

Vidya Amin

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO. 831 OF 2015

Bhagchand Issardas Totlani ... Appellant
Vs.
The Tahsildar, Pune & Ors. ... Respondents

Mr. Vivel V. Salunkhe, Advocate for the appellant.
Mr. A.R. Patil, AGP for respondent nos. 1 to 3.

CORAM: **MRS.MRIDULA BHATKAR, J.**
DATE: **25th January, 2016.**

P.C.:

In this Appeal, the judgment and order dated 30th March, 2015 passed by the learned District Judge, Pune thereby setting aside the judgment and decree dated 27th June, 2006 passed by the learned 9th Joint Civil Judge Senior Division, Pune in Regular Civil Suit No. 364 of 1996 is challenged.

2. The appellant is plaintiff no. 55, who is one of the member of Shopkeepers' Association and having a shop on the land within the jurisdiction of Pimpri Chinchwad Municipal Corporation. Many shopkeepers, who are plaintiffs, have filed the suit for declaration that the notice sent under section 50 of the Maharashtra Land Revenue Code of 1966 by respondent no. 1/State of Maharashtra is void, illegal and not maintainable in law, so also for the perpetual injunction that the

defendants shall not demolish their suit shops pursuant to the said notice. The said suit was decreed by the judgment and order dated 27th June, 2006 and so the appeal was preferred by the Government of Maharashtra through Tahsildar, Collector and also Pimpri Chinchwad Municipal Corporation. While hearing the Appeal, the learned District Judge partly allowed the appeal and found that the evidence was not properly tendered and the suit was remanded to the trial Court. Hence, this Appeal.

3. The learned counsel for the appellant submitted that the order of the Appellate Court is to be set aside. The appellant and other original plaintiffs are displaced persons and migrated from Sind West Pakistan and the Union of India allowed the said suit land to all the plaintiffs for rehabilitation. Thus, the plaintiffs have come in possession of the suit land and are conducting their respective business. The learned counsel submitted that the Appellate Court has not taken into account that this is the land of the Central Government and therefore, the State Government has no power to issue notices under section 50 of the Maharashtra Land Revenue Code. He further submitted that the learned Judge of the Appellate Court has committed an error on the point of remanding the matter back to the trial Court on the ground that additional evidence is required to be adduced in the matter. No application was preferred by the

present respondents under Order 41 Rule 27 of the Code of Civil Procedure and only 7/12 extract of the suit land was produced. The Appellate Court should not have passed this order in the absence of such application. The learned counsel submitted that the Appellate Court should allow the party to take additional evidence only under exceptional circumstances. In support of his submission, the learned counsel placed reliance on **Ferani Hotels Pvt. Ltd. vs. Nusli Neville Wadia, reported in 2013(3) LJSOFT 304**. He submitted that the said order, thus, is to be set aside and the Appellate Court is to be directed to hear the appeal.

4. Per contra, the learned AGP Mr. Patil submitted that no evidence is tendered by the plaintiffs to show that the land was given to them by the Central Government under the project of rehabilitation of displaced persons. He submitted that assuming that the land belonged to Union of India, yet the State Government is always empowered to look after and monitor the use of the suit land and is also empowered to take steps for preservice of the land of Union Government. He supported the order passed by the learned Judge of the Appellate Court.

5. Perused the orders passed by the Appellate Court and also of the trial Court in this matter. It is to be noted that no application under Order 41

Rule 27 of CPC was filed before the District Court and only copy of 7/12 extract was produced which was not produced before the trial Court. However, in the case of **Ferani Hotels Pvt. Ltd.** (*supra*), Chamber Summons was moved under Order 41 Rule 27 of CPC. After going through the order of the District Judge, it appears that the learned District Judge has observed that both the parties have not tendered the evidence to arrive at a proper conclusion. The plaintiffs have also not adduced any documentary evidence to show that they were allotted the land by the Central Government, as they were displaced persons. The said evidence should also come on record so also the Government has not produced any documentary evidence to show that the land belongs to them or the State Government has power to deal with the said land. The view taken by the Appellate Court that sufficient evidence should be adduced by both the parties to adjudicate the issue, i.e., regarding validity of the notices given under section 50 of the Maharashtra Land Revenue Code, cannot be faulted with. The learned trial Judge has not taken into account that initial burden lies on the plaintiff to prove its case. Under such circumstances, the order of the District Court is hereby maintained. The parties are directed to appear before the trial Court on 8th February, 2016 at 11 a.m. The evidence which is recorded earlier is to be read in the trial, however, the parties are allowed to tender further oral as well documentary evidence in support of

their respective claims. The trial Court may endeavour to complete the trial on or before 30th June, 2016.

6. Appeal from Order is dismissed.

(MRIDULA BHATKAR, J.)