

Shephali

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
NOTICE OF MOTION NO. 913 OF 2013
IN
SUIT NO. 3166 OF 2001**

Sarabjit Singh Sethi & Ors ...Plaintiffs
Versus
Maharashtra Housing & Area Development ...Defendants
Authority & Ors
And
Nathlal Leo ...

Mr JM D'Silva, for the Applicant.
Mr PG Lad, for the MHADA.

CORAM: G.S. PATEL, J
DATED: 29th November 2018

PC:-

1. The Motion is thoroughly misconceived. It seeks to set aside Consent Terms dated 12th October 2004 and the order of 12th October 2004, by which those Consent Terms were made an order of the Court.

2. According Mr D'Silva for the applicant, the suit itself pertained to land bearing Survey No. 158/A, Hissa No. 23 (part) CTS No. 5608 of about 9000 square meters at Village Kole-Kalyan,

Taluka Andheri, Mumbai Suburban District. It is his submission that despite this, by the Consent Terms between the Plaintiffs and MHADA, the Plaintiffs were effectively given title to land bearing Survey No. 157 Hissa No. 1 and 2 of CTS No. 5603 and 5604, i.e. properties that were not the subject matter of the Suit.

3. The entire case appears to be founded on revenue records, copies of which are at pages 18 to 22. The record at page 22 for Survey No. 158 Hissa No. 23 shows the name of one Nayal Leo Jansito in the other rights column. Mutation entry no. 1432 at page 18 and 19 shows Survey No. 157 Hissa No.1 and the names of the survivors of the original occupant, i.e., one Peter Deg and one Jaspar Deg, as his legal heirs. The Applicants claim that they have a sale deed of 28th February 1943, and that this is their document of title.

4. There is an Affidavit in Reply dated 29th November 2018 by one Kamlakar Surwade on behalf of MHADA. Paragraphs 2 to 8 of this Affidavit make it clear that the Applicants do not have any tenable claim to any part of this land. The sale deed on which they based their claim is unregistered. It is no answer to say, as Mr D'Silva does, that the sale deed is very old. The Registration Act is even older. The sale deed is in respect of Survey No. 158 Hissa No. 23 of village Kole-Kalyan.

5. Survey No. 157 Hissa No.1 corresponding to CTS No. 5603 and Survey No. 158 Hissa No. 23 corresponding to CTS No. 5608 were acquired by MHADA under Land Acquisition proceedings and

there is an award of 4th August 1986. Following this acquisition, MHADA has been shown as the holder of both lands. CTS No. 5603 was later subdivided, and the name of the Plaintiff was recorded pursuant to the Consent Decree. The Collector BSD allowed a subdivision of this property.

6. The entire claim of the Applicant is based on Village Form No. 6 and Mutation Entry No. 1432. This Mutation Entry was effected only because on 4th August 1937 the original owner died and his heirs (Peter Deg and Jaspar Deg mentioned above) were required to be shown as legal representatives. It is only the third column of Exhibit "A" to the Affidavit in Support that shows the survey numbers affected by the Mutation Entry. The survey numbers mentioned in the Consent Terms are not amongst those listed against this Mutation Entry.

7. Mr D'Silva declined on instructions to put in an Affidavit in Rejoinder to the present Affidavit in Reply. There is no answer to the explanation given by MHADA.

8. I do not think there is any substance to the present Notice of Motion. It is dismissed. There will be no order as to costs.

(G. S. PATEL, J)