

VPH

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION No. 795 OF 2016

Sanjay Pandurang Shetye & Anr. ... Petitioners
Vs.
The Mumbai Municipal Corporation of
Greater Mumbai & Ors. ... Respondents

Mr. Vikas Y. Murudkar, for the Petitioners.

Mr. Anil Yadav, for the Respondent No. 1 – BMC.

Mr. Abhay Patki, Additional Govt. Pleader, for the Respondent Nos. 2
and 3.

Mr. Shrikant Satam, A. R. PTQ and Mr. Ritesh Bhadane, S. RTP LI
G/North Ward – are present.

CORAM : A. S. OKA, &
P. N. DESHMUKH, JJ.

DATE : FEBRUARY 6, 2018

PC :

1. Heard the learned counsel for the Petitioners, the learned
counsel appearing for the first Respondent and the learned Additional
Government pleader for the second and third Respondents. By order
dated 5th January, 2018 the parties were put to notice that petition will
be disposed of finally at the stage of admission.

2. The Petitioners' predecessor one Pandurang R. Shetye was admittedly an allottee of Final Plot No. 791 under the Town Planning Scheme –III of Mahim (for short “TPS Scheme”) under the provisions of the Maharashtra Regional and Town Planning Act, 1966 (for short “the MRTP Act”). As held by the Apex Court in the case of – *Municipal Corporation of Greater Bombay & Anr. Vs. Advance Builders (India) Pvt. Ltd. & Ors.*¹, it is the obligation of the first Respondent being the Planning Authority to place the allottee of a final plot in vacant and peaceful possession thereof.

3. In fact, in Writ Petition No. 942 of 2000 was filed by the said Pandurang Shetye in this Court, a Division Bench by order dated 2nd March, 2001 allowed the said petition and directed the first Respondent to place the said Pandurang Shetye in possession of the final plot within a period of one year from 2nd March, 2001. As the possession was not handed over, Pandurang Shetye filed a contempt petition in this Court. The contempt petition and the notice issued therein were disposed of by an order 21st November, 2002. In the said order, the learned Single Judge of this Court observed that proceeding

1 AIR 1972 SC 793

under Section 89 of the MRTP Act was initiated for removing the occupants. The order records that a proceeding under Section 90(3) of the MRTP Act was pending. The contempt petition was disposed of by directing the concerned authorities to dispose of the pending proceedings under section 90(3) of said Act as expeditiously as possible.

4. After disposal of the contempt petition, no steps were taken by the first Respondent to put the Petitioners in possession of the final plot. Therefore, after making representations and after serving legal notice dated 18th December, 2015, the present petition has been filed.

5. Mr. Harish Balasaheb Chavan, Assistant Engineer (TP) I, G/N Ward of the first Respondent has filed a reply. It is not disputed therein that the Petitioners are entitled to possession of the said final plot. However, it is stated that a reference under sub-section (3) of section 90 of the MRTP Act has been made by the occupants and in a writ petition filed by them, this Court has protected their possession till disposal of the proceedings under sub-section (3) of section 90.

6. On the last date, the learned Additional Government Pleader placed on record a communication dated 7th December, 2017 addressed to the Municipal Commissioner and others issued by the Urban Development Department of the State Government. In the said communication, it is recorded that the proceeding under sub (3) of section 90 of the MRTP Act has been withdrawn by the appellants therein by a letter dated 18th September, 2017.

7. The learned counsel for the first Respondent, on instructions of Mr. Srikant Satam, Assistant Engineer who is present in the Court states that now notices have been issued to the occupants and their eligibility for allotment of alternate accommodation is being considered. He states that the entire process will take time of 3-4 months.

8. There is already a writ of mandamus issued against the first Respondent on 2nd March, 2001 directing the first Respondent to place the predecessor of the Petitioners in vacant and peaceful possession of the plot. In contempt proceeding initiated by the predecessor of the Petitioners, action was not taken against the first Respondent only on the ground of pendency of an application under

sub-section (3) of Section 90 of the MRTP Act. Now, even the said impediment does not exist.

9. In our view, the first Respondent ought to have complied its statutory obligation under the MRTP Act long back. We, therefore, propose to direct the first Respondent to place the Petitioners in vacant and peaceful possession of the said plot.

10. We make it clear that if vacant possession of the subject plot is not handed over, serious view will have to be taken as there is already a writ of mandamus issued way back in the year 2001 against the first Respondent.

11. Hence, we dispose of the petition by passing the following order:

- (i) Rule is made absolute in terms of prayer clause (a) with a modification that vacant and peaceful possession of the subject final plot shall be handed over to the Petitioners on or before 30th June, 2018.
- (ii) We make it clear that on the failure of the first Respondent to hand over possession of the final plot to

the Petitioners within the time fixed as above, serious view will have to be taken against the first Respondent.

(iii) On the failure of the first Respondent to abide by the above directions, apart from the remedies available under the Contempt of Courts Act, 1971, it will be always open for the Petitioners to file a fresh petition seeking reliefs in terms of prayer clauses (b) and (c) of this petition.

(iv) All concerned to act on an authenticated copy of this order.

Sd/-
[P. N. DESHMUKH, J.]

Sd/-
[A. S. OKA, J.]

Vinayak Halemath