

Rane

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SA-163-2012
(sr. no.)

10February,2015

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 163 OF 2012

Shri. Mahadeo Kanu Dadhekar
(since deceased)

1(1) Smt. Malati Mahadeo Dadhekar

.....Appellant

: V/S :

Thane Municipal Corporation

.....Respondent

* * * * *

Mr. N.V. Walawalkar, Sr. Counsel i/b. Smt. Neeta Karnik, Advocate for
the appellant.

Mr. Mandar Limaye, Advocate for respondents no.1 and 4

Mr. M.S. Lagu, Advocate for respondent no.3A and 3B.

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Coram :- Smt. R.P. SondurBaldota, J.

10th February, 2015.

P.C. :-

1). This Second Appeal is directed against the concurrent findings of facts by the Courts below, that the appellants have failed to establish their title to the suit property and as such are entitled, neither for declaration of the title in respect thereof nor it's possession nor any further relief of *mesne* profits.

2). The suit as filed originally, was by one, Mahadeo Dadhekar. During pendency of the suit, he expired. The appellants who are his

heirs and legal representatives then continued the proceedings. The respondents are original defendants no.1 to 6. Respondent no.6 was impleaded to the suit on her own application.

3). The undisputed facts of the case are as follows :-

. One Damodar Tribhovandas Kapadia was the owner of various pieces of land including the land at Survey no. 367, Hissa no.2/1 ("the suit land" for short) at Thane. On his death in the year 1944, his widow Chandaben became entitled to those properties. In and around the year 1960, the then Thane Municipal Council submitted proposal to the Collector for acquisition of land at Thane including the suit land for construction of road and other public purposes. On 14th July, 1960 vide order No. CB/REV/687 the Collector, Thane acquired the suit land. The Tahsildar, Thane, on 21st July, 1960, mutated the revenue records, vide Mutation Entry No. 2294 to enter the name of Thane Municipal Council therein. The entry was certified on 30th January, 1964. The possession of the land acquired was handed over to Thane Municipal Council in the year 1963. After using a portion of the land for the purpose of road widening, Thane Municipal Council leased out varying portions of the suit land to respondents no.2 to 5 and the original plaintiff, Mahadeo. The lessees constructed structures on their respective lands and have been occupying the same since then. The lease granted to Mahadeo in the year 1966 was in respect of land admeasuring 360 sq.ft. Mahadeo

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also constructed his own structure on the land. He had been paying rent for the land in his possession until the year 1976 and has stopped thereafter. The other lessees have continued to pay rent for the land leased to them till date, initially to Thane Municipal Council and later to respondent no.1, Thane Municipal Corporation.

4). In the year 1966 i.e six years after the acquisition of the lands, Chandaben died and her daughter Lata Seth became entitled to her estate. On 1st July, 1976 Lata entered into an agreement with Mahadeo for sale of the land bearing Survey No. 367/2/1, City Survey No.20/3, Tikka no. 16 admeasuring about 1127 sq. mts for the total consideration of Rs.30,000/-. She completed the transaction by executing sale deed on 25th February, 1980. Around the same time, she made representation to the Collector, Thane complaining that no compensation had been paid to her for acquisition of the lands at Thane. The Collector, Thane by his letter dated 14th March, 1980 informed Lata Seth that she should approach the then, Thane Municipal Council for agitation of her claim regarding compensation. While forwarding copy of the letter to the Council, the Collector requested that the claim of Lata Seth be settled on the basis of the market rates prevailing on the date of acquisition. In response to the letter of the Collector, the Municipal Council on 16th June, 1980 passed a Resolution appointing a valuer for valuing the land acquired. The valuer submitted his report dated 1st

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August, 1980 valuing in all 11 properties together admeasuring 23,890 sq.yds at Rs.1,90,400/-. The value arrived at was at the rate of Rs.8/- per sq.yd. Thereafter, the sale-deed dated 10th March, 1981 came to be executed between Lata Seth and Thane Municipal Council for sale of the lands that had been acquired during the period 1960-63 and consideration therefor of Rs.1,90,400/- paid to Lata Seth. The schedule to the sale-deed includes the suit property described as Survey no.367, Hissa no.2/1 admeasuring 6,193.68 sq.yds.

5). Thus even before, Thane Municipal Council took up the complaint of Lata Seth regarding non-payment of compensation to her, she had, by the registered deed of conveyance dated 25th February, 1980 sold the suit land to Mahadeo for the consideration of Rs.30,000/-. Mahadeo then applied to the District Inspector of Land Records (DILR) for changing the entry in the revenue records standing in the name of the Municipal Corporation. The DILR passed the order dated 3rd April, 1982 holding Mahadeo as the owner of the suit land. On the basis of that order, Mahadeo started claiming right to the suit property. He contended that Lata Seth was paid consideration only for the strips of land acquired for road widening by the Government and that the suit land was never acquired.

