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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO.429 OF 2016

Narsi Poona Jadhav & Anr. ...Petitioners
vs.
The State of Maharashtra
and another ...Respondents

Mr.Bipin Joshi for the Petitioners
Ms Vandana Mahadik for the respondent No.2
Ms Geeta Shastri, Addl.G.P for respondent No.1

CORAM : A.S.OKA, &
P.N.DESHMUKH,JJ.
DATE : JANUARY 23, 2018

P.C.:

1 Heard the learned counsel appearing for the petitioners. The Town Planning Scheme-IV Mahim was sanctioned under the provisions of Bombay Town Planning Act,1954 on 20th May 1963 which came into force on 15th August 1963. Under the said scheme, the original plot No.120-D was reconstituted as final plot Nos.750A, 751, 752 and 754 and the said final plots were allotted to Vicar and Wardens of the Church of N.S. D'salwacao.

2 On 23rd January 1988, a notice under sub-section 1 of section 90 of the Maharashtra Regional and Town Planning Act,1966 (for short 'MRTP Act') was served to the petitioners calling upon them to hand over vacant possession of final plot No.750. A reference was made to the State Government under sub-section (3) of section 90 of the MRTP Act. The action of

the Mumbai Municipal Corporation (Planning Authority) of issuing the notice under section 89 of the MRTP Act was upheld in the Reference by the Hon'ble Minister of Urban Development Department by his order dated 6th November 2003. In a Writ Petition filed by the petitioners, there was an order of remand to the State Government. After the order of remand, a finding was recorded that the petitioners were not the tenants or interested persons in respect of the original plot No.120-D and reconstituted final plots including the plot No.750-A. The said order of the State Government dated 13th September 2006 was challenged by the petitioners by filing Writ Petition No.3112 of 2006. By Judgment and Order dated 17th April 2015, this Court dismissed the said Writ petition. In paragraphs 14 to 17, this Court held thus:

"14 We have perused the rent receipt on record. The rent receipts contain no description of the land. It is pertinent to note that though the predecessor of the petitioners was claiming to be a tenant of the said Church, the said Church has not been impleaded as a party respondent to this petition. To the affidavit filed by the State Government, an extract of the Town Planning Scheme has been annexed which was forwarded to the said Church. As stated earlier, the said Town Planning Scheme was sanctioned by the State Government on 20th May 1963 and it came into force with effect from 15th August

1963. Therefore, the petitioners are required to establish that they or their predecessors were the tenants of the Church at least as of 15th August 1963. Even taking the documents forming part of the compilations as correct, the petitioners have failed to prove their alleged tenancy right in respect of the land which is now reconstituted as Final Plot No.750A.

15 The legal effect of the coming into force of the Town Planning Scheme under section 89 of the MRTTP Act as well as the provision of the Bombay Town Planning Act, 1954 is that on coming into force of the Town Planning Scheme, the Final Plot Nos. 750A and 754 which were allotted to the said Church vested in the Church. It appears that there was a lease deed executed by the Church in favour of the 3rd respondent-Society.

16 The specific finding of the State Government in clause (b) of the paragraph 6 of the impugned order is that the rent receipts produced by the petitioners do not reflect any original Plot or Final Plot or details of any structure.

17 Thus, the petitioners failed to prove their right, title and interest in respect of the plot of land which was reconstituted as Final Plot No. 750A and therefore, the issue

whether any flats were allotted to them in lieu of the said Final Plot No.750A becomes redundant."

3 The said Judgment and Order was challenged by the petitioners by filing a petition to Special Leave to the Appeal No.1663 of 2015. By order dated 7th July 2015, the Special Leave Petition was dismissed. Thereafter, a Review Petition was filed by the present petitioners which was dismissed by this Court by the order dated 23rd October 2015. There were two contentions raised in the Review Petition. One was based on Regulation 33 (15) (C) of the Development Control Regulation of 1991 for the city of Mumbai. Clause 15 of Regulation 33 was introduced with effect from 29th April 1998. The contention was that the petitioners' possession was protected by the said Regulation. Second contention was based on the Judgment and Decree dated 22nd June 2015 passed by the Court of Small Causes, Mumbai under which the petitioners were declared as lawful tenants in respect of the room admeasuring 360 sq feet situated on plot No.750-A. The Review Petition was dismissed by order dated 23rd October 2015. Apart from observing that the said two contentions could not have been raised under Rule 1 of Order XLVII of the Code of Civil Procedure, 1908 it was observed that both the contentions were available before the Apex Court when the SLP against the original Judgment was heard.

4 By the present petition filed in November 2015,

a writ of mandamus is prayed seeking to enjoin the State Government and the Mumbai Municipal Corporation to grant alternate accommodation to the petitioner in lieu of their structures on final plot No.750-A. The second prayer is that the petitioners should not be evicted and that their structures should not be demolished till the alternate accommodation is granted.

5 The submission of the learned counsel for the petitioners is that the contention based on Regulation 33(15)(C) raised in the Review Petition which was not considered on a technical ground and therefore, notwithstanding dismissal of the review petition, the said contention remains open. He invited our attention to clause 15 of Regulation 33 and submitted that a right is created in favour of the petitioners under the said clause. He, therefore, submitted that notwithstanding the dismissal of the Special Leave Petition and the Review Petition, rights of the petitioners continue to exist.

6 We have given careful consideration to the submissions. In the Judgment and Order dated 17th April 2015 in Writ Petition No.3112 of 2006, this Court has confirmed a finding of fact recorded by the State Government that the petitioners have failed to prove their alleged tenancy rights in respect of their structures on final plot no.750-A. As pointed out earlier, this Court has specifically held that the petitioners have failed to prove their

rights in respect of the plot of land which was reconstituted as final plot No.750-A. Therefore, notice of eviction was confirmed.

7 The petitioners relied upon the decree passed in a declaratory suit filed by them. The said decree was passed on 22nd June 2015. Apart from the question of the worth of the findings recorded by the Small Causes Court in the teeth of the findings recorded by this Court in Judgment and Order dated 17th April 2015, we may note that this Court in the said Judgment held that it is the Church which is the owner of the final plot Nosc.750-A and 754 as the said plots vest in the Church. This Court observed that there is a lease granted in favour of the Salvation Co-operative Housing Society Limited. Thus, the final plot vested in the Church and notwithstanding grant of lease to the Society, the Church continued to be the owner of the final plot. In the suit filed before the Small Causes Court, the Church is not even made a party. Secondly, the argument based on the decree dated 22nd June 2015 was available to the petitioners when the Special Leave Petition was argued before the Apex Court in July 2015. Even the argument based on Regulation 33(15) (C) was available in the original Writ Petition as well as before the Apex Court.

8 Thus, the order/notice of eviction has attained finality by virtue of the order dated 7th June 2015 passed by the Apex Court. Now, by taking recourse

to Regulation 33(15)(C), the petitioners want to nullify the orders which have attained finality. Apart from the fact that the petitioners cannot seek protection of their structures by relying upon the Regulation 33(15)(C), Clause 15 of Regulation 33 deals with the redevelopment of the contravening structures included in the final plot. Even assuming that the petitioners are entitled to seek benefits under the said clause 15 of Regulation 33, the question of claiming benefit will arise only when the owner of the plot undertakes the said redevelopment scheme.

9 Hence, we find absolutely no merit in the petition. In fact this is an attempt to re-agitate the issues which have either become final or which cannot be urged by the petitioners in the light of the orders passed by this Court and the Apex Court.

10 Writ petition is rejected.

(P.N.DESHMUKH,J.)

(A.S.OKA,J.)