

Mr.Amarnath Shreenath Upadhyay & Ors.	...	Petitioners
vs.		
The State of Maharashtra & Anr.	...	Respondents

CORAM : A.S. OKA & K.R. SHRIRAM, JJ.
DATE : 20TH AUGUST, 2015

2. The case of the petitioners is that by a Deed dated 6th January, 1996, the first two petitioners became partners of M/s. Karn Enterprises and

that the allottees Mrs Kanta Shaligram Tayade and Mrs Nanda Umesh Pardeshi retired. The Petitioners claim that under the said Deed, the petitioners started carrying on business in the new firm name of M/s. Arvind Engineers as partners thereof. It is thereafter contended that on account of the resignation of the original allottees that the petitioners became entitled to the said plot.

3. The case made out in this petition under article 226 of the Constitution of India is that for the period of more than 13 years, the first two petitioners have been attending the office of the first respondent for the purpose of allotment of said plot in their name. The case made out in the petition is that the petitioners constructed boundary wall for enclosing to said plot, but due to financial crisis they could not carry on construction on the said plot. In paragraph 10 of the petition it is contended that in the year 2000 or so, the petitioners could arrange the necessary financial assistance and therefore with the intention of carrying out construction when they visited the said plot, they found that a third party was in possession of the said plot, who claimed that he was the allottee of the second respondent. The petitioners have alleged that, since last more than 13 years, the petitioners have been attending the office of the second respondent for the purpose of allotment of the said plot in their favour. In paragraph 16, it is contended that in the month of May, 2014 when the petitioners met the

higher authorities of the second respondent, they became aware that said plot was lying vacant and hence, it was allotted to a third party. The prayer made in this petition under article 226 of the Constitution of India is for a writ of mandamus to the second respondent enjoining the second respondents to place the petitioners in possession of an industrial plot in lieu of the said plot already allotted to the petitioners.

4. There is a reply filed by Mr.Ashok D. Chavan, Area Manager of the second respondent. It is pointed out in the reply that the possession of the said plot was handed over to M/s Karn Enterprises under a possession receipt dated 10th June, 1992. It is pointed out that under sub-clause (d) of clause (3) of the Agreement dated 28th November, 1991, time of three and half years was granted to the original allottee to complete the construction on the said plot and obtain an completion certificate. It is pointed out that till the year 2004, no development work was carried out on the said plot and, therefore, termination notices were issued on 25th August, 2004, 28th July, 2005 and 10th October, 2005. It is stated that on 28th November, 2005 the possession of the said plot was obtained by the second respondent and subsequently by an allotment order dated 16th August, 2006 the said plot has been allotted to Mr.Satish Bhagwan Kokare. The Agreement to lease of the plot was executed between the second respondent and the said Mr.Satish Bhagwan Kokare on 7th June, 2007. On completion of

construction, a building completion certificate has been issued to the said subsequent allottee.

5. The submission of the learned counsel for the petitioners is that the notices of termination were never served to the petitioners. His submission is that the notices were also not served to the original allottees. The submission is that as the petitioners were entitled to the said plot, as a consequence of illegal allotment of the said plot to a third party, the petitioners may be allotted other plot.

6. We have considered the submissions. Firstly, the petitioners never applied to the second respondent for transfer of the said plot in their name. Secondly, the conjoint reading of the paragraphs 10 and 11 of the petition will show that the petitioners were aware for several years that the said plot was in possession of a third party. The petitioners never made any grievance about allotment of the plot to the third party and in fact in paragraph 13, it is contended that they were visiting the office of the second respondent regularly for allotment of another plot. The affidavit of the second respondent discloses that the possession of the said plot was taken over on 28th October, 2005 and the subsequent allottee Mr.Satish Bhagwan Kokare was placed in possession on 18th January, 2007. In this petition under article 226 of the Constitution of India, there is no challenge to the

termination of the Agreement. The said plot was never transferred in the name of the petitioners. Though a reply was filed on 29th October, 2014 by the second respondent, there is no rejoinder filed controverting what is stated in the reply. Apart from the fact that the petitioners were never the allottees of the said plot, the petitioners have not chosen to challenge the termination of the Agreement. If there is no challenge to the termination of the agreement, the petitioners do not get any right to seek allotment of another plot in lieu of the said plot.

7. Hence, the petition is dismissed.

(K.R. SHRIRAM, J.)

(A. S. OKA, J.)