6) In the year 1983, Mahadeo filed Special Civil Suit No.243 of 1983 which was later numbered as Regular Civil Suit No.774 of 2001,

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inter-alia, for declaration that he is the exclusive owner of the suit property i.e. Tika No.16, City Survey No.20/3 admeasuring 1127 sq. mtrs situate at Lalbaug Thane and for it's possession after demolition of the structures standing thereon belonging to respondents no.2 to 5. Mahadeo claimed that the land acquired in the year 1960 was the land utilized for the road widening and the suit property was never acquired.

7). The Municipal Corporation contested the Suit contending that it is the owner of the suit land and that owners of all the structures standing thereon, including Mahadeo, are the lessees in respect of the land under their structures. Lata Udayan Seth had no right whatsoever to the suit property and as such could not have sold it to Mahadeo. It is stated that the entire land had been acquired by the Collector of Thane for Thane Municipal Council and that the land had been standing in its name since the year 1960. After utilising a portion of the land for public purpose, the balance land was given on lease to respondents no. 2 to 5 and to Mahadeo as mentioned earlier. They have been paying lease rent to the Corporation since the dates of their respective Lease Agreements. The Corporation further contended that the transfer of land by Lata Seth to Mahadeo was in contravention of the provisions of Urban Land (Ceiling and Regulations) Act, 1976. Therefore, the sale is null and void. It further alleges that the District Inspector of Land Records appears to have conspired with Mahadeo and Lata Seth and mutated the land

records by transferring the land in the name of Mahadeo.

8). Respondents No.2 to 5 have supported the case of Thane Municipal Corporation. They further contended that Mahadeo was estopped from filing the suit on account of his own conduct. One Pukhraj Rupchand Jain, the husband of original Respondent No.6 and father of Respondent No. 6(a), had filed Regular Civil Suit No. 467 of 1968. In that Suit, Mahadeo had pleaded *inter-alia* that he was the tenant of Thane Municipal Council. Having taken a specific stand on the right to the suit property, according to respondents no. 2 to 5, Mahadeo cannot be allowed to shift that stand in the subsequent proceedings.

9). Original Respondent No. 6 also contested the suit contending in the written statement that her husband Pukhraj Jain was the owner of the property bearing Survey No. 368 (A), Hissa No. 13, admeasuring 2 gunthas 6 annas corresponding to C.T.S. No. 20/3, Tika No. 16, situate at Ram Maruti Cross Road, Naupada, Thane. He had purchased the land from one Mohanlal Chajhumal by Registered Deed of Conveyance dated 9th October 1961. Mr. Mohanlal Chajhumal had purchased the property in the auction sale held on 10th September, 1959 in a execution proceeding. Pukharaj had filed a suit being Regular Civil Suit No. 416 of 1976 against the Thane Municipal Corporation for declaration of title to the suit property. The suit was dismissed. The appeal preferred against the Decree was also dismissed and the second

appeal preferred against that is pending in this Court. Original Respondent No.6 supported the Appellants to a limited extent to state that the land acquired by Thane Municipal Corporation has been completely utilised for the purpose of road widening.

10). In view of death of Mahadeo during pendency of the suit, he was not available for deposition in the suit. The only witness examined by the appellants was appellant no.2. The Municipal Corporation led evidence of its Ward Officer of Estate Department. Respondent Nos. 2 to 5 did not lead any evidence. Original Respondent No. 6 examined herself in support of her claim of title to the suit property.

14). The trial Court by its Judgment and Decree dated 31st March 2005 dismissed the suit. It held that the appellants had failed to establish exclusive ownership of the suit property. The claim of Respondent No.6 also failed on the same ground. It found that the Thane Municipal Corporation is the owner of the suit property and has been in possession thereof. Being aggrieved by the Judgment and Decree of the Trial Court, the Appellants preferred Civil Appeal No.143 of 2006 to the District Court, Thane. The Appeal was dismissed by Judgment and Order dated 9th June 2011.

15). For noting the sequence of events it will be necessary to recapitulate the facts. One Damodar Tribhuvandas Kapadia was the owner of various pieces of land at Thane including the suit land. On his

death in the year 1947, his widow Chandaben became entitled to the properties. By the order dtd. 14th July, 1960, the Collector, Thane acquired the suit land for Thane Municipal Council. On completion of acquisition proceedings, the Tahsildar, Thane, by his order dtd. 21st July, 1960 mutated the revenue record. The mutation was certified on 30th January, 1964. Possession of the land was handed over to Thane Municipal Council in the year 1963. After receiving possession of the entire acquired land, the Municipal Council utilized a portion of it for the purpose of road widening and other public purposes. The remaining land was then let out to different persons. A portion admeasuring 360 sq. feet of it was given on lease to Mahadeo in the year 1966. In the same year, Chandaben died and her daughter Lata Seth became entitled to the assets of Chandaben. The assets, as on that date, did not include the suit land, it having been acquired by the Government for the Thane Municipal Council. About 20 years after the acquisition of the land and 14 years after the death of her mother, Lata Seth raised dispute, only about the compensation in respect of the land acquired. She neither challenged the acquisition in the year 1960 for any reason nor handing over of possession of the land to Thane Municipal Council in the year 1963. Despite these facts, she entered into agreement dtd. 1st July, 1976 for sale of the suit property to Mahadeo for the consideration of Rs.30,000/- and later executed the deed of conveyance in his favour on

25th February, 1980. Bare noting of these facts is sufficient to reject the claim of the appellants as regards the title to the suit property.

