

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 6865 OF 2015

Shri Ravi Ramanna Shivsharan &
Ors.

Petitioners

Vs

State of Maharashtra and Anr.

.. Respondents

Mr. Surel S. Shah, Advocate for Petitioners.

Mr. A.R.Metkari, A.G.P for Respondents-State.

CORAM : R.G.KETKAR,J.

DATE : 29/07/2015

PC:

1. Heard Mr. Surel Shah, learned counsel for the petitioners and Mr. A.R. Metkari, learned A.G.P for the respondents at length.
2. Rule. Mr. Metkari waives service for the respondents. At the request and by consent of the parties, Rule is made returnable forthwith and petition is taken up for final hearing.
3. By this Petition under Article 227 of the Constitution of India, original plaintiffs have challenged the Judgment and order dated 4.6.2015 passed by the learned Civil Judge, Sr. Dn, Solapur below Exhibit-5 in Regular Civil Suit No. 360 of 2015 as also the Judgment and order dated 4.7.2015 passed by the learned District Judge-2, Solapur in Civil Misc. Appeal No.96 of 2015. By these orders, the Courts below dismissed the application taken out by the plaintiffs for temporary injunction restraining the defendants from removing their huts or slums from Survey No.

531/A1 admeasuring 0.13 R, 531/A2 admeasuring 0.13R and 531/B admeasuring 1 H. 62 R land, situate on plots no. 37 to 70, Varad Nagar Zopadpatti, Solapur, (for short, 'suit property').

4. In support of this Petition, Mr. Shah submitted that the learned trial Judge held in paragraph 27 that under section 50(3) of the Maharashtra Land Revenue Code, 1966 (for short, 'Code') reasonable notice was given by the defendants to the plaintiffs to remove encroachments made over the suit property. Section 50 nowhere discloses that there is necessity to make any inquiry prior to issuance of notice. The learned trial Judge held that Section 50 of the Code is not applicable as the plaintiffs are not having any legal right or interest in the suit property.

5. The learned trial Judge also relied upon Section 230(2) which provides that no such notice shall be deemed void on account of any error in the name or designation of any person, or in the description of any land, referred to therein, unless such error has produced substantial injustice. He submitted that the learned trial Judge also observed in paragraph 19 that the plaintiffs have not produced on record any identity card issued issued to them by the Government to indicate that the Government Resolution dated 10.7.2001 is applicable to them for rehabilitation. In paragraph 17, the learned trial Judge observed that the documents filed on record by some of the plaintiffs do not disclose that they are residing over the suit

property prior to 1995.

6. Mr. Shah submitted that the learned District Judge in paragraph 11 held that the documents produced by the plaintiffs do not show that they have been residing over the suit property prior to 1.1.1995. In paragraph 12, the learned District Judge observed that for application of Section 53 of the Code it is necessary on the part of the plaintiffs to establish their legal right or interest in the suit property. Section 53 of the Code would be invoked only if the plaintiffs have any legal right or interest in the suit property. The learned District Judge reiterated that the documents produced by the plaintiffs on record do not show that they are residing on the suit property prior to 1.1.1995.

7. Mr. Shah relied upon Sections 50 and 53 of the Code which are as under:

“50. Removal of encroachments on land vesting in Government; provisions for penalty and other incidental matters.- (1) In the event of any encroachment being made on any land or fore-shore vested in the State Government (whether or not in charge of any local authority) or any such land being used for the purpose of hawking or selling articles without the sanction of the competent authority, it shall be lawful for the Collector to summarily abate or remove any such encroachment or cause any article whatsoever hawked or exposed for sale to be removed; and the expenses incurred therefore shall be leviable from the person in occupation of the land encroached upon or used as aforesaid.

(2) The person who made such encroachment or who is in unauthorised occupation of the land so encroached upon shall pay, if the land encroached upon forms part of an assessed survey number, assessment for the entire number for the whole period of the encroachment, and if the land

has not been assessed, such amount of assessment as would be leviable for the said period in the same village on the same extent of similar land used for the same purpose. Such person shall pay in addition a fine which shall be not less than five rupees but not more than one thousand rupees if the land is used for an agricultural purpose, and if used for a purpose other than agriculture such fine not exceeding two thousand rupees. The person caught hawking or selling any articles shall be liable to pay fine of a sum not exceeding fifty rupees as the Collector may determine.

(3) The Collector may, by notice duly served under the provisions of this Code, prohibit or require the abatement or removal of encroachments on any such lands, and shall fix in such notice a date, which shall be a reasonable time after such notice, on which the same shall take effect.

