

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO.962 OF 2014

Kolhapur Municipal Corporation,]
Having its Office at Bhausinghji Road,]
Kolhapur, Through its Commissioner] Applicant

Versus

1. Unchgaon Village Panchayat,]
Taluka Karveer, District Kolhapur]
Through its Deputy Sarpanch,]
Sachin Ankush Deshmukh]
2. Trilok Panjuml Dadlani,]
Age : 61 years, Occ. : Business,]
R/at City Survey No.B-8, Sonapark,]
Kolhapur.]
3. Pushpadevi Sureshlal Pinjani,]
Age : 52 years, Occ.: Household,]
R/at 249/75, Arihant Plaza,]
Nagada Park, Kolhapur.] Respondents

Mr. P.S. Dani, Senior Counsel, i/by Mr. Abhijit M. Adagule, for the Applicant.

Mr. Girish Godbole, Senior Counsel, a/w. Mr. Drupad S. Patil, for Respondent No.1.

Mr. Anil Sakhare, Senior Counsel, with Mr. Narendra Gandhi, for Respondent No.2.

Mr. Tejas Dande, with Ms. Bharati Gadhavi and Mr. Niranjana Bhavke, i/by M/s. Tejas Dande & Associates, for Respondent No.3.

CORAM : DR. SHALINI PHANSALKAR-JOSHI, J.

RESERVED ON : 24TH JANUARY 2018.

PRONOUNCED ON : 22ND FEBRUARY 2018.

JUDGMENT :

1. Heard learned Senior Counsel for the respective parties.
2. This Civil Revision Application preferred by the Original Defendant

takes an exception to the Judgment and Order dated 6th September 2013 passed by the 3rd Joint Civil Judge, Junior Division, Kolhapur, in Regular Civil Suit No.193 of 2013, overruling the Applicant-Municipal Corporation's objection to the jurisdiction of the Civil Court to entertain the Suit.

3. For the sake of convenience, the parties to this Revision Application are referred to by their original nomenclature as "*Plaintiff*" and "*Defendant*".

4. The facts, which are relevant, for the purpose of deciding this Revision Application lie in a very narrow compass and can be stated as follows:-

. The Plaintiff, in the Regular Civil Suit No.193 of 2013, is "Gram Panchayat, Uchgaon", established in the year 1943 and accepted as 'Legal Entity' under the provisions of Bombay Village Panchayats Act, 1958; whereas, Defendant is the Municipal Corporation of Kolhapur, functioning under the provisions of Maharashtra Municipal Corporations Act, 1949, (*for short, "MMC Act"*).

5. On 29th January 2013, the Defendant-Municipal Corporation has published a 'Public Notice' in daily local newspaper "Pudhari", declaring

that the Revision Survey Nos.84, 87, 91 to 97, 100 to 103, 118 to 120, 122 to 125, 134, 137, 138 and 143 are the part and parcel of the area belonging to the Kolhapur Municipal Corporation and the constructions carried thereon being without obtaining permission from the Defendant-Municipal Corporation, the said constructions be demolished within 30 days from the receipt of the notice, as the lands bearing Revision Survey Nos.100, 101, 103 and 123 are affected by DP Reservation No.158 for 'Truck Terminus'; whereas, lands bearing Revision Survey Nos.87(Part), 89(Part), 104(Part) and 105(Part) are affected by DP Reservation No.157 for 'Dumping Ground'.

6. According to the Plaintiff, these Revision Survey numbers and the entire land in the area of Village Uchgaon fall within the jurisdiction of Uchgaon Gram Panchayat and Kolhapur Municipal Corporation, therefore, has no concern therewith. It was contended that, the Uchgaon Gram Panchayat has issued the permissions for carrying out constructions over these lands and those constructions are legal, valid and authorized. If these constructions are demolished, then, the persons, who have carried out those constructions, will suffer loss in crores of rupees.

