

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 11037 OF 2014

Ibrahim Suleman Patil.	...	Petitioner.
V/s.		
Khopoli Municipal Council and others.	...	Respondents.

Kuldeep S. Patil for the petitioner.

R.S.Datar for respondent No.1.

PPKakade, AGP for for respondent Nos.2 and 3.

VV.Salunke for respondent No.5.

**CORAM : NARESH H. PATIL AND
S.B. SHUKRE, JJ.**

DATED : 24th August 2015.

PC.

Heard.

2. By order dated 3rd December 2014, in para-5, the Division Bench has observed :

“5. By way of ad-interim relief which will be operative till the returnable date, we direct that no further steps shall be taken by the first respondent-Municipal Council on the basis of the impugned resolution No.90 dated 26th August 2014. We make it clear that on the basis of the impugned resolution, pending execution application shall not be withdrawn.”

3. The petitioner has raised objection to the resolution passed by respondent No.1- Khopoli Municipal Council on 26th August 2014. It is submitted that in spite of there being a judgment and decree in favour of the municipal council, for getting the sale-deed executed in respect of land CTS Nos.1474 and 1475, attempts have been made to compromise the matter with the land owner i.e. respondent No.5. Learned counsel for the petitioner has referred to various orders passed by different Chief Officers on different dates. We have perused the order passed by the Collector dated 17th August 2002 whereby earlier resolution passed by the municipal council dated 14th May 2002 was stayed. The said order of the Collector has been confirmed by the Regional Director, Municipal Administration and Divisional Commissioner, Konkan Division by order dated 31st December 2002.

4. The municipal council had filed civil suit being RCS No.24/1985 in the Court of Civil Judge, Junior Division, Khalapur. By judgment and order passed on 6th November 1993, the Civil Judge, Junior Division, Khalapur decreed the said suit. The operative part of the judgment reads as under:

“1. The suit is decreed with costs.

2. The plaintiff has already paid purchase price to the defendant which is admitted by the defendant. Hence, the defendants are hereby directed to executed the sale deed as per the agreement dated 28/5/80 between the plaintiff and deceased defendant on or before 30/11/93. The defendants to bear all expenses of the said sale-deed of of the suit properties.

3. The defendants are also hereby directed to hand-over the peaceful possession and vacant possession of the suit property of CTS 1475 to the

plaintiff immediately after the execution of the sale deed.

4. In case of the failure of the defendants to execute the sale deed of the suit land in favour of plaintiff and giving possession of the suit land of the suit land of CTS.No.1475 to the plaintiff, as directed in paras above, the plaintiff will be entitled for getting executed the said sale deed through the Court and will also be entitled for such further steps which can be required for obtaining the possession of CTS.No.1475.

5. The defendants do pay the cost of the suit to the plaintiff and bear their own.

6. The preliminary decree be drawn accordingly.”

5. The learned counsel appearing for the petitioner submits that the impugned resolution is against the public interest. If the resolution is to be implemented, the municipal council would be put to heavy loss. Being taxpayer and resident of Khalapur the petitioner has filed this petition.

6. The learned counsel appearing for the municipal council submits that the petitioner has no locus to file this petition. This is not a public interest litigation but a writ petition simplicitor. It was further submitted that with a view to get the sale-deed executed in respect of land bearing CTS No.1474 and 1475, the parties entered into compromise agreement which need not be questioned by the petitioner.

7. The learned counsel appearing for respondent No.5- original owner of the land, who was defendant in the suit, submits that the decree

does not relate to the property owned by respondent No.5. The decree passed by the civil Court would operate in respect of CTS No.1475 and not with respect to CTS No.1474. Considering various issues and financial capacity of the land owner, the parties agreed between themselves for a via-media and, accordingly, the subject resolution came to be passed.

8. We have perused the record placed before us. We need not go into the questions and facts discussed by the trial Court. It is submitted that the judgment of the trial Court has been confirmed by lower appellate Court by dismissing Civil Appeal No.199/1993. It is also true that the present petition is not filed as public interest litigation. But the questions raised by the petitioner in this petition being resident of Khalapur and as a tax-paper would certainly raise eyebrows regarding the manner in which the municipal council has dealt with the subject issue. The reasons for the council to pass resolutions on different occasions for different purposes are required to be looked into. In the first attempt, the council failed as the said resolution was stayed by the Collector and the Commissioner. The municipal council under the resolution had agreed for grant of TDR on condition that the land owner will execute sale-deed in respect of land bearing CTS No.1474. The council agreed for releasing the land CTS No.1475 in favour of the land owner. This issue deserves serious consideration by the Collector, Raigad.

9. We have also perused the communication made by the successive Chief Officer of the municipal council. The Collector shall look into changed approach of different Chief Officers in regular intervals, departmentally.

10. In this petition, filed under Article 226 of the Constitution of India and in view of the facts and material brought before us we find it appropriate to issue directions to the Collector as under:-

The Collector, Raigad is directed to call for the record concerning the lands bearing CTS Nos.1474 and 1475, the judgment of the trial Court in civil suit bearing RCS No.24/1985, and the municipal record in respect of resolutions passed by the council from time to time. The Collector shall, thereafter, deal with the matter to decide as to whether the resolution passed by the council was proper and in tune with the public policy and in larger public interest. The Collector is entitled to hear the parties personally. The Collector shall complete this exercise within two months from the date of receipt of copy of this order, by passing a reasoned order.

Ad-interim order granted by this Court shall continue till the Collector passes order.

With the aforesaid observations and directions, this petition is disposed of.

Registry to forward the copy of this order to the Collector.

(S.B. SHUKRE, J.)

(NARESH H. PATIL, J.)