

Shailaja

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION
WRIT PETITION NO. 6908 OF 2018

Dinesh Mhatre] Petitioner
Vs.
The Collector of Mumbai City & Anr.] Respondents

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Mr. Abhijeet P. Rane, for Petitioner.
Mr. A.B. Kadam, A.G.P, for Respondents No.1 and 2.

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CORAM : R.G. KETKAR, J.

DATE: 28TH NOVEMBER, 2018.

P.C.

Heard Mr. Rane, learned Counsel for the petitioner and Mr. Kadam, learned A.G.P, for respondents No.1 and 2 at length.

2. By this Petition under Article 227 of the Constitution of India, the petitioner has challenged the order dated 8th November, 2017 passed by the Collector of Mumbai City as also the order dated 24th April, 2018 passed by the learned President, Maharashtra Revenue Tribunal Mumbai (for short 'Tribunal') in Appeal/TNC/MUM/25/2017. By these orders, the objections raised by the petitioner herein were overruled and entry made in respect of C.S. No.865 in Malbar Hill Cumballa Revenue Division (for short 'suit land') as a licensee was deleted. The petitioner is also directed to hand over possession of the suit land to the Coastal Road Project undertaken by the Municipal corporation of Greater Mumbai (for short 'Corporation').

3. It is the case of the petitioner that on 28th November, 1931, petitioner's Late grandfather, Ganpat Bhikaji Patil was given the suit property on leave and licence basis by the Secretary of State for India in Council by way of auction sale held on 28th November, 1931. The petitioner's mother Chandrabai Sitaram Mhatre made Affidavit-cum-declaration on 27th September, 2017 confirming that after the death of her father, she is continuing the business of fishing along with the help of the petitioner. In the meantime, on 17th January, 2017, letter was issued by respondent No.1 stating that out of total area of 7923.14 square meters of the suit property area of 3500.54 square meters is proposed to be acquired and, therefore, public notice is not correct. Respondent No.1 issued letter dated 5th June, 2017 stating therein that when land site inspection was carried out in the month of June nobody was found in the suit property. On 7th June, 2017, Panchanama was prepared in the presence of Panchas. On 12th June, 2017, public notice was issued by Collector Mumbai City in 'Maharashtra Times' proposing acquisition of the suit land. On 18th July, 2017, the petitioner submitted objection for the proposed acquisition. This was followed by written submissions dated 30th October, 2017. After inspection was carried out, the petitioner's objections were overruled by the Collector on 8th November, 2017. Aggrieved by that decision, the petitioner preferred Appeal under section 274 of the Maharashtra Land Revenue Code, 1966 (for short 'Code') before the Tribunal. By order dated 24th April, 2018, the Tribunal dismissed the appeal. It is against these orders, the petitioner has instituted the present Petition.

4. In support of this Petition, Mr. Rane strenuously contended that the Collector and the Tribunal failed to appreciate that possession of the suit land was with grandfather of the petitioner from 1931. For more than 88 years, family of the petitioner is carrying on business of fishing over the suit land. The possession as also activity of carrying on business of fishing was

never objected or disturbed by the State Government or its machinery. He invited my attention to extract of the property card in respect of C.S. No.865 i.e suit land. Column 9, entry (B) clearly records that Ganpat Bhikaji Patil was inducted as a licensee in respect of the suit land. Column 11 deal with mode of acquisition by the present owner. It records conducting auction sale on 28th November, 1931 N.D.220.

5. Mr. Rane submitted that a perusal of extract of the property card shows that State Government is not owner of the suit land. He relied on section 294 and 295 of the Code to contend that easement rights of the petitioner are subsisting. The petitioner has to be paid compensation either in the form of TDR or FSI before acquiring the suit land. He also relied on the decision of Privy Council in **Perry Vs. Clissold, 1906 J.C 73** to contend that as the petitioner has acquired possessory title, he can be divested of the title upon payment of compensation in the form of TDR or FSI. He, therefore, submitted that the Petition requires consideration.