7. It was also contended that, the Revision Survey numbers mentioned in the 'Public Notice' were never included in the Kolhapur

Municipal Bureau, which was earlier in existence, or, thereafter in Kolhapur Municipality and, subsequently, in Kolhapur Municipal Corporation area. The requisite procedure for issuing notice to Uchgaon Gram Panchayat and giving an opportunity of hearing to Uchgaon Gram Panchayat was also not followed, while extending the area of Kolhapur Municipal Corporation to these Revision Survey numbers.

8. Thus, the Suit was filed by the Gram Panchayat for the declaration that, none of the area of Gram Panchayat, Uchgaon, is included in the area of Kolhapur Municipal Corporation and the 'Notification' extending the Municipal limits of Defendant-Municipal Corporation for inclusion of these Revision Survey numbers, issued under Section 3 of the Maharashtra Municipal Corporations Act, 1949, is illegal and not binding on the Plaintiff. The consequential relief of perpetual injunction was also sought, restraining the Defendant from demolishing the constructions and for not taking any action on the basis of the 'Public Notice', issued in the local newspaper "Pudhari". Relief of perpetual injunction was also sought for restraining the Kolhapur Municipal Corporation from issuing any building permissions or recovering taxes from the properties lying in the area of Village Uchgaon.

9. Along with the Suit, Plaintiff-Gram Panchayat had filed an application at "Exhibit-5" for the relief of interim injunction, restraining

the Defendant-Municipal Corporation from taking any harsh action in pursuance of the impugned notice.

10. This Suit and application for interim injunction came to be resisted by the Defendant-Municipal Corporation vide written statement at “Exhibit-16”, raising objection to the jurisdiction of the Civil Court to entertain and decide the Suit. It was submitted that, the 'Notification', issued under Section 3 of the MMC Act, being final one, it cannot be challenged in the Civil Court. Further it was submitted that, the dispute raised in the present Suit cannot lie within the four corners of either the MMC Act or even Maharashtra Regional and Town Planning Act, 1966, (*for short, “MRTP Act”*). It was submitted that, as per the 'Government Notification' dated 14th August 1942, the objections for extending the area of Kolhapur Municipal Bureau were called for and a fresh 'Notification' was issued on 30th June 1945, which was published in 'Kolhapur Government Gazette' on 12th July 1945, extending the area of Kolhapur Municipal Bureau. According to the said 'Gazette', Revision Survey Nos.1 to 109, 18 to 125, 134, 137, 138, 143, 144, 146, 147, 397, 401, 402, 403, 409, 412, 416, 417, 418 of Village Uchgaon were included in the area of Kolhapur Municipal Council. Thereafter, by virtue of 'Notification' dated 5th March 1946, these Revision Survey numbers were included in Kolhapur Municipal Bureau. When Kolhapur Municipal Corporation came into existence on 15th December, 1972,

these Revision Survey numbers were automatically included in the Kolhapur Municipal Corporation and now all these areas lie in the jurisdiction of Kolhapur Municipal Corporation.

11. It was further submitted that, in the 'Development Plan' prepared by the Kolhapur Municipal Corporation on 18th April 1978, these areas are reserved for 'No Development Zone'. The said 'Development Plan' was sanctioned on 25th January 2001 and according to it, these Revision Survey numbers are reserved for DP Reservation No.158 for 'Truck Terminus' and DP Reservation No.157 for 'Dumping Ground' and other areas are reserved for 'Green Island' and 'No Development Zone'. It was submitted that, the Kolhapur Municipal Corporation, being the Planning Authority, is perfectly entitled to take requisite action against the constructions made on these Revision Survey numbers. These constructions are unauthorized, as no permission was obtained from Kolhapur Municipal Corporation for carrying out these constructions.

12. Further it was submitted that, the owners of those constructions had already filed various Suits against the Kolhapur Municipal Corporation and those Suits are pending in the Court. In such situation, it was not justified on the part of the Uchgaon Gram Panchayat to take up the cause of those persons, who had carried out constructions illegally.

