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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO.491 OF 2016

Ali Akbar Adamjee Peerbhoy ...Petitioner

vs.

The State of Maharashtra & Ors. ...Respondents

Mr.S.G.Kudle for the Petitioner

Mr.Rafiq A. Dada, Senior Advocate, Mr.Virag V. Tulzapurkar, Senior Advocate, Mr.Firoz Bharucha, Mr.Yatish Pandya, Mr.Farida poonawala Tata, Ms Jumana Lokhandwala, Ms Rati Lodha i/b Pandya and Poonawala for the respondent No.5

Mr.P.K.Dhakephalkar, Senior Advocate, Ms Manjiri Shah, Mr.Gobinda Mohanti, Mr.Juzer Shakir i/b Mr.Gobinda Chandra Mohanty for the respondent No.6
Ms Geeta Shashtri, Addl.G.P for the respondent Nos.1,2 and 4.

Ms Geeta Joglekar for the respondent No.3-BMC.

CORAM : A.S.OKA, &
SMT.ANUJA PRABHUDESSAI, JJ.
DATE : DECEMBER 2, 2016

P.C.:

1 Called out for admission. Heard the learned counsel for the petitioner. This petition concerns a land in the city of Mumbai in respect of which on 8th May 1886 a lease was executed by and between the Secretary of State for India in Council and one Adamjee Peerbhoy (original lessee). It appears from the petition that the petitioner is claiming to be one of the heirs and legal representatives of the said original lessee in respect of the land subject matter of the lease.

2 The grievance of the petitioner in this petition under Article 226 of the Constitution of India is as regards the communication dated 6th November 2015 which is at Exhibit-0 to the petition. The said communication is addressed by the District Collector to the present petitioner. By the said communication, the petitioner was informed that the lease has been renewed for the period from 1st January 1999 to 31st December 2028 in the name of Adamjee Peerbhoy Trust and a decision to that effect has been taken by the State Government. About this communication, the grievance of the learned counsel for the petitioner is that there was a specific direction issued by the Deputy Commissioner (Revenue) Konkan Division, C.B.D.Belapur, New Bombay to the District Collector which is reflected from the letter dated 30th June 2015 (Exhibit-L to the petition). His submission is that the District Collector has not complied with the said direction. The District Collector has acted in breach of the directions issued by the Apex Court on 3rd February 2000. He invited our attention to the said Judgment and Order of the Apex Court.

3 Prayer (b) in this petition is for a direction for showing the names of the legal representatives of the original lessee in the record of rights. The learned counsel submitted that if prayer (b) cannot be granted, other prayers will be looked into. Prayers(c), (d), (e), (f), (g) and (h) read thus:

"(c) This Hon'ble Court be pleased to issue the writ of mandamus order, directions or any other order directions or appropriate writ in the nature of mandamus directing the respondent Nos.3 and 4 herein to pay the personal visit to the premises of Respondent Nos.5 and 6 including the graveyard and after paying the personal visit if it is revealed that the graveyard in question has been converted into commercial premises for private use of respondent Nos.5 and 6 herein then in that case necessary criminal action be initiated against the Trustees of Respondent Nos.5 and 6 herein thereby giving a specific warning to restore the entire area of graveyard to its original position.

(d) This Hon'ble Court further be pleased to issue necessary directions to respondents herein to allow the petitioner and legal heirs of original lessee i.e Sir Adamjee Peerbhoy to maintain the mosque and dargah of Sir Adamjee Peerbhoy and accordingly no obstruction be caused to the legal heirs of original lessee while visiting the said premises.

(e) This Hon'ble Court further be pleased to issue necessary directions to the respondents herein to make the provision of car parking in the premises of respondent No.5 herein at the time of having inspection and visit of mosque and dargah in so far as Petitioner and other legal heirs of original lessee are

concerned;

(f) This Hon'ble Court be pleased to issue necessary directions to exhibit the name plate of Sir Adamjee Peerbhoy Sanatorium Trust in the bold capital letters on the exterior portion of said Sanatorium Trust as per the direction of the Hon'ble Apex Court;

(g) This Hon'ble Court be pleased to issue further directions to grant the liberty to the petitioner and other legal heirs of original lessee to recommend 10 persons for the purposes of admitting them in the Saiffee Hospital so as to avail the medical treatment free of cost.

4 Prayer (h) seeks a direction against the trustees of Sir Adamjee Peerbhoy Trust and Saiffee Hospital Trust to admit the legal representatives of Sir Adamjee Peerbhoy as trustees. Surely, this prayer cannot be considered in writ jurisdiction under Article 226 of the Constitution of India. A writ of mandamus cannot be issued against the trustees of these two Trusts. Prayer (i) seeks a directions in terms of prayer clause (b) of incorporating the name of the petitioner and other legal heirs of Sir Adamjee Peerbhoy in the record of rights so as to treat them as original lessees.

5 The learned counsel for the petitioner pointed out that a part of graveyard on the said property has been converted into commercial premises by the respondent Nos.5 and 6. Inviting attention of the

Court to various directions issued by the Apex Court and especially the direction No.(viii) which lays down that 25 beds should be reserved for Government employees in the hospital run by the respondent No.6, he submitted that no such reservation has been made.

