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

**WRIT PETITION NO.731 OF 2018**

Prakash M Deshpande

and anr

... Petitioners

V/s.

Pimpri Chinchwd New Township

Development and anr.

... Respondents

Mr. Prakash M. Deshpande, the Petitioner in person.

Mr. Nitin P. Deshpande, for the Respondent No.1.

Mr. A.R. Metkari, AGP for respndent No.2.

**CORAM : DR.SHALINI PHANSALKAR-JOSHI, J.**

**DATE : 1<sup>st</sup> MARCH, 2018.**

**P.C. :**

1] Heard the petitioner No.1, who is appearing in person, learned counsel for respondent No.1 and learned AGP for respondent State.

2] By this writ petition, the petitioners are challenging the order dated that 5<sup>th</sup> December, 2017, passed by 3<sup>rd</sup> Joint Civil Judge Senior Division, Pune below Exh.39 in R.C.S.No.886 of 2009.

3] Application at Exh.39 was preferred by the present petitioners under Order XIV Rule 5 of the Code of Civil Procedure for re-framing of the issues.

4]           The petitioners are the original plaintiffs before the trial Court and they had filed suit for declaration that the action of defendant taken on 27<sup>th</sup> May 2009, damaging the suit property and confiscating the belongings of the petitioners, without following due process of law as provided under the Maharashtra Regional and Town Planning Act, was arbitrary, illegal, null, void, bad-in-law, ab-initio, abuse of authority vested in public servant and in breach of the provisions of MRTP Act.

5]           The petitioners have further sought direction from the Court that the respondents-defendants be directed to reinstate the position of the suit property as on 27.05.2009 and return the confiscated belongings of the petitioners from the suit property to the plaintiffs.

6]           The third prayer made by the petitioner is for permanent injunction from obstructing the petitioners for protecting their suit property by erecting necessary compound wall/fencing/gate and using the property especially the open area exclusively owned by the petitioners for garden/green house and other purposes, within four corners of laws and by laws of the Pimpri Chinchwad New Township Development Authority.

7]           Thus, the necessary reliefs which the petitioners is claiming in the suit, is for declaration and return of the confiscated

belongings and also for injunction. Hence the issues relating to the possession and absolute ownership of the petitioners over the suit property were relevant,.

8] As a matter of fact from the comparative chart given at page No.6 of the petition, the issues framed by the trial Court and the the issues proposed by the present petitioners, it can be clearly seen that the issues proposed by the present petitioners for re-framing appears to be proper, legal and correct for just decision of the suit pending before the trial Court in the light of the reliefs claimed by the petitioners. The trial Court, therefore, should have allowed the said application. The relevant chart is reproduced as follows :-

Comparative Chart

| Issues framed by Ld. Lower Court |                                                                                                                                                                                                         | Proposed re-framing of issues. |                                                                                                                                                                                                                                            |
|----------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1                                | Whether plaintiffs prove that they are lawful and absolute owner of the suit property?                                                                                                                  | 1                              | Whether plaintiffs prove that they are in settled possession of the suit property with effect from 01.11.2006 and entitle to retain, enjoy and protect the same?                                                                           |
| 2                                | Whether plaintiffs prove that defendants have illegally and unauthorizedly damaged some portion of the suit property and they have not followed the mandatory provision as contemplated under MRTP Act? | 2                              | Whether plaintiffs prove that on 27.05.2009, officials of Defendants State authorities entered the suit property, damaged portion of the suit property and confiscated belongings of the plaintiffs, without following due process of law? |
| 3                                | Whether suit is bad for want of proper description of the suit property as                                                                                                                              | 3                              | Whether plaintiffs prove that there is threat to possession and enjoyment of the suit property by                                                                                                                                          |

|   |                                                                                             |   |                                                                                                                                  |
|---|---------------------------------------------------------------------------------------------|---|----------------------------------------------------------------------------------------------------------------------------------|
|   | contemplated as Order VII Rule 3?                                                           |   | the plaintiffs at the hands of the defendants State authorities without following due process of law?                            |
| 4 | Whether plaintiffs prove that suit is properly valued?                                      | 4 | Whether suit is bad for want of proper description of the suit property as contemplated under the provision of Order VII Rule 3? |
| 5 | Whether plaintiffs are entitled for relief of declaration as sought?                        | 5 | Whether suit is properly valued?                                                                                                 |
| 6 | Whether plaintiffs are entitled for relief of mandatory and perpetual injunction as sought? | 6 | Whether plaintiffs are entitled for the reliefs prayed?                                                                          |
| 7 | What order and decree?                                                                      | 7 | What order and decree?                                                                                                           |

9] In view thereof, the impugned order passed by the trial Court rejecting the said application needs to be quashed and set aside.

10] The Writ Petition is accordingly allowed.

11] The application filed by the petitioners for re-framing of the issues as per chart is allowed.

12] The trial Court to re-frame the issue accordingly and proceed with the hearing of the suit.

**[DR.SHALINI PHANSALKAR-JOSHI, J.]**