16). The Courts below rejected the claim of the appellants on the grounds that i) the appellants had failed to establish that the suit property was not acquired by the State of Maharashtra for the benefit of Thane Municipal Council and the property acquired consisted of only northern and southern strips of land of survey no.367, Hissa No.2/1, (ii) as on the date of transfer of the suit property to the appellants, Lata Seth, was not it's owner, as a consequence, she could not have transferred a title better than what she had, (iii) acquisition of the land in the year 1960 and undisputed handing over of it's possession to Thane Municipal Council in the year 1963 belies the case of the appellants and establishes the claim of Thane Municipal Corporation and (iv) the defective pleadings of the appellants. The plaint did not contain description of the property sufficient to identify it. The appellants had not disclosed the four boundaries of the suit property in the plaint so as to identify the same. Admittedly, the suit property was never measured through the surveyor. The map produced by the surveyor (Exh. 67) was drawn by a private surveyor, who was not examined.

17). It has been earnestly argued before this Court that the Courts below erred in placing the burden of establishing the fact of the acquisition of the suit property upon the appellants. It is urged that the

burden ought to have been placed upon the Municipal Corporation because the entire record relating to the acquisition would be in the custody of the Corporation. Merely because the documents relevant for establishing the facts alleged by the appellants are likely to be in the custody of the Corporation the burden of establishing the fact cannot shift.

18). It was sought to be contended before the courts below that the land acquired in the year 1960 did not include the entire survey no.367, Hissa No. 2/1 corresponding to survey No.20/2, Tikka 16 and that only southern and northern strips of that land had been acquired by the Collector. The appellants, however, did not produce any evidence whatsoever before the Court in support of the allegation. The trial court held that Section 110 of the Evidence Act put the entire burden of establishing the facts alleged on the appellants, as it was the appellants who desired the Court to give judgment on the title to the suit property on existence of the facts alleged by them. It also noted that neither the appellants nor Lata Seth had challenged the order of acquisition of land by the Collector, Thane in the year 1960. Admittedly, Mahadeo had not made any enquiries as regards acquisition of the land from Lata Seth at the time he purchased the land. The appellants have notably not examined Lata Seth.

19). Mr. Walawalkar, the learned Senior Counsel appearing for the appellants submits that, the fact that only a small portion of the land in question was acquired, gets established from the deed of conveyance executed by Lata Seth in favour of the Corporation. He refers to the amount of consideration for the land mentioned therein and argues on the basis of the rate of valuation that the same cannot be for the entire land. This is clearly an argument of desperation. It was necessary for the appellants to establish their claim that, only a small portion (two strips of land) of the land at Survey No. 367, Hissa No.2/1 was acquired by the Collector by specific evidence. Undoubtedly, the documents relating to the acquisition would be in the custody of the State or the Corporation. During the course of the trial, the Corporation has stated that no documents are available with it. The suit filed by Mahadeo was 23 years after the acquisition and the evidence in the suit was recorded more than 36 years after the acquisition. Therefore, the statement of the Corporation of unavailability of document of acquisition with it cannot be doubted. In such circumstances, the appellants ought to have brought circumstantial evidence to establish the fact. There is also no explanation forthcoming for handing over of possession of the entire land. It is important to note that, Chandaben in whose lifetime, the acquisition took place and the possession was taken, did not question it. She died six years after the acquisition. Lata Sheth though became

entitled to the assets of Chandaben in the year 1966, made no complaint about the acquisition till the year 1980. The complaint that was made in the year 1980 was limited to non-receipt of compensation. She raised no dispute as regards the area of the land acquired. But she agreed to sell the suit land to Mahadeo in the year 1976 and completed the sale in the year 1980. The State of Maharashtra, the acquiring body is not impleaded to the suit and so is Lata Seth. Consequently, the facts relating to the complaint of Lata Seth, the enquiry into it by the State etc. have not come on record. Since the Corporation is the only the body for whose benefit the acquisition took place, it had to act on the dictates of the Collector and pay compensation to Lata Seth. In these facts and circumstances, the complaint of Lata Seth and the manner in which it was dealt with by the State also appear to be clouded by doubts.

20). The concurrent findings of fact are thus seen to be supported by the record. There is no substantial question of law arising for consideration of the Court. Hence, the Second Appeal is dismissed with costs.

(SMT. R.P. SONDURBALDOTA, J)