6 After having heard the learned counsel for the petitioner, we find that broadly there are three grievances made by the petitioner. The first grievance is about the failure of the Authorities to show the names of the legal representatives of the original lessees Adamjee Peerbhoy in the revenue record. The second grievance appears to be against the trustees of the respondent Nos.5 and 6 and the third grievance appears to be as regards alleged conversion of graveyard into commercial premises by the respondent Nos.5 and 6.

7 As far as the first grievance is concerned, the main contention raised by the petitioner is about the non implementation of the directions issued under the Judgment and Order dated 3rd February 2000 by the Apex Court. We have perused the Judgment and Order of the Apex Court. Clauses (ii), (iii), (v), (vi) and (vii) of the order read thus:

“(ii) The policy laid down under Government Resolution No.LND/1085/134222 CR No.184/J-2, dated 5-99 for renewal of the expired Government lease from Greater Bombay is made applicable in this matter as a

Special Case and the lease is being renewed from the date 1.7.83 to 31.12.98 in favour of Sir Adamji Peerbhoy Trust. The ground rent at the rate of 1% on the 50% concessional value of the value calculated as per the market value prevailing at the time of expiry of the lease i.e on the date 1.7.83 shall be charged at the time of the renewal.

(iii) **The lease of the said land shall be renewed for the further period of 30 years from the date 1.1.1999** and for that purpose, the ground rent at the rate of 1% on the amount arrived at after calculating 50% concessional value of the land at the market rate prevailing on the date 1.1.99 shall be charged as the said land would be used for hospital/religious purpose.

(iv) ...

(v) **On the expiry of 30 years period of the lease, the period thereof shall be extended and the lease be renewed at the option of the lessee and in the event of failure to exercise the option above on the part of the concerned Trust (Sir Adamji Peerbhoy Sanatorium Trust) the Sub-lessee (as is spoken of hereinbelow) would have the right to renew the lease and be treated for all intents and purposes the lessee of the land though however upon receipt of information pertaining to failure to renew the lease so far as Sir Adamji Peerbhoy Sanatorium Trust**

is concerned. Further renewal also shall be on the same terms and conditions as regards the quantum of rent to be fixed in the light of the market rate then prevailing on the respective dates of future renewal.

(vi) The State Government is hereby directed to accord permission to use the land for Saifee Hospital and also for the Sanatorium in terms of wishes and desires of Sir Adamji in the building of the Trust as well as to sub-lease the land under the said building to Saifee Hospital Trust.

(vii) The documentation of the said lease shall be prepared by the Government Solicitor and Joint Secretary, Law and Judiciary Department and the cost incurred therefor shall be borne by the Lessee or the Sub-lessee.

8 Thus, it is recorded by the Apex Court that the lease in respect of the said property for the period between 1st July 1983 to 31st December 1998 has been renewed in favour of Sir Adamjee Peeorbhoy Trust. Further direction is to renew the lease for a period of 30 years from 1st January 1999. Therefore, option given in clause (v) is to the said Trust to get the lease renewed after expiry of the period of 30 years. There is no direction issued by the Apex Court to renew the lease in the name of the legal representatives of the original lessee. On the contrary, the order directs the renewal lease in the name of the Trust. Hence, prayer (b) has no merit.

9 It is further provided that 25 beds shall be reserved for the Government employees in the Saifee Hospital. Secondly, it is directed that Sir Adamjee Trust shall take precaution while carrying out new construction for the hospital to see that no hindrance is caused to the religious place as well as the graveyard located on the said land.

10 Needless to add that Sir Adamjee Peerbhoy Trust and Saifee Hospital Trust will have to abide by the directions of the Apex Court as well as the terms and conditions on which the lease has been renewed. If according to the case of the petitioner, if any hindrance has been caused to religious places as well as graveyard, it is for him to make a specific grievance in that behalf before the appropriate authority of the State Government. If any other condition including the condition No.(viii) is breached, the petitioner is free to make said grievance before the appropriate Authority. Needless to add that if any, illegality is noticed, the concerned authorities are bound to initiate action in accordance with law.

11 Coming to prayer clause(c), in the representation made relied upon by the petitioner (Exhibit-J to the petition) addressed to the Divisional Commissioner, we find that no grievance has been made regarding the alleged conversion of a portion of graveyard into commercial premises. Before seeking a writ of mandamus, the petitioner

should have specifically made such a grievance before the concerned authority.

12 As far as the prayer clauses (d) and (e) are concerned, the same are against the trustees of the Trust against whom a writ of mandamus cannot be issued. The same is the case with the prayer clauses (f), (g) and (h).

13 The disputed question whether any obstruction is being made preventing entry of the legal representatives of the original lessee into mosque/dargah on the said property is expressly kept open to be decided by the appropriate Authority/Forum in accordance with law. We also make it clear that the remedies of the petitioner against the trustees of the Trusts before the appropriate authorities are kept open.

14 For the reasons recorded above, and subject to observations made above, none of the prayers made in this petition can be granted.

15 Writ petition is rejected.

(ANUJA PRABHUDESSAI, J.)

(A.S.OKA, J.)