

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

WRIT PETITION NO. 4503 OF 2012

College of Engineering, Pune

...Petitioner

V/s.

The Hon'ble High Court of Judicature
of Bombay and Ors, Bombay High Court

...Respondent

Mr.A.V. Anturkar, Senior Counsel i/b Mr.Sandeep Phatak and
Mr.Ajinkya Udane i/b Mr.S.B. Deshmukh for the Petitioner.

Mr.P.S. Dani, Senior Counsel i/b Ms.Leena Patil for the Respondent
Nos.1 & 2.

Mr.B.V. Samant, AGP for Respondent No.3.

**CORAM : S.C. DHARMADHIKARI &
SMT.BHARATI H. DANGRE, JJ.**

DATE : 07th JUNE 2018

P.C.:

1. By this petition the petitioner-College of Engineering, Pune claims a writ of mandamus or any other appropriate writ, order or direction directing the third respondent to delete an entry in the possession column or entry deleting the possession of the respondent from the Map prepared in respect of the petitioner's property, namely, plot No.79.

2. At the outset Mr.Dani, learned Senior Counsel

appearing on behalf of respondent Nos.1 and 2 raises a preliminary objection of maintainability of this petition. He submits that a dispute in relation to the right, title and interest in a immovable property or a claim of possession in relation thereto cannot be resolved in writ jurisdiction of this Court more so, when the facts as narrated in the petition do not reflect the correct position at site. In other words they are not admitted facts.

3. Mr.Anturkar, the learned senior counsel appearing for the petitioner submits that there is no merit in the preliminary objection. This is not a case where there is any dispute in relation to right, title and interest in a immovable property nor a dispute of possession. This is a clear case where a Town Planning Scheme was drawn up and the learned arbitrator, while determining the rights of the plot holders, has made an allotment and final plot No.79 replaces the old survey number. The scheme document is final and binding. It is only when a measurement is carried out and thereafter a map is drawn up, that for the purposes of the correction therein, a request was made by the petitioner to the City Survey Officer. At that stage the official from the District Court/Department of Law and Judiciary, Government of Maharashtra came at the site and actually directed the City Survey Officer to depict the

respondent Nos.1 and 2 is possession insofar as the plot is concerned. That could not have been the manner in which the claim of possession would be accepted. The arbitrator has already allotted final plot No.80 for the use and enjoyment of the Department of Law and Judiciary. Therefore for any boundary dispute or any dispute with regard to measurement, the respondents should have approached the Competent Authority under the Maharashtra Land Revenue Code, 1966 and sought an inquiry. If that Competent Authority could not have resolved the dispute, then, the doors of Civil Court are always open. However, orally directing the City Survey Officer and such City Survey Officer acting at his behest is violation of the provisions of the substantive law, namely, Section 86 and 87 of the Maharashtra Regional and Town Planning Act, 1966 and Section 135 of the Maharashtra Land Revenue Code. So also the Maharashtra Land Revenue Records or Rights and Register (Preparation and Maintenance) Rules, 1971. For all these reasons, Mr.Anturkar would submit that this writ petition be entertained, more so, when on the administrative side of this Court as also the District Court no assistance has been rendered to the petitioner and its representation was not even considered. Mr.Anturkar submits that the portion is required by the college for construction of the new building and particularly house its library. The college has been

recently granted autonomy and now has raised funds for the purposes of the construction. Hence, the land is urgently required.

4. With the assistance of the Mr.Anturkar and Mr.Dani, we have perused the petition and the annexures thereto. The Writ Petition itself proceeds on the footing that the Maharashtra Regional Town Planning Act prescribes and provides for a complete mode in order to enable the Town Planning Schemes to be made. Our attention has been invited to Chapter-V in that regard. It is common ground that after the scheme is sanctioned, then, within one month from the date on which the sanction of the State Government to the draft scheme is published in the Official Gazette, the State Government shall, for purposes of one or more planning schemes received by it for sanction, appoint any person possessing such qualifications as may be prescribed to be an Arbitrator with sufficient establishment and his duties are set out. In terms of his duties certain decisions are rendered by the arbitrator to which a finality is given by Section 73. By the Section 74 there is a provision of appeal. The Appellate Tribunal renders its decision in the appeal and thereafter if no appeal is filed, the decision attains finality. By Section 83 possession of land in advance of Town Planning Scheme is contemplated. If there is any obstruction caused in taking

