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

WRIT PETITION NO. 3112 OF 2006

Narsi Poona Jadhav & Ors.

.. Petitioners.

Versus

State of Maharashtra through the Hon'ble
Minister for Urban Development & Ors.

..Respondents.

Mr. R.D. Soni i/b Mr. Bipin Joshi for the Petitioners.
Ms. Geeta Shastri, Addl. G.P. for Respondent No.1-State,
Ms. Shobha Ajitkumar for Respondent - BMC.

CORAM : A.S. OKA, &
A.P BHANGALE, JJ.

DATE : 17th April 2015

ORAL JUDGMNET (Per A.S. Oka, J) :

This Petition was called out for final hearing in the last week. It was partly heard and today is kept for further hearing. Town Planning Scheme-IV Mahim, was sanctioned under the provisions of the Bombay Town Planning Act, 1954 on 20th May 1963 which came into force on 15th August 1963. Under the Scheme, the original Plot No. 120 D was reconstituted as Final Plot Nos. 750 A, 751, 752 and 754 and that the same were allotted to the Vicar and Wardens of the Church of N.S. D'salwacao.

2. A notice dated 11th November 1982 was served under Section 89 read with Section 65 of the Maharashtra Regional and Town Planning Act, 1966 (for short "MRTP Act"). The notice was for summary eviction of the Appellant from Final Plot Nos. 750 A and 752. Thereafter, another notice was issued by

the Mumbai Municipal Corporation as the Planning Authority on 23rd January 1988 under Section 90 (1) of the MRTP Act calling upon the Appellant to hand over vacant possession of Final Plot No. 750 A. As the said action was questioned, a reference was made to the State Government under Sub-section (3) of Section 90 of the MRTP Act. The said reference was made under the order of this Court.

3. The Hon'ble Minister of Urban Development Department by order dated 6th November, 2003 held that the action taken by the Municipal Corporation of issuing notice under Section 90 (1) of the MRTP Act to the Appellant calling upon him to vacate the Final Plot Nos. 750 A and 752 was legally justified. A Writ Petition was filed in this Court by the present Petitioners for challenging the order dated 6th November 2003. By order dated 4th May, 2005, the Writ Petition was disposed of. An order of remand was passed by this Court to the Appellate Authority. Impugned order dated 13th September 2006 has been passed by the State Government after the order of remand upholding the action of the Municipal Corporation. A finding was recorded that the Petitioners were not tenants or interested persons in respect of original Plot No. 120 B and the reconstituted Final Plot including the Final Plot No. 750 A.

4. The learned Counsel appearing for the Petitioners has taken us through the impugned order and all earlier orders. He tendered three compilations of documents on record. He urged that even the State Government has accepted that the Petitioners have produced a rent receipt in respect of land bearing Final Plot No. 750 A and the finding of the State Government is that a rent receipt of the structure thereon was not produced.

5. He invited our attention to the various documents forming part of the said compilations and submitted that none of the said documents have been considered. He invited our attention to the consent decree passed in Suit No. 2975 of 2013 filed by the predecessor of the Petitioners. He invited our attention to the title report and inspection report forming part of the compilation. He submitted that there is a voluminous evidence on record to show that the predecessor of the Petitioners was the tenant in respect of Final Plot No. 750 A and in any case, he was having a structure on the said Final Plot. He pointed out the order of this Court dated 4th May 2005 wherein a specific direction was issued to decide whether the two flats allotted to the Petitioners are in lieu of their rights over the Final Plot No. 754 or Final Plot No. 750 A. He urged that the said issue is not at all decided by the State Government while passing the impugned order. On instructions, he states that the documents forming part of the compilations tendered before this Court were before the Appellate Authority. He pointed out that the ownership agreements in respect of the two flats produced on record show that the same were not allotted in lieu to Final Plot No. 750A. He submitted that in the impugned order the fact that the predecessor of Petitioners was the tenant in respect of the land bearing Final Plot No.750 A was accepted. On the other hand, nothing was placed on record to show that any flat has been accepted by the Petitioners in lieu of Final Plot No. 750A. He would, therefore, urge that the admitted fact is that the Petitioners were the tenants in respect of Final Plot No. 750A for which, no consideration was paid to them and therefore, in view of pre-existing right of the predecessor of the Petitioners, they could not be evicted on the basis of the said Final Town Planning Scheme.