(4) Every person who makes, causes, permits or continues any encroachment on any land referred to in a notice issued under sub-section (3), shall in addition to the penalties specified in sub-section (2), be liable at the discretion of the Collector to a fine not exceeding twenty-five rupees in the case of encroachment for agricultural purposes and fifty rupees in other cases for every day during any portion of which the encroachment continues after the date fixed for the notice to take effect.

(5) An order passed by the Collector under this section shall be subject to appeal and revision in accordance with the provisions of this Code.

(6) Nothing contained in sub-sections (1) to (4) shall prevent any person from establishing his rights in a civil court within a period of six months from the date of the final order under this Code.

53. Summary eviction of person unauthorisedly occupying land vesting in Government.-

(1) If in the opinion of the Collector any person is unauthorisedly occupying or wrongfully in possession of any land or foreshore vesting in the State Government or is not entitled or has ceased to be entitled to continue the use, occupation or possession of any such land or foreshore by reason of the expiry of the period of lease or tenancy or termination of the lease or tenancy or breach of any of the

conditions annexed to the tenure, it shall be lawful for the Collector to evict such person.

(1-A) Before evicting such person, the Collector shall give him a reasonable opportunity of being heard and the Collector may make a summary enquiry, if necessary. The Collector shall record his reasons in brief for arriving at the opinion required by sub-section (1).

(2) The Collector shall on his finding as aforesaid, serve a notice on such person requiring him within such time as may appear reasonable after receipt of the said notice to vacate the land or foreshore, as the case may be, and if such notice is not obeyed, the Collector may remove him from such land or foreshore.

(3) A person unauthorisedly occupying or wrongfully in possession of land after he has ceased to be entitled to continue the use, occupation or possession by virtue of any of the reasons specified in sub-section (1), shall also be liable at the discretion of the Collector to pay a penalty not exceeding two times the assessment or rent for the land, for the period of such unauthorised use or occupation."

8. Mr. Shah submitted that Section 53 lays down procedure for summary eviction of person unauthorisedly occupying land vesting in Government. In other words, the Courts below were not justified in holding that Section 53 of the Code is not applicable unless the plaintiffs establish their legal right or interest in the suit property. In fact, Section 53 empowers the State Government to evict persons who are unauthorisedly occupying land vesting in the Government. Thus, Section 53 is applicable even when in the opinion of the Collector the persons having no interest in the land are unauthorisedly occupying it. I find merit in the submission of Mr. Shah that before evicting persons unauthorisedly occupying land vesting in the

Government, the Collector has to follow procedure contemplated by sub-section (1-A) of Section 53 of the Code. He further states that if the respondents are inclined to hold inquiry, notices addressed to the plaintiffs may be served upon Advocate Mr. R.P.Kanbaskar who is authorised to accept service on behalf of the petitioners-plaintiffs. Mr. Kanbaskar is also authorised to represent the petitioners in the inquiry. He further states that upon receipt of the notice, petitioners will give reply within two weeks therefrom. He further states that the petitioners will withdraw the suit pending in the trial Court by filing formal application. Statements made by Mr. Shah are recorded.

9. Mr. Metkari, upon taking instructions from Hemant Kolekar, Tahasildar, North Solapur, states that Competent Authority/Appropriate Authority will hold inquiry as contemplated under section 53(1-A) of the Code. He states that within two weeks from today, the respondents will serve notice on Advocate R. P. Kanbaskar. Mr. Shah assures that after receipt of the notice, reply will be filed along with documents within two weeks therefrom. Mr. Metkari states that after receipt of reply, requisite inquiry will be conducted in accordance with law within three months therefrom.

10. In view thereof, Petition is disposed of in the following terms:

(i) Impugned orders are quashed and set aside.

(ii) In view of the fact that the respondents are now holding inquiry, the suit does not survive and the plaintiffs will take out formal application for withdrawal of the suit in the trial Court. The said application shall be filed within two weeks from today and the learned trial Judge will formally permit the plaintiffs to withdraw the suit.

(iii) The respondents shall serve notice within two weeks from today on Advocate R. P. Kanbaskar representing the plaintiffs herein. The plaintiffs shall give reply along with documents within two weeks from receipt of the notice.

(iv) The Competent Authority/Appropriate Authority will conduct inquiry and follow the procedure laid down in Section 53 of the Code by giving hearing to the plaintiffs' Advocate Mr. R. P. Kanbaskar. Let that inquiry be completed within three months from receipt of reply to the notice.

(v) For a period of six months from today, the order dated 4.7.2015 passed by the learned District Judge shall remain in force. It is made clear that I have not examined merits of the case and Competent Authority/Appropriate Authority will decide the case uninfluenced by any observations made herein.

(vi) Rule is made absolute in the aforesaid terms with no order as to costs.

(R.G.KETKAR, J.)