

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 508 OF 2017
WITH
CIVIL APPLICATION NO. 935 OF 2017

Suryakant Shamrao Kale .. Appellant
vs.
Pandharpur Municipal Council .. Respondent

Mr. V. P. Sawant i/b. Mr. Nikhil Chavan for Appellant.

CORAM : M. S. SONAK, J.
DATE: 20 FEBRUARY 2018

P.C :

1] Heard Mr. Sawant for the appellant.

2] He submits that the issue as to whether the appeal court has correctly interpreted the provisions of the Government Resolution dated 27th May 2005 arises for determination in this appeal. He submits that the interpretation of the GR dated 27th May 2005 raises a substantial question of law in the following form:

“Whether the Appellate Court has correctly interpreted the provisions of the Government Resolution dated 27.5.2005 and whether the Appellant is not entitled to the benefit of the said Government Resolution for want of a fresh application for sale of land?

3] He submits that the trial court has correctly interpreted the GR dated 27th May 2005 and on the basis of such correct interpretation has held that the appellant was entitled to the benefit of this GR and consequently, entitled to purchase the suit plot allotted by the respondent Municipal Council for industrial purposes. He submits that the GR, *inter alia* prescribes three categories of persons who

are entitled to purchase the allotted plots. They are as follows:

- (I) The allottees who have been using the allotted plot;
- (II) The allottees who belong to the low income group; and
- (III) The allottees who belong to backward classes.

4] Mr. Sawant, learned counsel for the appellant submits that there is absolutely no dispute that the appellant is an allottee of the plot for industrial purposes and has been using the plot for industrial purposes in accordance with the rules for the last several years. He submits that even the appeal court has held that the appellant comes within the category of plot holders who were intended by the State Government not to be evicted, as is evident from the GR dated 27th May 2005. He submits that the appellate court has non suited the appellant on the ground that the appellant may not have made any application for sale of the plot to the respondent Council. Mr. Sawant points out that such application was not at all necessary or contemplated, except perhaps in the case of allottees claiming under the category of educated unemployed persons. Mr. Sawant submits that the appeal court has misconstrued and mis interpreted the GR dated 27th May 2005 and therefore, this appeal warrants admission followed by interim reliefs.

5] There is no dispute that the appellant was indeed an allottee of a plot by the respondent council. The allotment was for user of such plot for industrial purposes. The respondent council at some stage, executed sale deed and purported to sale the said plot to the appellant – allottee. In respect of such allotment, some sanction was also obtained from the State Government. The sanction and consequently the sale deed on the basis of such sanction was questioned in writ petition no. 488 of 1990 as being *ultra vires*. This writ petition was allowed, the sanction was set aside and as a

consequence, there was no question of the sale prevailing. The sanction was set aside because the same was backed by no reasons whatsoever.

6] Thereafter, the State Government, issued GR dated 27th May 2005 purporting to make exceptions of the general rule that public property or municipal property, is required to be disposed of by way of public auction or similar other procedure. The GR basically made exceptions in favour of allottees who belonged to the lower income group or backward classes. The submission that the GR made exceptions in respect of three broad categories of allottees i.e. the allottees who have used the allotted plot for industrial purposes in accordance with rules, the allottees who belonged to low income group and the allottees who belonged to backward classes, is not entirely correct. From the reading and construction of the GR, it is quite clear that the allotment on sale basis was required to be made in favour of such of the allottees who have used allotted plot for industrial purposes in accordance with rules, provided such allottees, belong to the lower income group or to the backward classes. Merely because some of the allottees may have been in possession for several years or may have used allotted plot for industrial purposes in accordance with rules was certainly, not a ground to make an exception to the general rule that such allotments are to be made on the basis of public auction or such similar procedure. The trial court, has in fact misinterpreted the GR dated 27th May 2005 and the interpretation of the appeal court is not only inconsistent with the text of the GR but also, with the general principle that public property or municipal property should be disposed of so that there is transparency and further, the State or the Municipal Corporation gets the best possible price. Exceptions can be made in exceptional circumstances and on the basis of

some rational criteria.

7] Accordingly, there is no error in the interpretation of the appeal court and there is no substantial question of law involved in this appeal.

8] Accordingly, this appeal is dismissed. There shall however be no order as to costs. Since the appeal is dismissed, civil application for interim reliefs will not survive and the same is also disposed of.

9] At this stage, the learned counsel for the appellant seeks restraint on the execution of the decree for a period of six weeks from today. Subject to filing the usual undertaking within a period of two weeks from today, to the effect that the appellant will not create any third party rights or part with possession of the suit premises, there shall be restraint on the execution of the decree for a period of six weeks from today. Copy of such undertaking to be furnished to the respondent council before the same is filed in the Registry.

(M. S. SONAK, J.)