

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 2591 OF 2016

Nawabulla Garibulla Pathan

Petitioner

Vs

Rajan Narayan Chalke since
deceased, through legal heirs
and Ors.

.. Respondents

Mr.Uday Warunjikar i/b Sachin K. Hande, Advocate for Petitioner.

Mr. Sachindra B.Shetye, Advocate for Respondent no.7.

CORAM : R.G.KETKAR,J.

DATE : 17/03/2016

PC:

1. Not on Board. At the request of Mr.Warunjikar, taken up in production board. Heard Mr. Uday Warunjikar, learned counsel for the petitioner and Mr. Sachindra Shetye, learned counsel for respondent no.7 at length.

2. By this Petition under Article 227 of the Constitution of India, the petitioner has challenged the Judgment and order dated 21.1.2014 passed by the learned Civil Judge, Jr. Dn, Uran below Exh.5 in Regular Civil Suit No.108 of 2013 as also the Judgment and order dated 5.8.2015 passed by the learned Principal District Judge, (P.D.J.), Raigad-Alibag in Misc. Civil Appeal No. 11 of 2014. By these orders, the Courts below rejected the application made by the petitioner, hereinafter referred to as 'plaintiff', seeking temporary injunction restraining

respondents no. 1 to 6, hereinafter referred to as defendants no. 1 to 6', from causing any obstruction to the plaintiff's possession over the shade admeasuring 70' East-West and 35' North-South, situate in Survey No.134-A/C, Hissa No.1, Mora Road, Uran .

3. The plaintiff has instituted suit, inter-alia, claiming declaration that the agreement dated 8.3.1988 executed by defendants no. 1 to 5 in favour of the plaintiff is binding on them. In the alternative, if defendants no.1 to 5 deny the said agreement, it will be declared that the plaintiff has become owner of the suit premises by adverse possession; for declaration that the transactions entered into between defendants no. 1 to 5 and defendant no. 6 are not binding on the plaintiff and for perpetual injunction restraining defendants no. 1 to 6 from dispossessing the plaintiff and from causing obstruction over the suit property. It is at this juncture material to note that though respondent no.7, hereinafter referred to as 'defendant no.7' -Municipal Council was impleaded as party defendant, no relief was claimed against it. During the pendency of the suit, the plaintiff took out application seeking injunction against defendants no. 1 to 6 from dispossessing the plaintiff and from causing obstruction to the plaintiff's possession.

4. Defendant no.7 filed reply Exhibit-40 to the said application, inter alia, contending that the plaintiff has instituted R.C.S. No. 52 of 2002 against defendant no.7. The suit was

dismissed on 27.4.2007. Aggrieved by that decision, the plaintiff preferred Civil Appeal no.134 of 2007 which was dismissed on 12.2.2008. The plaintiff has suppressed these facts from the Court. In fact, the shade of the plaintiff is unauthorised and therefore defendant no.7 has issued notice dated 20.9.2000 under sections 52 to 54 of the Maharashtra Regional and Town Planning Act, 1996 (for short, 'Act'). By order dated 21.1.2014, the learned trial Judge dismissed the application. While dismissing the application, the learned trial Judge recorded that the plaintiff has suppressed filing of R.C.S. No.52 of 2002 from the court. The learned trial Judge also observed that the plaintiff did not make out prima facie case, balance of convenience does not lie in favour of the plaintiff and that irreparable loss would be caused to the defendants in case injunction is granted.

5. Aggrieved by that decision, the plaintiff preferred Appeal before the learned P.D.J. By the impugned order, the learned P.D.J. dismissed the Appeal.

6. During the course of hearing, the plaintiff invited my attention to notice dated 1.8.2015. In paragraph 13, the learned PDJ did not take cognizance of that notice on two grounds, namely, firstly, the plaintiff did not seek any relief against defendant no.7 and secondly cause of action in the present suit and the reason for which notice was issued, are totally independent.

7. Mr. Warunjikar submitted that as defendant no.7 has issued notice on 1.8.2015 during the pendency of the appeal, sufficient opportunity may be given to the plaintiff to challenge that notice by following due process of law. Otherwise, suit premises will be demolished in pursuance of fresh notice dated 16.3.2016 issued by the Municipal Council. He, therefore, prayed for protecting the suit premises for reasonable time so as to challenge notices dated 1.8.2015 and 16.3.2016.

8. On the other hand, Mr. Shetye supported the impugned orders. He submitted that plaintiff had instituted Regular Civil Suit No.52 of 2002 against defendant No.7 challenging the notice dated 20.09.2000 issued under Sections 52 to 54 of the Act. By judgment and decree dated 27.04.2007, Suit was dismissed. Civil Appeal No.134 of 2007 was preferred against the decision dated 27.04.2007. That appeal was dismissed on 12.02.2008. Aggrieved by these decisions, the plaintiff had preferred Second Appeal No.295 of 2015 in this Court. That Second Appeal was withdrawn on 07.05.2015. The plaintiff thereafter filed Review Petition No.9 of 2015 in this Court. On 7.7.2015 Review Petition was dismissed. At that time, oral application was made for interim protection granted by order dated 7.5.2015 upto 30.7.2015. In the order dated 7.5.2015, assurance of the petitioner to the effect that the petitioner will not ask for further extension of time was recorded. In view thereof, oral application

was rejected.