possession then, Section 84 comes into play. The consequences of taking possession are then set out in Section 85. Section 86 contemplates sanction of State Government to a preliminary or final scheme. Section 87 provides for withdrawal of scheme and by Section 88 it is stated that 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. All rights in original plots which have been reconstituted shall determine and the reconstituted plots shall become subject to the rights settled by the arbitrator. On the own showing of the petitioners, this entire exercise was completed by the arbitrator. After the Pune Municipal Corporation declared its intention to prepare the Town Planning Scheme, the Town Planning Scheme for concerned area was prepared and the petitioner itself shows that the Plot No.79 was allotted to the petitioner, whereas the adjacent plot No.80 has been allotted to the Department of Law and Judiciary, Government of Maharashtra. In para 10 of the petition it is stated that the property to the eastern side of the petitioner's property is final plot No.80 that belongs to Law and Judiciary Department. In the map, which has been enclosed to the memo of the petition, the said final plot No.80 has been shown and it is pertinent to mention that the final plot No.80A had been carved out

of final plot No.80 and clear cut boundary walls exist between these two plots. Moreover, the plot belonging to the Judicial Department is 3 to 4 feet higher than the land of the petitioner at boundary and much higher otherwise, in the East. It is also set out that there is owner of the plot No.80-A and he had encroached on the petitioner's property by constructing a small structure. Thereafter this encroachment was dealt with by approaching the Commissioner. Then, once again in October-2007 when the petitioner was attempting to clean the plot for parking of vehicles, there was an obstruction raised by the person claiming to be the owner of final Plot No.80-A. That is how the cleaning operations were shelved. Thereafter, a petition was filed charging the said final plot owner of 80A with encroachment. It is pertinent to note that no action was taken on this complaint of the petitioner as the concerned judicial officer was of the view that ownership of the said piece of land must be first established. Then, the petitioner filed proceedings to challenge this order of the learned Judge refusing to accept the complaint and proceed against the encroacher and it is stated that an application styled as miscellaneous application against that order and also miscellaneous application for restoration of the Civil Suit are filed and both these applications are pending.

5. Upon such pleadings we are of the clear view that the petitioner is aware that the remedy in such cases is not to approach this Court in its writ jurisdiction, but to approach a Competent Civil Court which has jurisdiction to determine and decide issues of right, title and interest in immovable properties/lands and claims of possession in relation thereto. These are clearly factual disputes. It is not an undisputed or admitted version which would enable the determination of the issues but it is a case where the petitioners assert a set of facts, but those facts were clearly denied. In the present case after the rights were settled by the arbitrator, final plots were allotted. Not one, but on two occasions it was the petitioner who wanted and desired that there should be a map drawn up. There is a distinction and in law itself with regard to a survey and a specific map in relation to a immovable property. It is the petitioner who desired that there should be a deletion of a portion shown on the map and that the plot No.79 should also depict the portion which the department of Law and Judiciary claims to own. Thus, these are not matters where an exception can be made merely because another wing of the State is involved and claiming to be in possession of the petitioner's property as alleged or stating that the petitioner is trying to encroach over a portion which is included in final plot No.80. Once a private party raised a similar dispute and

that was not determined and decided by approaching a Court of limited jurisdiction, but by filing a substantive proceeding in Civil Court, then, we do not see how we can make an exception and either direct this Court on its administrative side or the District Court or the Department of Law and Judiciary, Government of Maharashtra to subject itself to inquiries or proceedings which are entirely summary in nature before the officials or authorities under the Maharashtra Land Revenue Code, 1966. From the scheme of the Code and its rules it is apparent that such decisions of all the authorities thereunder do not finally resolve the disputes in relation to claims of possession of immovable properties or right, title and interest therein. These have to be resolved and determined by Competent Civil Courts. Even the orders and decisions of the authorities under the Maharashtra Land Revenue Code, 1966 are subject to decisions in Civil suits rendered by the Competent Civil Courts. We are of the clear view that the disputes of the nature presented before us cannot be resolved in our jurisdiction under Article 226 of the Constitution of India.

6. The simple reason for this is that the petitioner would have to establish its claim of being owner of final plot No.79 and that plot includes the disputed portion as claimed by the adjacent

plot holder. Secondly, the petitioner would, with the aid of the map, have to establish and prove that at the time when the measurement was taken and the map was prepared allegedly, no dispute was raised by the Department of Law and Judiciary. Thirdly, when this map was once again sought to be corrected at the instance of the petitioner, there was an obstruction raised by the adjacent plot holder and that prevented the authority from correction in the map. Unless and until the petitioner crosses the first two hurdles and proves that the portion was always forming a part of its own property/plot we do not see how it can succeed in having the maps corrected or the portion as disputed before us deleted therefrom. In such circumstances, we are of the view that there is substance in the preliminary objection raised by Shri.Dani to the maintainability of this petition. Holding that the disputes of the present nature cannot resolved in our limited jurisdiction, we, therefore, dismiss this Petition.

7. The petitioner is free to invoke all the legal remedies. If the Competent Court is approached, the same shall resolve the dispute strictly on merits, uninfluenced by the disposal of this petition.

(SMT.BHARATI H. DANGRE, J.)

(S.C. DHARMADHIKARI,J.)