.Sandeep Aole a/w Vishesh Kalza i/b Vidhi Partners
for the respondent No.1
Mr.A.P.Kulkarni for respondent No.2
Mr.V.P.Malvankar, AGP `A' Panel for respondent No.3

CORAM : A.S.OKA, &
 A.K.MENON, JJ.
DATE : JANUARY 16, 2015

P.C.:

1 Heard the learned counsel for the petitioner, learned counsel for the second respondent, learned counsel for the first respondent and the learned AGP for the third respondent. On the basis of the application dated 14th March 1997, the erstwhile Vasai Municipal Council (the Predecessor of the first respondent Municipal Corporation) issued a letter/certificate dated 27th March 1997 to the petitioner. In the first paragraph of the said letter/certificate, it is recorded that the City and Industrial Development Corporation of Maharashtra Limited has granted permission to construct a house to the petitioner on the land bearing Survey No.76 Hissa No.5/2. The second paragraph records that for approaching the said land, there is a public road

owned by the Vasai Municipal Council which is in use. The challenge in this petition under Article 226 of the Constitution of India is to the certificate dated 12th April 2012 issued by the Acting Assistant Commissioner of the first respondent-Municipal Corporation. It is recorded therein that there is no public road in existence on the land bearing Survey No.76 Hissa No.5/2 (part) and as per the 7/12 extract, the said land is held by the second respondent. Therefore, the letter/certificate dated 27th March 1997 has been cancelled.

2 Today, an affidavit has been filed by Smt.Smita Dattatray Bhoir, Assistant Commissioner of the first respondent-Corporation. The affidavit records that personal hearing was given to the petitioner on 4th March 2012. The petitioner produced various documents including the plan drawn by the Taluka Inspector of Land Records. In paragraph 6 of the affidavit, it is stated that the petitioner did not produce any documentary evidence to show that the municipal road is in existence on Hissa No.5/2 Survey No.76 and that the 7/12 extract thereof shows that the said land stands in the name of the second respondent. In short, it is contended that the said land is not vesting in the first respondent-Municipal Corporation. That is the reason given for issuing the impugned certificate dated 12th April 2012.

3 After having heard the learned counsel for the petitioner, learned counsel for the first respondent

and the learned counsel for the second respondent, we find that the communication/certificate dated 27th March 1997 has been cancelled by the certificate dated 12th April 2012 only on the ground that the first respondent-Municipal Corporation is not the owner of the land bearing Hissa No.5/2 (part) of Survey No.76 of village Dhovali.

4 It cannot be disputed that the first respondent-Municipal Corporation or its predecessor had no jurisdiction to decide any dispute regarding the existence of right of way or the existence of a road. Therefore, the impugned certificate dated 12th April 2012 cannot be construed to mean that the first respondent-Corporation has decided the issue of the existence of road. All that the impugned certificate records is that the land in question is shown standing in the name of the second respondent in the revenue record and that the said land is not vesting in the first respondent-Municipal Corporation.

5 Hence, we find no reason to interfere in writ jurisdiction under Article 226 of the Constitution of India in a petition where the only challenge is to the certificate dated 12th April 2012. As held earlier, the said certificate does not decide any contested issue of the existence of road or a right of way

. The first respondent-Municipal Corporation cannot decide the said issue. Even the issue of title cannot be decided by the first respondent-Municipal

Corporation.

6 Subject to what is observed above, petition is disposed of.

7 We make it clear that we have made no adjudication on the rival claims of the petitioner and the second respondent.

(A.K.MENON, J.)

(A.S.OKA, J.)