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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION No. 346 OF 2014

Guljar Baba Khan & Anr. ... Petitioners
Vs.
M/s. Sumer Builders & Ors. ... Respondents

Mr. A. N. Mulla, for the Petitioners.

Mr. Prasad Dani a/w Yasmin Bhansali i/b Yasmin Bhansali & Co., for
Respondent No. 1.

Mr. Vaibhav Sugdhare i/b Pankaj Thatte, for Respondent No. 2.

Mr. Rahul R. Singh, for Respondent No. 4.

Mr. M. M. Malvankar, for Respondent No. 10.

Mr. R. M. Momin, for Respondent No. 11.

Mr. M. P. Jadhav, AGP for Respondent No. 12.

CORAM : V. M. KANADE, &
REVATI MOHITE DERE, JJ.

DATE : JANUARY 12 , 2015

PC.

1. Heard the learned counsel appearing on behalf of the
Petitioners and the counsel appearing on behalf of Respondent No. 1.
By this petition, which is filed under Article 226 of the Constitution of
India, Petitioners are seeking following reliefs:

“(a) Rule *nisi* be issued;

Record and proceedings be called for;

- (b) That, this Hon'ble Court may be pleased to issue a writ of certiorari or writ in the nature of certiorari or any other appropriate writ, order or direction under Article 226 of the Constitution of India, and may be pleased to call upon proposal for development submitted by Sumer Builders and commencement certificate issued by Municipal Commissioner on 9.6.2006 and Town Planning remarks dated 12.3.2008 issued by Executive Engineer, Mumbai (annexed at Exhibit - “Y1” and “Z1”) and after going into the propriety and legality may be pleased to declare that the “suit premises” bearing final plot No. 1052 to 1059, situate at, New Prabhadevi Road, Nagu Sayajichi Wadi, Mumbai-400 025, are properties belonging to S. M. MUNNEE WAKF and A.U. BOTAWALA TRUST;
- (c) That, this Hon'ble Court may be pleased to issue a writ of certiorari or writ in the nature of certiorari or any other appropriate writ, order or direction under Article 226 of the Constitution of India, and may be pleased to call upon record and proceedings of said Hayatbi Cottage” and after going into the propriety and legality of the same; it may be pleased to declare that, the Petitioners are lawful lessee of “Hayatbi Cottage” admeasuring 341 sq. yards out of “suit premises” and

have been regularly paying taxes to Municipal Corporation and Rent to the Wakf, as well as collecting Rent from the tenants of said “Hayatbi Cottage” since 1950 till date;

- (d) That, this Hon'ble Court may be pleased to issue writ of certiorari or writ in the nature of certiorari or writ of mandamus or any other appropriate writ, order under Article 226 of the Constitution of India, and may be pleased to call upon record and proceedings from the office of Charity Commissioner, Mumbai, in the matter of sale permission of Wakf land and after going into the propriety and legality, it be declared that the Intervenor Trustee and interested persons were deprived of their right to be heard by rejecting their Application on 16.2.1993 and thereby allowing Application No. 175 of 1991 ex parte on 4.5.1993 for permission to sale of Wakf land be declared as illegal and may be quashed and set aside;
- (e) That, this Hon'ble Court may be pleased to issue a writ of mandamus or writ in the nature of mandamus or writ of certiorari or any other appropriate writ, order or direction under Article 226 of the Constitution of India, and may further be pleased to direct / call upon the Trustees of S. M. MUNNEE WAKF, A.U. BOTAWALA TRUST and Sumer Builders to produce

original copies of various Agreements, Indentures and Power of Attorney executed between Sumer Builders and Trustees viz. Agreement dated 10.9.1991, 16.9.1991 and from Exhibits- “J” to “Z” annexed to this Petition, and after verifying, perusing and going into the propriety and legality of the same be pleased to declare that all these documents are nominal, hollow and bogus and not binding on the Petitioners, the entity of Wqkf and its beneficiaries;

- (f) That, this Hon'ble Court may be pleased to issue a writ of mandamus or writ in the nature of mandamus or writ of certiorari or other appropriate writ, order or direction under Article 226 of the Constitution of India, and may be pleased to call upon M/s. Sumer Builders, Ashok Sohanlal Jain and Sohanlal Kesrimal Jain, Respondent Nos. 1, 4 and 3 respectively, to produce Power of Attorney dated 12.10.1999 and Agreement dated 4.8.2001 and Deed of Correction dated 16.8.2001 executed between Petitioners and Sohanlal Kesrimal Jain and Ashok Sohanlal Jain, be declared as forged and fraudulent;
- (g) That, this Hon'ble Court may be pleased to issue writ of mandamus or writ in the nature of mandamus or writ of certiorari or any other appropriate writ, order or direction under Article 226 of the Constitution of India,

and further may be pleased to call upon the record and proceedings of T. E. & R. Suit No. 54/57 of 2002 filed by M/s. Sumer Builders against Petitioners and others in the Court of Small Causes Court, Mumbai and consent terms filed therein on 20.4.2007 which came to be obtained fraudulently, purported to be signed by Petitioners in favour of M/s. Sumer Builders, be declared as null and void and not binding on the Petitioners;

