

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD
WRIT PETITION NO. 7545 OF 2013

SWARUPCHAND A. KOTHARI AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

...

Advocate for Petitioners : Mr. S.D. Kulkarni, Adv. h/f. Mr.Sanket S. Kulkarni
AGP for Respondents: Miss S.S. Raut.

CORAM : S.V. GANGAPURWALA
& K.K. SONAWANE, JJ.
DATE : 19TH JULY , 2016.

PER COURT:

1] Mr. Kulkarni, learned counsel for the petitioner states that the judgment of the District Judge in Appeal No. 57 of 2013 is not in consonance with the provisions of the Maharashtra Regional and Town Planning Act. According to learned counsel, the arbitrator itself had directed the Chief Officer to deliver the possession of the Final Plot No. 655. Same was directed in the year 1986. As yet, the possession has not been delivered. The respondents are demanding the payment of betterment charges and other charges without delivering possession of the property. Learned counsel submits that the petitioner is entitled for possession of Final Plot No. 655. The petitioner is not liable to pay the contributory charges.

2] Mr. Bedre, learned counsel for the respondent submits that the petitioner is being benefited by excess area of 445 square meters. He is in possession of the entire area. Learned counsel submits that the scheme is not yet finalized.

3] As far as the request of the petitioner for delivering the possession of the final plot is concerned, same at this stage would be premature. The Town Planning scheme is not yet sanctioned by the Government. It is only after the town planning scheme is sanctioned by the

Government, the same becomes final. Even after the town planning scheme is forwarded to the Government, some variations can take place or even the Government can decide to drop the scheme itself. In the light of that, the grievance of the petitioner with regard to delivery of possession of the plot cannot be considered. The contributory charges are for the entire town planning scheme. Considering the fact that, more than 40 years have lapsed, the petitioners are not in a position to enjoy the fruits of their property, it would be appropriate for the petitioners to file an application with the appropriate authority for handing over possession, which application shall be considered by the authority on its own merits, under the provisions of the MRTP Act, expeditiously.

4] While considering the application of the petitioners if submitted, the authorities will have to consider the objection, if any, to the plots in question. So also, shall consider if any pending appeals before Tribunal would have some bearing on the writ plots. Planning authority also has to consider whether any proposal for withdrawal of scheme is in the offing or not and finally the say of the State who is authority to sanction final scheme.

5] Writ petition is accordingly disposed of. It is made clear that all contentions are kept open.

[K.K. SONAWANE]
JUDGE

[S.V. GANGAPURWALA]
JUDGE.

grt/-