13. Moreover, according to the Defendant-Municipal Corporation, when the impugned 'Public Notice' dated 29th January 2013 was issued, under Sections 52 and 53 of the MRTP Act, the Suit challenging the said notice was expressly barred, in view of Section 149 of the said Act. On all these grounds, it was submitted that, the Suit is liable to be dismissed with costs.

14. Along with the written statement, Defendant-Municipal Corporation had also filed application, under Section 9A of the Civil Procedure Code, 1908, for framing of preliminary issue as to '*whether the Civil Court has jurisdiction to try the Suit of the present nature*'. After hearing learned Senior Counsel for both the parties, vide its order dated 4th May 2013, the Trial Court has framed such preliminary issue.

15. On this preliminary issue, in support of its case, on behalf of the Plaintiff - Uchgaon Gram Panchayat, its Deputy Sarpanch Mr. Sachin Ankush Deshmukh was examined; whereas, on behalf of the Defendant - Kolhapur Municipal Corporation, its Junior Engineer Mr. Mahadev Gangadhar Phulari was examined.

16. Both the parties then relied upon voluminous documentary evidence and on the basis of the same, the Trial Court was pleased to

hold that, as regards the properties mentioned in the impugned 'Public Notice' dated 29th January 2013, as the said 'Public Notice' was issued under Sections 52 and 53 of the MRTP Act, the Suit is barred in view of Section 149 of the said Act. However, the Trial Court held that, as in the Suit, the other properties situate at Village Uchgaon are also involved, in respect of those properties, the Civil Court has jurisdiction to entertain the Suit. The Trial Court has also, in paragraph No.59 of its Judgment, held that, such issue of jurisdiction cannot be decided finally, it being a mixed question of fact and law, but, so far as finding to the preliminary issue is concerned, Suit is not barred by an express or implied provision of any special law, in view of the declaration prayed therein.

17. While challenging this finding of the Trial Court holding that the Civil Court has jurisdiction to entertain this Suit, in the Revision Application, Mr. Sakhare, learned Senior Counsel for Respondent No.2, has submitted that, the question involved in the present Suit pertains to the extension of area of the Kolhapur Municipal Corporation. According to him, the limits of the Kolhapur Municipal Corporation area or the extension of the said area is fixed under Section 3 of the MMC Act and as the area is determined by the State Government, the Civil Court cannot have jurisdiction to decide the dispute about the extension of the limits of the Municipal Corporation area; especially in a Suit like the present one, where the Plaintiff – Uchgaon Gram Panchayat is contending that

all the properties situate in Village Uchgaon are falling in the jurisdiction of Gram Panchayat, though to some of these properties, the area of Kolhapur Municipal Corporation is already extended by following due procedure of law, as laid down in Section 3 of the MMC Act. According to him, such dispute cannot, obviously, lie within the jurisdiction of the Civil Court.

18. Per contra, learned Senior Counsel for Respondent No.1-Plaintiff has supported the impugned order passed by the Trial Court by pointing out that, there is no express or implied bar to the jurisdiction of the Civil Court for deciding such dispute; especially when, in the present case, the Plaintiff – Gram Panchayat is also seeking the relief of injunction and declaration that the 'Public Notice' issued by the Defendant - Municipal Corporation, under Sections 52 and 53 of the MRTP Act, is not legal and correct.

19. In my considered opinion, in order to decide whether the Civil Court has jurisdiction to entertain this Suit or not, the reliefs which are claimed by the Plaintiff – Gram Panchayat in the present Suit need to be considered. Plaintiff – Gram Panchayat has filed the Suit seeking a declaration that, the properties situated in Village Uchgaon are not included in the area of Kolhapur Municipal Corporation. The second declaration sought is that, if the limits of the area of Kolhapur Municipal

Corporation are extended, then, such extension of the limits is illegal, unauthorized and not binding on the Plaintiff - Gram Panchayat. The consequential relief of injunction sought is that, the Defendant - Municipal Corporation should not act on the basis of the 'Public Notice', issued under Sections 52 and 53 of the MRTP Act, and should not proceed to demolish the constructions, nor should collect the taxes from the said properties.