6. On the other hand, Mr. Kadam supported the impugned orders. He submitted that the Tribunal has dealt with the decision of **Perry** (supra) in paragraph 7. The Tribunal also considered decision in **Gaya Prasad Dikshit Vs. Dr. Nirmal Chander, AIR 1984 SC 930**. After considering the judgments, the Tribunal observed that the petitioner failed to produce any title document for a period of more than 30 years. He has never been recorded as a holder or owner of the property. The petitioner has failed to show a clear title which is superior to and better than the tile of the Government. He, therefore, submitted that no case is made out for interfering with the impugned orders.

7. I have considered rival submissions advanced by learned Counsel for the parties. I have also perused the material on record. As noted earlier,

petitioner's grandfather Ganpat Bhikaji Patil was inducted as a licensee in respect of the suit land. Section 52 of the Indian Easements Act, 1882 defines expression 'licence'. It reads thus;

“Where one person grants to another, or to a definite number of other persons, a right to do, or continue to do, in or upon the immovable property of the grantor, something which would, in the absence of such right, be unlawful and such right does not amount to an easement or an interest in the property, the right is called a license”.

A perusal of the above definition shows that licence is a privilege to do something in a property which is otherwise not permissible. The said right does not amount to a easement or interest in the property. Thus, basically, the petitioner's grandfather being inducted as a licensee does not have any right in the property.

8. Mr. Rane relied on the decision in the case of **Perry** (supra). In that case, Privy Council observed that it cannot be disputed that a person in possession of land in the assumed character of owner and exercising peaceably the ordinary rights of ownership has a perfectly good title against all the world but the rightful owner. If the rightful owner does not come forward and assert his title by process of law within the period prescribed by the provisions of the Statute of Limitations applicable to the case, his right is forever extinguished, and the possessory owner acquires an absolute title. As mentioned earlier, in the present case, petitioner's grandfather was inducted as a licensee. In other words, it is the case of permissive possession. In view thereof, the said decision is not applicable to the facts of the present case. The petitioner has also not claimed perfection of title by way of adverse possession. This aspect is considered by the Tribunal in paragraph 6 of the impugned order. That apart, with the assistance of the learned Counsel appearing for the parties, I have also perused the objections raised by the petitioner as also written submissions

submitted by him. A perusal of this material does not indicate that the petitioner has set up ownership by way of adverse possession.

9. Mr. Rane submitted that the suit land was sold through public auction as is evident from entry recorded in column 11 of the extract of the property card. It is not possible to accept this submission as no document is produced for substantiating holding of auction. That apart, on 28th November, 1931, petitioner's grandfather Ganpat Bhikaji Patil was inducted as a licensee in the suit land.

10. In view thereof, reliance placed by the petitioner on the extract of the property card does not advance case of the petitioner. One of the objections raised by the petitioner was that the suit land admeasures 7923.14 square meters and acquisition is in respect of 3500.54 square meters. Therefore, the Authorities below were not justified in directing the petitioner to hand over possession of the entire area. As mentioned earlier, the petitioner's grandfather was inducted as a licensee and the licence is terminated by the State Government by issuing public notice. These objections and suggestions were considered by the Collector as also by the Tribunal. In view thereof, the petitioner cannot claim that after demarcating area of 3500.54 square meters, rest of the property should continue to remain in his possession .

11. Mr. Rane submitted that easementary rights of the petitioner are subsisting and, therefore, the petitioner is entitled to compensation. In view of definition of 'licence', it cannot be said that the petitioner has easementary rights over the suit property. The Authorities below have considered the objections raised by the petitioner and found that the suit land is portion of foreshore.

12. Section 294 lays down that all unoccupied lands within the City of Bombay, and every unoccupied portion of the foreshore, below high water mark, shall be deemed and are hereby declared to be, the property of the State Government, subject always to the rights of way and all other rights of the public legally subsisting.

13. In view thereof, I do not find that the State Government is divested of the title as per the entry in column No.11 of the extract of the property card as it records sale by way of auction on 28th November, 1931. Hence, no case is made out for interfering with the impugned orders. Petition fails and the same is dismissed.

14. At this stage, Mr. Rane orally applies for continuation of stay of the order dated 10th January, 2018 for a period of 4 weeks from today. In view thereof, notwithstanding dismissal of the Writ Petition, stay granted by this Court on 10th January, 2018 is extended for a period of 4 weeks from today. Order accordingly.

[R.G. KETKAR, J.]