

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

WRIT PETITION NO.3426 OF 2016

Shri.Narayan Hiranman Bhoir

..Petitioner

V/s.

Shri.Siraj Abubakar Kazi & Ors.

.. Respondents

Mr.Rajadhyakshya, Senior Advocate a/w Mr.Akhilesh Dubey, Mr.Rahul Shirma, Ms.Rani Dubey, Ms.Ritika Gupta and Mr.Chaitanya Chavan i/b M/s.Law Counsellors for the petitioners.

Mr.G.S.Godbole, Senior Advocate i/by Mr.Parag M. Tilak for Respondent Nos.1 to 3.

Mr.P.K. Dhakepalkar, Senior Advocate i/by Mr.Akshay Petkar for the respondent Nos.5, 7A, 7B and 8.

Mr.P.S.Dani, Senior Advocate i/by Mr.Sumit Kothari for Respondent No.10.

Mr.Ashutosh Kumbhakoni, Senior Advocate a/w Mr.Vagish Mishra for Respondent No.14.

CORAM : R.G. KETKAR, J.

DATE : 05TH APRIL, 2016.

P.C.

1. Heard Mr. Rajadhyakshya, learned Senior Counsel for the petitioner. Mr.Godbole, learned Senior Counsel for the respondent nos.1 to 3. Mr.Dhakepalkar, learned Senior Counsel for respondent nos.5,7A,7B and 8 and Mr.Dani, learned Senior Counsel for respondent no.10. Mr.Ashutosh Kumbhakoni, learned Senior Counsel for respondent no.14 at

length.

2. By this petition under Article 227 of the Constitution of India, the petitioner has challenged the judgment and order dated 04th March 2016 passed by the learned Civil Judge Senior Division, Panvel below Exhs.43,44 and 46 in Special Civil Suit No.71 of 2016. By that order the learned Trial Judge allowed the applications Exh.43 filed by defendants No.1 to 4, at Exh.44 filed by defendant no.7 and at Exh.46 filed by defendant no.10 under section 10 of Code of Civil Procedure, 1908 (for short C.P.C.) for staying Special Civil Suit No.71 of 2016 filed by the petitioner/the plaintiffs in the Court of Civil Judge Senior Division, Panvel.

3. The petitioner, hereinafter referred to as plaintiff, has instituted the suit inter-alia praying that it be held that the suit land described in paragraph 1 of the plaint was in the plaintiff's father possession till it was taken over by City Industrial Development Corporation (for shot 'CIDCO') as plaintiff was cultivating the said land as a tenant; it be declared that plaintiff

is owner of 2275.00 sq.meters plot out of the 27700 sq.meters plot from Plot No.A-3/2 ad-measuring 9200 sq.meters in Sector No.39A, Plot No.A-3/1 ad-measuring 9200 sq.meters in Sector No.39A and Plot No.A-10 ad-measuring 9300 sq.meters in Sector No.39A in lieu of acquisition of lands situate at Mause-Taloja-Panchand; for mandatory injunction against defendants no.4 and 5 from entering into lease agreement in respect of 2275 sq.meters out of 27700 sq.meters, among other reliefs. Plaintiff contended that his father Hira Kasha Bhoir, since deceased was a tenant in respect of land bearing survey no.298, Hissa No.2 ad-measuring 12 Hecter 02 ares situate at Mause-Taloja-Pachnand, Taluka-Panvel, District-Raigad. The said land was acquired by CIDCO. As per the policy of giving 12.5% of the acquired land, he is entitled to allotment of 2275 sq.meters land in view of acquisition of land ad-measuring 27700 sq.meters.

4. It is the case of the plaintiff one Suresh S. Mahagaokar instituted Special Civil Suit No.463 of 2012 inter-alia praying for declaration that the letter of intent issued in

favour of Defendant nos.2 and 3 and Fatima Abdulla Kazi, since deceased about allotment of plots is illegal and not binding on him; for declaration that defendant no.1 is eligible for allotment of plot in lieu of acquired land as per the gift deed executed by Begumsaheb Alisaheb Kazi, among other reliefs. On 24th April 2015 the suit was compromised as per the consent terms and was disposed of accordingly. Plaintiff thereafter filed Special Civil Suit No.71 of 2016 in the Court of Civil Judge Senior Division, Panvel for setting aside the consent decree dated 24th April 2015 passed in Special Civil Suit No.463 of 2012 and for perpetual injunction. Pending these two suits, defendant nos.1 to 4, 7 and 10 took out applications at Exh.43,44 and 46 respectively under section 10 for staying proceedings of Special Civil Suit No.71 of 2016 pending on the file of Civil Judge Senior Division, Panvel. By the impugned judgment, the learned Trial Judge has allowed the application and stayed proceedings of Special Civil Suit No.71 of 2016 pending final hearing and disposal of Regular Civil Suit No.169 of 2010. It is against this order, plaintiff has instituted the present writ petition.

5. I have heard learned counsel for the parties at length. During the course of hearing I suggested to the parties as to whether they have any objection for transferring Regular Civil Suit No.169 of 2010 pending before the learned Civil Judge Junior Division, Panvel to the Court of learned Civil Judge Senior Division, Panvel, and clubbing it with Special Civil Suit No.71 of 2016. The learned counsel appearing for the parties stated that they have no objection for transferring Regular Civil Suit No.169 of 2010 to the Court of Civil Judge Senior Division, Panvel and trying both the suits together.

6. In view thereof Regular Civil Suit No.169 of 2010 pending on the file of Civil Judge Junior Division Panvel shall stand transferred to the Court of Senior Division, Panvel. Regular Civil Suit No.169 of 2010 and Special Civil Suit No.71 of 2016 shall be tried together and disposed of together.

7. In view thereof the impugned order stands dissolved and the learned Civil Judge Senior Division will proceed to decide both the suits together in-accordance with

law. All the contentions on the merits for all the parties are kept open.

8. Learned counsel appearing for the parties state that parties will appear before the Trial Court on 25th April 2016 and for that purpose, fresh notice need not be issued to them. The Trial Judge will issue notice to the other defendants who are not before this Court. Petition is disposed of accordingly.

(R.G. KETKAR, J.)