20. Thus, the crux of the Plaintiff's Suit is that, the properties, which are described in paragraph No.1 of the plaint and which describes all the properties falling in the limits of Village Uchgaon, are in the jurisdiction of Uchgaon Gram Panchayat and hence, Kolhapur Municipal Corporation has no jurisdiction over the same. If at all, the limits of the area of Kolhapur Municipal Corporation is extended to cover those properties, then, such extension of the limits of the area is illegal, null and void. The question for consideration is, *'whether such declaration can be granted by the Civil Court ?'* and answer to this question has to be in the 'negative'.

21. It is pertinent to note that, the specification of larger urban areas and constitution of Corporations is defined in Section 3 of the Maharashtra Municipal Corporations Act, 1949, and it reads as follows :-

“3. Specification of Larger Urban Areas and Constitution of Corporations :-

- (1) The Corporation for every City, constituted under this Act, existing on the date of coming into force of the Maharashtra Municipal Corporations and Municipal Councils (Amendment) Act, 1994, specified as a larger urban area in the Notification issued in respect thereof under clause (2) of Article 243-Q of the Constitution of India, shall be deemed to be a duly constituted Municipal Corporation for the larger urban area so specified forming a City, known by the name “The Municipal Corporation of the City of”;*
- (1A) The Corporation of the City of Nagpur incorporated under the City of Nagpur Corporation Act, 1948, for the larger urban area specified in the Notification issued in this respect under Clause (2) of Article 243-Q of the Constitution of India shall, on and from the date of coming into force of the Bombay Provincial Municipal Corporations (Amendment) and the City of Nagpur Corporation (Repeal) Act, 2011, be deemed to have been constituted under this Act and accordingly the provisions of this Act shall apply to the area of the City of Nagpur.*
- (2) Save as provided in sub-section (1), the State Government may, having regard to the factors mentioned in Clause (2) of Article 243-Q of the Constitution of India, specify by Notification in the Official Gazette, any urban area with a population of not less than three lakhs as a larger urban area;*

(2A) Every larger urban area so specified by the State Government under sub-section (2) shall form a City and there shall be a Municipal Corporation for such larger urban area known by the name of the Municipal Corporation of the City of;

(3)(a) Subject to the provisions of sub-section (2), the State Government may also from time to time after consultation with the Corporation by Notification in the Official Gazette, alter the limits specified for any larger urban area under sub-section (1) or sub-section (2), so as to include therein or to exclude therefrom, such area as is specified in the Notification;

(b) Where any area is included within the limits of the larger urban area under Clause (a), any appointments, notifications, notices, taxes, orders, schemes, licences, permissions, rules, bye-laws or from made, issued, imposed or granted under this Act or any other law, which are for the time being in force in the larger urban area shall, notwithstanding anything contained in any other law for the time being in force, but save as otherwise provided in Section 129A or any other provision of this Act, apply to and be in force in the additional area also from the date that area is included in the City;

(4) The power to issue a Notification under this Section shall be subject to the condition of previous publication;

Provided that, where the population of any urban area, in respect of which a Council has been

constituted under the provisions of the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965, as per the latest census figures has exceeded three lakhs, the State Government may, for the purpose of constituting a Corporation under this Act for such urban area, with the same boundaries, dispense with the condition of previous publication of the Notification under this Section.”