6. The learned Additional Government Pleader for the State and learned Counsel appearing for the Municipal Corporation supported the impugned order.

7. We have given careful consideration to the submissions. A notice was issued by the Mumbai Municipal Corporation under Section 90 (1) of the MRTP Act. The Petitioners filed Writ Petition No. 497 of 1988 for challenging the said notice. On 24th February 1988, the learned Single Judge disposed of the Writ Petition by directing the Planning Authority (the Mumbai Municipal Corporation) to refer the dispute raised by the Petitioners for adjudication to the State Government in accordance with Sub-section (3) of Section 90 of the MRTP Act. The said reference under Sub-section (3) of Section 90 has been referred to by the State Government as an Appeal.

8. Earlier, the said proceedings described as Appeal No. TPB/4302/2211/CR-11/03/UD-11 were decided by an order dated 6th November 2003 confirming the action of the Planning Authority under Sub-Section (1) of Section 90 of the MRTP Act. Thereafter, the order of 4th May 2005 was passed in a Writ Petition filed by the Petitioners. The order dated 4th May 2005 reads thus:

1. Rule. Heard forthwith.

2. It is the case of the Petitioners that the order of the Appellate Authority dismissing their appeal in respect of F.P. No. 750 and 750-A disclosing that the issue has not at all been addressed to. The original plot was IDENTIFIED AS plot No. 120 D. The said plot was reconstituted as F.P. 750A, 751, 752 and 754 of the sanctioned TPS No. V Mahim first variation final. The case of the Petitioners is that in respect of their right on F.P. 754. Petitioners have been given two flats in the building constructed therein which is known as Mira Mar CHS

Ltd. it is their further case that they have structure on Final Plot No. 750A and in so far as that plot is concerned no relief has been given. The agreement by which the flats were given which was entered into between them and the builder and it is pointed out pertained only to Final Plot No. 754 and it had nothing to do with the new plot No. 750A.

3. After considering the contentions of the parties which had also been raised before the appellate authority we do not find that this issue has been answered by the Appellate Authority though it may be set out that the Appellate Authority in second part of para B has observed that the structure should also be removed. If the Appellate Authority had come to a conclusion then a finding ought to have been recorded based on the document that the two flats had been allotted to the Petitioners in view of their right over on F.P. No. 754 and F.P. No. 750A. We do not find such a finding has been recorded.

4. In the light of that the impugned order dated 6th November 2003 is set aside. the matter is remanded back to the Appellate Authority. The Respondent No. 1 to decide the matter afresh in view of what has been recorded in this judgment. The parties to appear before the Appellate Authority on 27th July 2005 at 11.00 a.m. the Appellate Authority thereafter hearing the parties to dispose of the same not later than four months after the first appearance. Rule made absolute accordingly. No order as to costs.

(underlines added)

9. It will be necessary to make a reference to the order dated 6th November 2003 which was set aside. In the said order, it is recorded that the builder appointed by the Salvation Co-operative Housing Society Limited (for short " the third Respondent Society") allotted two flats to the Petitioners at a nominal price. The said Society was claiming to be a lessee of the Church of Our Lady of Salvation in respect of Final Plot Nos. 750 A and 754.

10. Perusal of the order dated 4th March 2005 shows that the case of the Petitioners was that in lieu of their rights in respect of Final Plot No. 754, two

flats were allotted to them. The order of remand was passed on the ground that there was no finding recorded whether the said two flats were allotted in lieu of the rights of the Petitioners in respect of both the Final Plot Nos. 754 and 750 A or only in respect of the Final Plot No. 754.