9. He submitted that aggrieved by the impugned order, the plaintiff had initially instituted Appeal from Order (ST) No.21438 of 2015. By order dated 7.8.2015, this Court issued notice to the respondent and directed the parties to maintain status-quo. Eventually, Appeal from order was allowed to be withdrawn with liberty to file appropriate proceedings before this Court. Accordingly, the present petition is filed. He submitted that the present proceedings are abuse of process of law and also abuse of process of Court. The Petition may be dismissed by imposing exemplary cost.

10. I have considered the rival submissions made by the learned counsel appearing for the parties. I have also perused the material on record. In my opinion, the present proceedings are nothing but abuse of process of court and abuse of process of law. The plaintiff had earlier instituted R.C.S. No.52 of 2002 against defendant no.7 challenging the notice dated 20.09.2000 issued under Sections 52 to 54 of the Act. On merits, the suit was dismissed. Issue No.2 was to the effect as to whether the plaintiff established that he had constructed the shed after obtaining permission from defendant No.7. Issue No.4 was to the effect as to whether plaintiff established that the notice dated 20.09.2000 issued by defendant No.7 is illegal. The learned trial Judge answered both the issues in the negative. Civil Appeal

No.134 of 2007 preferred against the decision dated 27.4.2007 was dismissed by District Court on 12.02.2008. The learned District Judge framed point No.1 to the effect as to whether plaintiff proved that the shed was constructed after obtaining building permission from defendant No.7 and that the said construction is illegal and unauthorised. Point No.2 was whether plaintiff proved that the notice issued by defendant No.7 is illegal and void. The learned District Judge answered both the points in the negative. Against these decisions, plaintiff instituted Second Appeal No.295 of 2015. On 07.05.2015, Second Appeal was allowed to be withdrawn. Plaintiff, thereafter, filed Review Petition No.9 of 2015 in this Court. Review Petition dismissed on 7.7.2015. Thus, the challenge to notice dated 20.09.2000 attained finality. During the pendency of these proceedings, the plaintiff had instituted R.C.S NO.108 of 2013,. Though defendant no.7 was impleaded in the suit, no relief was claimed against it. In fact, subject matter of the present suit and the notices are totally independent.

11. By order dated 21.1.2014, the learned trial Judge dismissed the application. Aggrieved by that decision, the plaintiff preferred Msic. Civil Appeal no.11 of 2015. Incidentally during the pendency of that appeal, defendant no.7 had issued notice dated 1.8.15. Though the plaintiff did not seek any relief against defendant no.7 and perusal of the plaint also does not indicate

that any grievance was made by the plaintiff against defendant no.7, the plaintiff impeladed defendant no.7 without any reason. However, as defendant no.7 was made party in the suit as defendant no.7 issued notice on 1.8.2015, the plaintiff produced that notice before P.D.J on the ground that the District Court has unlimited powers and prayed for issuing injunction against defendant no.7. Perusal of notice dated 1.8.2015 shows that the same was issued for implementing notice dated 20.09.2000. In my opinion, the learned P.D.J rightly did not accede to that request. Eventually, the learned District Judge dismissed the Appeal. I do not find that the Courts below committed any error in dismissing the application.

12. As noted earlier, plaintiff has instituted Suit, inter alia, claiming declaration that the agreement dated 8.3.1988 executed by defendants no. 1 to 5 in favour of the plaintiff is binding on them. In the alternative, if defendants no.1 to 5 deny the said agreement, it will be declared that the plaintiff has become owner of the suit premises by adverse possession; for declaration that the transactions entered into between defendants no. 1 to 5 and defendant no. 6 are not binding on the plaintiff and for perpetual injunction restraining defendants no. 1 to 6 from dispossessing the plaintiff and from causing obstruction over the suit property. It is material to note that no relief was claimed against defendant No.7. In such state of affairs, I fail to

understand as to why defendant no.7 was impleaded in the suit at all. Having regard to the conduct of the plaintiff, namely suppression of filing of the suit as also decision rendered therein, in my opinion, this petition is nothing but abuse of process of court as also abuse of process of law. Hence, Petition is dismissed by imposing costs of Rs.,50,000/-. Costs to be paid by the petitioner-plaintiff to the Municipal Council, Uran, Dist-Raigad, within four weeks from today. If the amount is not paid by the plaintiff within four weeks from today, Collector, Raigad shall recover it as a land revenue from the plaintiff. Order accordingly.

13. At this stage, Mr. Warunjikar states that the plaintiff will demolish the shade by 5 pm. Mr. Shetye submits that defendant no.7 has issued notice for demolishing the structure by 10.15 am. It is made clear that I have not granted any interim order and defendant no.7 will proceed in the matter as I have already held that subject matter of the suit is entirely independent.

(R.G.KETKAR, J.)