22. Thus, this Section authorizes the State Government, from time to time, after consultation with the Corporation, by 'Notification' in the 'Official Gazette', to alter the limits specified for any larger urban area, so as to include therein or to exclude therefrom such area, as is specified in the 'Notification'. The entire authority is, thus, given to the State Government, whether to include or to exclude any area from the limits of the Municipal Corporation. *'Whether Civil Court can, in such situation, interfere in the matter on the ground, as contended by the Plaintiff – Gram Panchayat, that, the Gram Panchayat was not heard before extending the limits of the area of Kolhapur Municipal Corporation or they were not given any notice prior to it and, therefore, the extension of the limits of the Defendant – Municipal Corporation is illegal?'* The answer to this question is also required to be in 'negative', if one has regard to the Judgment of the Apex Court in the case of *Tulsipur Sugar Co. Ltd. Vs. The Notified Area Committee, Tulsipur, (1980) 2 SCC 295*, holding that, when the declaration of any area as 'town area' is made

with previous publication to public and consideration of their representations or objections, the principle of *audi alteram partem* is not applicable. It was further held that, when the 'Notification' is published under Gazette for declaration of certain areas as 'town areas', the plea that the area is a part of agricultural village is not available.

23. One can, in this respect, also place reliance on the Judgment of the Apex Court in the case of *Sundarjas Kanyalal Bhathija Vs. The Collector, Thane, Maharashtra and Ors.*, AIR 1990 SC 261, wherein, in paragraph No.24, it was observed that,

“Equally, the rule issued by the High Court to hear the parties is untenable. The Government in the exercise of its powers under Section 3 is not subject to the rules of natural justice any more than is legislature itself. The rules of natural justice are not applicable to legislative action plenary or subordinate. The procedural requirement of hearing is not implied in the exercise of legislative powers, unless hearing was expressly prescribed. The High Court, therefore, was in error in directing the Government to hear the parties, who are not entitled to be heard under law.”

24. The point, therefore, to be stressed is that, the exercise of power under Section 3 of MMC Act being under legislative power, it cannot be questioned in Civil Court.

25. In the instant case, admittedly, as per 'Notification No.18', issued

on 14th August 1942, a declaration was made to extend the limits of Kolhapur Municipal Bureau, under the provisions of Section 7 of Kolhapur Municipal Bureau Act, 1944. Accordingly, the 'Notification' dated 30th June 1945 was published in 'Kolhapur Government Gazette' on 12th July 1945, including Revision Survey Nos.1 to 109, 18 to 125, 134, 137, 138, 143, 144, 146, 147, 397, 401, 402, 403, 409, 412, 416, 417 and 418 of Village Uchgaon in Kolhapur Municipal limits. By issuing a 'Public Notice' dated 18th July 1945 in daily local newspaper "Pudhari", the objections were called for about including these areas in the Municipal limits of Kolhapur Municipal Corporation and then, after considering those objections, by 'Notification' dated 5th March 1946, these Revision Survey numbers were included in the area of Kolhapur Municipal Bureau. Kolhapur Municipal Corporation came into effect on 15th December 1972 and as per Section 76 of the MMC Act, all the areas of Kolhapur Municipal Bureau came to be included in Kolhapur Municipal Corporation. Thereafter, on 18th April 1978, the 'Development Plan' of Kolhapur City was prepared by the Kolhapur Municipal Corporation, under the provisions of the MRTP Act. That 'Development Plan' got sanctioned on 25th January 2001 and in that 'Sanctioned Plan', DP Reservation No.158 is shown for 'Truck Terminus' and DP Reservation No.157 is shown for 'Dumping Ground'.

26. The witness for the Plaintiff – Gram Panchayat, namely, Mr.Sachin

Ankush Deshmukh, the Deputy Sarpanch, has admitted all these facts in his cross-examination before the Trial Court. He has admitted that, during the period from 1942 to 1946, the areas of Gram Panchayat, Uchgaon, were included by the State Government in Kolhapur Municipal Bureau. A 'Resolution' to that effect was passed; objections were called for; and, thereafter, the 'Notification' was issued for inclusion of those areas in Kolhapur Municipal Bureau. He has also admitted that Gram Panchayat, Uchgaon, has not challenged the said 'Notification' till date. Further, he has admitted that, thereafter the Kolhapur Municipal Corporation has prepared the 'Development Plan', wherein these areas are shown and some of them are shown as 'reserved' for the particular objects, as stated above.