11. The contention of the Petitioners appears to be that their predecessor was a tenant in respect of the land which is now a part of Final Plot No. 750A. According to them, their predecessor was a tenant of the Vicar and Wardens of the Church of N.S. D'salwacao.

12. We have carefully perused the additional compilations tendered by the learned counsel appearing for the Petitioners. The Petitioners are relying upon the letter dated 17th November 1962 issued to their predecessor by the Secretary of the 3rd Respondent Society. In the said letter, there is a specific statement that on 3rd October 1962, the said Church executed a lease in respect of property in question in favour of the 3rd Respondent Society and therefore, the Petitioners' predecessor was called upon to attorn the tenancy and to a pay rent of Rs. 12.50 per month from 1st October 1962. The said letter records that it is the 3rd Respondent-Society which had become tenant of the Church on 3rd October 1962 under the lease executed by the Church in favour of the 3rd Respondent Society.

13. It will be necessary to make a reference to the S.C. Suit No. 2975 of 1963 filed by the predecessor of the Petitioners against the 3rd Respondent-Society. In paragraph (1) of the plaint, it is merely stated that the land belongs to the said Church. In the suit filed on 1st July 1963, there is no description of the land either with reference to the original Plot numbers or a Final Plot number. It is alleged in the plaint that the land had been rented out by the predecessor of the Petitioners prior to 1944 and that predecessor of

the Petitioners has erected a side wall by spending an amount of Rs. 2,000/- apart from the structure constructed on the said land. In paragraph 3, there is a specific statement that the Church has given one portion of the land on lease to the 3rd Respondent Society. The reliance is placed on the same letter dated 17th October 1962 addressed by the 3rd Respondent. The suit was for injunction. Consent terms were filed in the suit. The execution of lease deed dated 3rd October 1962 by the Church in favour of the 3rd Respondent-Society has been accepted in clause 2 of the consent terms.

14. We have perused the rent receipt on record. The rent receipts contain no description of the land. It is pertinent to note that though the predecessor of the Petitioners was claiming to be a tenant of the said Church, the said Church has not been impleaded as a party Respondent to this petition. To the affidavit filed by the State Government, an extract of the Town Planning Scheme has been annexed which was forwarded to the said Church. As stated earlier, the said Town Planning Scheme was sanctioned by the State Government on 20th May 1963 and it came into force with effect from 15th August 1963. Therefore, the Petitioners are required to establish that they or their predecessors were the tenants of the Church at least as of 15th August 1963. Even taking the documents forming part of the compilations as correct, the Petitioners have failed to prove their alleged tenancy right in respect of the land which is now reconstituted as Final Plot No.750 A.

15. The legal effect of the coming into force of the Town Planning Scheme under Section 89 of the MRTP Act as well as the provision of the Bombay Town Planning Act, 1954 is that on coming into force of the Town Planning Scheme, the Final Plot Nos. 750A and 754 which were allotted to the said Church vested in the Church. It appears that there was a lease deed executed by the Church in favour of the 3rd Respondent-Society.

16. The specific finding of the State Government in clause (b) of the paragraph 6 of the impugned order is that the rent receipts produced by the Petitioners do not reflect any original Plot or Final Plot or details of any structure.

17. Thus, the Petitioners failed to prove their right, title and interest in respect of the plot of land which was reconstituted as Final Plot No. 750 A and therefore, the issue whether any flats were allotted to them in lieu of the said Final Plot No. 750 A becomes redundant.

18. Hence, there is no merit in the Petition and the same is, accordingly, rejected. Rule is discharged with no order as to costs.

19. The learned counsel appearing for the Petitioners prays for continuation of interim relief granted on 13th June 2007. We direct that the interim relief shall continue to operate till 17th July 2015.

(A.P. Bhangale, J.)

(A.S. Oka, J.)