- (h) That, this Hon'ble Court may be pleased to issue writ of mandamus or writ in the nature of mandamus or writ of certiorari or any other appropriate writ, order or direction under Article 226 of the Constitution of India, and further may be pleased to call upon the record and proceedings of T. E. & R. Suit No. 54/57 of 2002 filed by M/s. Sumer Builders against Petitioners and others in the court of Small Causes Court, Mumbai and second consent Terms dated 14.9.2001 filed in above suit between Sumer Builders and Gaurishankar Chaplot was collusive and not binding on the Petitioners;
- (i) That, this Hon'ble Court may be pleased to issue writ of certiorari or writ in the nature of certiorari or any other appropriate writ, order or direction under Article 226 of the Constitution of India, directing MHADA authorities to produce record and proceedings in the

matter of Notices issued u/s 95A of MHADA Act for summary eviction of Petitioners and tenants of “Hayatbi Cottage” pending collateral eviction proceedings in the Small Causes Court against Petitioners and others and after going into the propriety and legality of the same be declared as without jurisdiction, null and void;

- (j) That, this Hon'ble Court may be pleased to issue writ of certiorari or writ in the nature of certiorari or any other appropriate writ, order or direction under Article 226 of the Constitution of India, and further may be pleased to call upon the various disputes, litigations and cases pending in different courts for direction to send them to Wakf Tribunal for hearing and final disposal as per section – 6 and 7 of Wakf Act;
- (k) That, this Hon'ble Court may be pleased to issue writ of certiorari or writ in the nature of certiorari or any other appropriate writ, order or direction under Article 226 of the Constitution of India, and further may be pleased to call upon the various Agreements executed between Sumer Builders and Trustees of S. M. MUNNEE WAKF AND A. U. BOTAWALA TRUST after commencement of Wakf Act, 1995 are executed without obtaining prior permission of the Wakf Board, hence are void;

- (l) that, impugned judgment and order dated 16.8.2013 passed by Small Causes Court, Mumbai in R.A.E. & R. Suit No. 267/522 of 1999 filed by Sumer Builders against Petitioners and others be quashed and set aside;
- (m) pending hearing and final disposal of this Petition, impugned Judgment and Order dated 16.8.2013 passed by Small Causes Court, Mumbai in R.A.E. & R. Suit No. 267/522 of 1999 filed by Sumer Builders against Petitioners and others, be stayed;
- (n) pending hearing and final disposal of this petition, the Respondent No. 1 Sumer Builders and their agents, servants and Constituted Attorney or by any other person or persons be prevented by an order of injunction of this Hon'ble Court from demolishing the "Hayatbi Cottage" admeasuring 341 sq. yards bearing final plot No. 1052 to 1059, situate at, Nagu Sayajichi Wadi, New Prabhadevi Road, Mumbai 400 025;
- (o) pending hearing and final disposal of this petition, ad-interim relief in terms of prayer clause (m) and (n) be granted;
- (p) Leave to amend;
- (q) Such other and further relief;
- (r) costs."

2. Brief facts are that the property in question belonged to two Trusts. A permission was obtained under Section 36 of the Bombay Public Trust Act, and pursuant to the said permission, the Respondent No. 1 purchased the said property. Petitioners claimed to be the lessee of the said property belonging to the Trust. The said property was sold by the Petitioners to Respondent No. 3 – Sohanlal Jain by a registered sale-deed, thereafter Respondent No. 1 purchased the said property from the said Jain, who had purchased the property from the Petitioners. The suit was filed by the Respondent No. 1 against the said Jain and consent terms were filed in the said suit. According to the Petitioners, certain documents have been forged, and therefore, the Respondents are not entitled to develop the said property. The Petitioner is also challenging the order, which is passed by the MHADA under Section 95A of the MHADA Act. It is submitted that the Petitioners had constructed a chawl on the said property and by virtue of order passed under Section 95A of the MHADA Act, said structures can not be demolished. It is submitted that the Petitioners would like to bring on record the subsequent documents, and therefore, they are seeking leave to amend the

petition. In our view, question of leave to amend the petition does not arise because we are of the view that reliefs which are claimed by the Petitioners cannot be granted while exercising our writ jurisdiction under Article 226 of the Constitution of India, since various disputed questions on facts are raised in the petition. The Petitioners have an alternate efficacious remedy of approaching an appropriate authority, seeking a declaration that they are the owners / lessee of the part of the land. We are, therefore, not inclined to entertain this petition under Article 226 of the Constitution of India. Writ petition is, therefore, dismissed reserving the of the Petitioners to approach an appropriate authority.

[REVATI MOHITE DERE, J.]

[V. M. KANADE, J.]

Vinayak Halemth