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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.1795 OF 1998

Sushilaben B. Shah & Others ...Petitioners
vs.
State of Maharashtra & Ors. ...Respondents

Mr.Amit B. Borkar i/b Mr.A.M.Kulkarni for the
Petitioners
Mr.A.A.Alaspurkar, AGP for the respondent No.1
Mr.Rajdeep S. Khadapkar for respondent No.3

CORAM : A.S.OKA, &
 SMT.VIBHA KANKANWADI, JJ.
DATE : JULY 6, 2017

ORAL JUDGMENT : (PER A.S.OKA,J.)

1 Heard the learned counsel for the petitioners. The entire petition proceeds on the footing that the petitioners are the owners of final plot No.228, CTS No.496, Mahatma Phule Peth, Pune for last 30 years. The petition is affirmed on 2nd April 1998. The petitioners have referred to the reservation on the said plot under the draft development plan. The contention is that the said plot of land was never acquired on the basis of the said reservation. There are three prayers in this petitions which read thus:

“(B) This Hon'ble Court be pleased to quash and set aside the impugned notices issued by the Respondent Corporation, asking the petitioners to remove themselves from the

F.P.No.228, C.T.S.No.596, Mahatma Phule Peth, by demolishing the structures standing thereon;

(C) Issue writ of mandamus, directing the Respondents to declare that the reservations with respect to the Final Plot No.228, C.T.S.No.596, Ganj Peth, (Mahatma Phule Peth), Pune for primary school stands cancelled;

(CC) this Honourable Court may be pleased to declare that the reservation in respect of final plot No.228 CTS No.596 (Ganj Peth, Mahatma Phule Peth), Pune stands lapsed in view of the inaction on the part of the State Government and the appropriate authority as contemplated under section 49(6) and 49 (7) of the Maharashtra Regional and Town Planning Act, 1966".

2 The learned counsel for the petitioners submitted that in substance, the challenge in this petition is to the Town Planning Scheme under the provisions of the Maharashtra Regional and Town Planning Act, 1966 (for short 'MRTP Act'). His submission is that there could not have been reservation on the said plot under the development plan for primary school or vegetable market as the same has lapsed. In substance, the petitioners are challenging the action of keeping the said final plot reserved for primary school under the Town Planning Scheme. There is a reply filed by Smt.Sadhana Pradeep Naik, Deputy Director of Town

Planning, Pune Division, Pune. In the said reply, it is pointed out that the contention in the petition that the petitioners are the owners of final plot No.228 is not correct. The affidavit states that there was Town Planning Scheme known as the Town Planning Scheme, Pune no.3 (for short 'the said Scheme') under Chapter V of the MRTP Act which was sanctioned in accordance with section 86 of the MRTP Act on 15th July 1989 and that the said Scheme came into force with effect from 15th September 1989. Reliance is placed on Form No.1 (Redistribution and Valuation statement) which shows that the allottee of the final plot No.228 is the Pune Municipal Corporation. It is further contended that the said plot vests in the Pune Municipal Corporation.

3 We have considered the submissions. Chapter V of the MRTP Act which deals with the Town Planning Scheme is a Code by itself. Chapter V provides for preparation of a draft scheme. Further there is a provision for appointment of an Arbitrator who is empowered to decide various aspects which are set out in sub-section 3 of section 72 of the MRTP Act.

4 Section 88 of the MRTP Act reads thus:

"88. Effect of [preliminary scheme]

On and after the day on which a [preliminary scheme] comes into force-

(a) all lands required by the Planning

Authority shall, unless it is otherwise determined in such scheme, vest absolutely in the Planning Authority free from all encumbrances;

(b) all rights in the original plots which have been reconstituted shall determine, and the reconstituted plots shall become subject to the rights settled by Arbitrator.

5 Thus, on the date on which the Scheme came into force i.e 15th September 1989, re-constituted plots became subject to the rights settled by the Arbitrator. In the present case, in view of sub clause (a) of section 88, the said final plot vested in the Pune Municipal Corporation. The distribution and valuation statement annexed to the affidavit of Smt.Naik shows that the Pune Municipal Corporation is the allottee of the said final plot. Thus, the said final plot vested in the said Corporation on 15th September 1989.

6 Though the petitioners were aware about the sanction of the said Scheme with effect from 15th September 1989 and though the petitioners were aware that the final plot vests in the Pune Municipal Corporation, this petition which was affirmed on 2nd April 1998 proceeds on the footing that the petitioners were the owners of the final plot. Moreover, there is no specific challenge to the Town Planning Scheme. Apart from the fact that in 1998,

the Town Planning Scheme which came into force on 15th September 1989 could not have been challenged, without challenging the Town Planning Scheme in accordance with law, the petitioners cannot claim even a semblance of the title in respect of the said final plot. It is true that there is a challenge to the notice of eviction. The challenge to the notice of eviction cannot be sustained as the petitioners have been divested of the right, title or interest in the said final plot.

7 The learned counsel for the petitioners relied upon the decision of a Division Bench of this Court in the case of Iqbal and Brothers, Pune vs. State of Maharashtra and others¹. For challenging a notice under section 89 of the MRTP Act for eviction of the persons occupying a final plot in the sanctioned Town Planning Scheme, it is not necessary that the person who challenges the notice should have a title. It in this context that the issue of locus of the petitioner has been considered in the said decision.

8 In the present case, though the petitioners could not have claimed title with effect from 15th September 1989 and though with effect from the said date, the final plot vested in the Pune Municipal Corporation, the petitioners have claimed that they are the owners of the said plot.

9 The entire petition proceeds on the footing

1 2012 (4) Mh.L.J. 713

that there is some kind of a reservation in the Town Planning Scheme. This petition is completely misconceived. Prayer (CC) suggests that if the reservation in development plan lapses, the so called reservation under the Town Planning Scheme lapses. In the present case, the said final plot vests in the Municipal Corporation. The issue of reservation is of no consequences. Accordingly, we hold that there is not merit in the writ petition and the same is rejected. Rule is discharged.

10 At this stage, the learned counsel for the petitioners prays for continuation of ad-interim relief granted on 21st April 1998. On 3rd November 1998, interim relief in terms of prayer clause (d) was granted (except bracketed portion) which reads thus:

“(D) Pending hearing and final disposal of the present petition; be directed not to take any steps in demolishing and acquisition of said plot by demolishing the existing structures thereon.”

11 As the interim relief granted on 3rd November 1998 is operating for a long time, the same is extended for a period of ten weeks from today.

(VIBHA KANKANWADI, J.)

(A.S.OKA, J.)