27. Thus, it is not the case that Uchgaon Gram Panchayat was unaware of this 'Government Notification', issued under Section 3 of the MMC Act. It is also not that they have filed any objection to challenge inclusion of these areas. The Plaintiff – Gram Panchayat was also aware that in the 'Development Plan' of Kolhapur Municipal Corporation, these areas are reserved for particular purposes. In such situation, after more than 50 to 60 years of the 'Notification', including these areas in the area of Kolhapur Municipal Corporation, Plaintiff – Gram Panchayat cannot institute a Suit, that too in a Civil Court, challenging the said 'Notification'. The Civil Court, obviously, cannot entertain such dispute,

as the decision of the State Government in that respect cannot be challenged in the Civil Court, it being under legislative powers.

28. It may be stated that, this Court [*Coram : N.M. Jamdar, J.*], on 13th October 2016, when the matter came up before it for the first time, has specifically observed that,

“The dispute between the Kolhapur Municipal Corporation and the Gram Panchayat, Uchgaon, is regarding the area, which is stated to be within the Municipal limits of the Kolhapur Municipal Corporation. According to the Defendant – Municipal Corporation, disputed area falls within the Municipal limits; while, according to the Plaintiff - Gram Panchayat, it falls within the area of Gram Panchayat, Uchgaon. Hence, this dispute, initially, should be looked into by the State Government, as it is not necessary that these two Public Bodies should resolve the dispute of such nature through process of the Civil Court. The Principle Secretary, Urban Development Department, Government of Maharashtra, was, therefore, requested to call the representatives, preferably the Commissioner or the Deputy Commissioner of the Kolhapur Municipal Corporation and the Sarpanch or the Deputy Sarpanch of the Gram Panchayat, Uchgaon, to ascertain the nature of the dispute and make efforts to find out solution thereon.”

29. Accordingly, the Principal Secretary, Urban Development Department, Government of Maharashtra, has conducted such meeting and filed his Report dated 7th March 2017 stating that, as per the

'Notification', these areas of Revision Survey Nos.1 to 109, 118 to 125, 134, 137, 138, 143, 144, 147, 397, 401, 402, 403, 409, 412, 417, 418, totally 133 survey numbers, are part of the area of Kolhapur Municipal Corporation. A direction was also given that these areas are not forming part of Uchgaon Gram Panchayat and a 'Notification' to that effect be issued. Thus, now there is also the decision taken by the State Government confirming that these areas are the part of Kolhapur Municipal Corporation.

30. In such situation, Civil Court cannot enter into this dispute. Therefore, in my considered opinion, the dispute of such nature clearly falls outside the jurisdiction of the Civil Court. The Civil Court now cannot give the declaration, as claimed by the Plaintiff - Gram Panchayat, that the 'Notification', including these areas in Kolhapur Municipal Corporation, is illegal, as the Plaintiff-Gram Panchayat was not heard in the matter or no notice was issued to the Plaintiff. Hence, on this ground itself, the finding given by the Trial Court, that Civil Court has jurisdiction to decide this dispute, is liable to be quashed and set aside by allowing this Revision Application.

31. As a result, the Revision Application is allowed. The impugned order passed by the Trial Court, holding that the Civil Court has jurisdiction to entertain the Suit, is quashed and set aside.

32. As a result, the Regular Civil Suit No.193 of 2013 stands dismissed for want of jurisdiction in the Civil Court to entertain such dispute.

33. At this stage, learned Senior Counsel for Respondent No.1-Gram Panchayat submits that, the operation of this Judgment and Order, allowing the Civil Revision Application, be stayed, as Respondent No.1-Gram Panchayat intends to approach the Hon'ble Supreme Court. Accordingly, the operation of this Judgment and Order is stayed for a period of ten weeks from today.

[DR. SHALINI PHANSALKAR-JOSHI, J.]