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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.9147 OF 2009

Namdeo Kashinath Aher & Anr. ...Petitioners
vs.
The State of Maharashtra
and others ...Respondents

Mr.Prashant Chavan i/b Mr.Nitin Dhumal for the
petitioners
Ms M.P.Thakur, AGP for the respondent No.1
Mr.A.S.Rao for respondent nos.2 and 3
Mr.D.H.Mehta a/w Mr.Dhavan Mehta i/b Mr.D.M.Legal
Associates for respondent No.4

CORAM : A.S.OKA, &
A.K.MENON, JJ.
DATE : MARCH 2, 2015

P.C.:

1 Heard the learned counsel for the petitioners, learned AGP for the first respondent, learned counsel for the second and third respondents and the learned counsel for the fourth respondent. The petitioners are claiming to be the owners of the land bearing Survey No.7/2 (Part) admeasuring 1537.28 sq mtrs situated at Durgamata Chowk, Kalyan, District Thane. The learned counsel for the second respondent-Municipal Corporation states that the area of 1330 sq meters out of the land bearing survey No.7/2 (Part) claimed by the petitioners has been included in Lease Deed dated 31st August 2009 executed by and between the second respondent-Municipal Corporation as a Lessor and fourth respondent as the Lessee. He states that the said

land is also included in the Resolution No.127 dated 23rd December 2003 passed by the second respondent. On instructions, he states that as the said land admeasuring 1380 sq meters bearing Survey No.7/2 (Part) claimed by the petitioners has not been acquired in accordance with law, the second respondent shall delete the said portion of land from the Lease Deed dated 31st August 2009 by executing a Deed of Rectification.

2 The learned counsel for the fourth respondent invited our attention to the affidavit of Shri Anil Shah, a partner of respondent No.4 M/s.S.M. Associates. He states that in the said affidavit, a contention has been raised that the deceased first petitioner had at highest 30% share in the said land bearing Survey No.7/2 (Part). He, however, on instructions he states that the fourth respondent has not been placed in possession of area of 1380 sq meters out of land bearing Survey No. 7/2 (Part) claimed by the petitioners and that the fourth respondent has no objection for deleting the said portion of land from the purview of Resolution dated 22nd December 2003 bearing No.127. He states that the fourth respondent has no objection for executing a Deed of Rectification for rectifying the Lease Deed dated 31st August 2009 for deleting the said area admeasuring 1380 sq.meters out of land bearing Survey No.7/2 (Part).

3 Thus, the fourth respondent is not placed in possession of the area admeasuring 1380 sq meters

out of the land bearing Survey No.7/2 (Part). Even the second respondent-Municipal Corporation is not claiming that the said area has been acquired and the possession thereof has been taken over.

4 It is pointed out that by order dated 9th April 2007, an application made by the petitioners for grant of development permission under the Maharashtra Regional and Town Planning Act, 1966 (for short 'MRTP Act') has been rejected and an appeal preferred by the petitioners against the said order is pending before the State Government.

5 The learned counsel for the fourth respondent states that the said appeal has been dismissed. However, the learned AGP has no instructions on this aspect.

6 As far as prayer (a) is concerned, admittedly, the petitioners have not served a the notice either under section 49 or section 127 of the Maharashtra Regional and Town Planning Act, 1966. Therefore, the said prayer cannot be considered at this stage.

7 Therefore, in view of the aforesaid statements made by the second and fourth respondents through their respective learned counsel, the petition is worked out. As regards the controversy regarding pendency of the appeal, we propose to issue appropriate directions.

8 Hence, we dispose of the petition by passing the following order:

- (I) The statements made by the learned counsel for the second respondent as well as the statements made by the learned counsel for the fourth respondent are accepted. If the Resolution No.127 dated 22nd December 2009 is not rectified and the Deed of Rectification as agreed is not executed and registered within a period of four months from today, it will be open for the petitioners to file appropriate proceedings for enforcing the assurances given to this Court;
- (II) We direct the petitioners or their representative to remain present before the Appellate Authority on 13th April, 2015 at 3.00 p.m.;
- (III) If the appeal preferred by the petitioners against the order dated 9th April 2007 is already disposed of, a copy of the order passed on the said appeal shall be provided to the petitioners on that date. Needless to state that the petitioners will be entitled to challenge the order passed on the appeal in accordance with law;
- (IV) If the appeal preferred by the petitioners is still pending, by taking copies of Memorandum of Appeal and other documents from the petitioners, the file of appeal

shall be re-constructed. The appeal shall be disposed of as expeditiously as possible and preferably within a period of two months from 13th April, 2015;

- (V) All contentions of the parties on merits of the appeal are expressly kept open;
- (VI) As far as alleged reservation on the land claimed by the petitioners is concerned, all contentions and remedies of the parties are kept open. As far as issue of title raised by the fourth respondent is concerned, all contentions of the parties are kept open;
- (VII) Petition is disposed of on above terms.

(A.K.MENON,J.)

(A.S.OKA,J.)