

Sequeira

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

PUBLIC INTEREST LITIGATION NO. 60 OF 2016

Shaibaz Shaikh Nazir .. Petitioner
Vs
The State of Maharashtra and others .. Respondents

Mr.Subhash Jha a/w Ms.Sanjana Pardeshi i/b Mr.Pravin Upadhyay,
for the Petitioner.

Ms.Nisha Mehra - Additional Government Pleader, for Respondent
Nos.1 and 2.

Mr.A.S.Rao, for Respondent No.2.

*CORAM : PRADEEP NANDRAJOG, C.J. &
N.M.JAMDAR, J.*

Date : 17 July, 2019.

P.C. :

1. From the facts which we would be noting hereinafter it is apparent that there are serious gaps not only in the pleadings but in the material in the form of annexures to be provided.

2. In the Public Interest Litigation the Petitioner pleads that the issue of unauthorised use and construction of CTS plot No.6516 to 6525 admeasuring approximately 1442.4 sq.metres in village Thakurli, Taluka Kalyan has not been raised in any other Writ Petition.

3. In paragraph 9 the Petitioner pleads that in the year 1950 the Collector Thane, granted land admeasuring 9 acres 27 gunthas and 23 square yards out of Survey no.379-A / 1A / 1A / 1A / 1A to the Respondent No.4 : Middle Class Government Servant's Co-operative Housing Society for building purpose requiring transfer of members of the Society.

4. What does the Petitioner mean by this loose expression? Nothing has been pleaded. Whether the demise was to develop the land and carve out lots to be allotted to the members of the society? Or for purpose of constructing buildings and then demising built-up structures? Nothing has been pleaded.

5. In paragraph 13 it is pleaded that the transfer was permitted by the Collector in the year 1995 in accordance with law. The document has been marked as Exhibit'C'.

6. There is no mention in the pleadings to documents annexed as Annexures 'A' and 'B'. Annexure -A is a layout of an area

and has no legends. Nobody can understand anything with reference to Annexure 'A' *sans* a legend thereto. Annexure 'B' is the order by which the Collector demised the subject land measuring 9 acres 27 gunthas and 23 sq.yards to the Society. Annexure 'C' is an order issued by the Prant Officer Thane Prant, in the name of one Mr.N.C.Bhide of Sathewadi (Naupada). The same records that Mr.N.C.Bhide has been permitted non-agricultural use of land measuring 688 sq. yards comprised in Survey No.379/A1/A1/A1.

7. There are no pleadings in the Petition whether the land demised to Mr.N.C.Bhide was part of land measuring 9 acres 27 gunthas and 23 sq.yards, allotted to the Cooperative Society out of Survey No.379 379-A / 1A / 1A / 1A / 1A or it was in the remaining land comprised in the survey number. Exhibit 'C' further records that Mr.N.C.Bhide can construct a building only on 223 sq.yards land requiring 465 sq.yards to be kept open to the sky.

8. In paragraph 8 of the Petition it is pleaded that CTS Plot No.6516 to 6525 admeasuring approx. 1442.4 sq. metres was developed by M/s.Sudama Associates Private Limited – Respondent No.5. It is pleaded that the same was by amalgamation of plots in contravention to object of land grant and terms and conditions laid down by the Collector. No document has been filed concerning the grant of 1442.40 sq.metres lands comprised in CTS Plot No.6516 to 6525 to M/s Sudama Associates and thus it is not possible for this Court to decide whether or not amalgamation resorted to by

M/s.Sudama Associates was right or wrong.

9. However, pleadings in the Petition are that the Petitioner obtained documents under Right to Information Act 2005, which are collectively marked as Exhibit 'E'.

10. What information Petitioner seeks to convey from Exhibit 'E' i.e. requirement to plead the effect of a document is missing.

11. A look at the document collectively marked as Exhibit 'E' shows that one Sudhir Kantilal Rawal has entered into an Agreement with M/s.Sudama Associates Private Limited on 30 June 1999 recording therein that subject matter of the Agreement is Survey No.6516 to 6525 village Thakurli. This land was acquired by Sudama Associates from the erstwhile owners H.M.Bedekar and R.M.Nanavare. The Agreement records that Mr.Sudhir Rawal had transferred rights to transfer TDR for an area of 550 sq.metres. The document does not record as to with respect to which plot of land the transferor claimed the TDR land. As per the indenture the said TDR rights were transferred to M/s.Sudama Associates Private Limited.

12. The document is not linked to any TDR right relatable to the 9 acres 27 gunthas and 23 sq.yards land originally demised to Respondent No.4 Cooperative Society.

13. In paragraph 17 of the Petition it is pleaded that illegal development took place on plot No.27 and 28 corresponding CTS no.6516 to 6525.

14. As noted hereinabove no document concerning title in favour of M/s Sudama Associates in CTS No.6516 to 6525 have been referred to in the pleadings or filed as annexures.

15. On these truncated pleadings, further pleading is that one Mr.Sunil Sudam Patil whose uncle is an Ex. State Minister acquired rights to amalgamate land meant for housing and has managed to construct a bungalow hereon.

16. As drafted, this Court cannot grant any relief because there is hardly any linkage in the pleadings to the 9 acres 27 gunthas and 23 sq.yards land and the construction made by Respondent No.6. The Petitioner managed to get some information and without proper research, making inadequate pleadings, has filed the Petition. As drafted the Petition merits dismissal.

17. However from the response filed by Respondent No.2 the Tahsildar, District Thane we get certain clues. The clues are that on the land demised to the Cooperative Society, after development lots were carved out and plot No.28 was allotted to Mr.Jayant Anant Bhide who in turn transferred the same to Mr.Harishchandra M.Bedekar. Meaning thereby plot No.28 became the single entity plot. Plot No.27 which also became a single entity plot was allotted

to Mr.S.S.Nanavare.

17. Truncated pleadings in the Petition show that the documents collectively exhibited as 'E' show that Mr.Bedekar and Mr.Nanavare transferred their right to Mr.Sudhir Kantilal Rawal who in turn transferred the same to M/s.Sudama Associates. To this extent there is a connection in a truncated pleading in the Petition with the information provided by the Tahsildar.

18. The reply filed by Tahsildar brings out that the plot No.27 and 28 were amalgamated and this is in contravention of the law. A bungalow named 'Smit' and a bungalow named 'Venushilp' have been constructed which are on the land demised to the Cooperative Society for low and middle class group housing purpose. As per the affidavit filed by the Tahsildar taking cognizance of the wrong committed, the Tahsildar cancelled the allotment of the two plots and mutation entry has been made in the name of the State Government.

19. On this noting the response of the State ends.

20. Suffice it to state merely cancelling the mutation entry qua a land which was allotted by the Government for a particular purpose upon being misused is not enough. Possession of the land has to be taken.

21. Thus, we dispose of the Petition directing the Collector

Thane, to take further action in light of the affidavit filed by the Tahsildar and in the further action, the Collector Thane would be guided by the present decision.

N.M.JAMDAR, J.

CHIEF JUSTICE