

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.3860 OF 2017**

Nirmal Sudhakar Akole and Anr. .. Petitioners
Versus
Birla Corporation Limited and Ors. .. Respondents

Mr. Girish Agrawal I/b Rushikesh Patil for petitioners.
Mr. Prasad Dani, Senior Counsel a/w Mr. Pradeep Bakhev a/w Ms.
Upsana Vasu I/b Wadia Ghandy and Co. for respondent No.1.

CORAM : K.K. TATED, J.

DATE : 25 FEBRUARY 2019.

P.C:-

. Heard learned Counsel for parties.

2. By this writ petition under Article 227 of the Constitution of India, petitioner original defendant Nos. 5 and 6 challenges the order dated 15.02.2017 passed by the Joint Civil Judge, Senior Division, Khed-Rajgurunagar below Exhibit-181 in Special Civil Suit No.114 of 2014, rejecting their application for framing additional issues under Order 14 Rule 5 of Civil Procedure Code, 1908.

3. In the present proceedings respondent No.1/original plaintiff has filed Special Civil Suit No.114 of 2014 for declaration that he is the absolute owner of suit property and for setting aside other sale deeds. The prayer clauses in the said suit reads thus :

“(a) it be declared that the Plaintiff is the absolute owner, and in possession and occupation of the said Plot (described in paragraph 1 of the plaint above),

(b) it be further declared that the Impugned Instruments (I) “*Kharedi Khat*” (Sale Deed) dated 18.06.2008, registered in the office of the Sub. Registrar, Khed No.2 at Serial No.3053/2008 on the same day, and (ii) “*Kharedi Khat*” (Sale Deed) dated 18.06.2008, registered in the office of Khde No.2 at Serial No.3052 /2008 on the same day, are illegal, void ab *initio*, nullity and non-est in law to the extent of the said Plot,

(c) the Defendants themselves or through their servants, agents, representatives and/or any other person acting or claiming through them or any of them, be permanently restrained from disturbing, obstructing or interfering and/or causing to be disturbed or obstructed the occupation and possession of the Plaintiff to the said Plot in any manner,

(d) during the pendency of this suit, as prayed for by separate application, the Defendants themselves or through their servants, agents, representatives and/or any other person acting or claiming through them or any of them, be restrained by temporary injunction, from disturbing, obstructing or interfering and/or causing to be disturbed or obstructed the occupation and possession of the Plaintiff to the said Plot in any manner,

(e) the cost of the suit be awarded to the Plaintiff from the Defendants,

(f) any other order deemed fit and proper be passed.”

4. In that suit initially, the original defendant Nos. 1 to 4 filed application below Exhibit-80 under Order 14 Rule 5(1) of Civil Procedure Code, 1908 on 22.08.2012 for framing additional issues, including the issues as under :

“19) Whether Maharashtra Project Affected Displaced Persons Rehabilitation Act is applicable?

21) Whether the sale Deed of Plaintiff ab initio void as per sec.12 of Rehabilitation Act?

23) Whether the Dist. Collector permission is required U/s. 12 of Rehabilitation Act for transfer of suit land?”

That application below Exhibit-80 was decided by the learned Joint Civil Judge, Senior Division, Pune by order dated 13.08.2013 and framed the following additional issues :

“1. Whether the counterclaim is within limitation?

2. Whether the counterclaim is properly valued and whether requisite court fees is paid thereon?

3. Whether the plaintiff is entitled to compensatory costs of Rs.5000/- as against the defendant Nos.5 and 6?

4. To what reliefs, if any, are the defendant Nos. 5 and 6 entitled to?”

5. That order dated 13.08.2013 below Exhibit-80 was not challenged by the defendant Nos. 5 and 6. Thereafter, respondent No.1/original plaintiff has filed their Affidavit in chief dated 4.08.2016.

6. There after petitioners/original defendant Nos. 5 and 6 have filed application below Exhibit-181 for framing additional issues on 06.12.2014. The main contention of the defendant Nos. 5 and 6 was that, they raised several objections including validity of the sale deed executed in favour of respondent No.1-original plaintiff on the ground of provisions of Maharashtra Project Affected Displaced Persons Rehabilitation Act, 1986. That application below Exhibit-181 was rejected by the trial Court by order dated 15.02.2017. Hence, the present writ petition.

7. Learned Counsel appearing on behalf of Petitioners/defendant Nos. 5 and 6 submits that the Court below failed to appreciate the fact that, as per Section 12 of the Maharashtra Project Affected Displaced Persons Rehabilitation Act, 1986 the transaction between plaintiff and defendant Nos. 1 to 4 was not valid. Hence, it is necessary to frame the issues to that effect. He further submits that petitioner/defendant Nos. 5 and 6 and defendant Nos. 1 to 4 filed the joint written statement before the trial Court and raised the same issues. Hence, the impugned order passed by the trial Court is required to be set aside directing the trial Court to frame the additional issues as claimed by petitioner in their application below Exhibit-181 in Special Civil Suit No.114 of 2014. He further submits that if the present writ petition is not allowed irreparable loss will cause to them.

8. On the other hand, learned Senior Counsel appearing on behalf of respondent No.1/original plaintiff vehemently opposed the present writ petition. He submits that respondent No.1/original plaintiff has filed the suit for declaration that the

sale deed dated 18.06.2008 executed between defendant Nos. 1 to 4 and defendant Nos. 5 and 6 is void ab initio and same to be set aside. He submits that there is no issue about the execution of the sale deed dated 29.09.1995 between respondent No.1/original plaintiff and defendant Nos. 1 to 4. Therefore there is no question of allowing the petitioner's application below Exhibit-181. He further submits that initially the respondent Nos. 1 to 4 also filed the application for same relief under Exhibit-80. That was partly allowed by the trial Court on 13.08.2013. He submits that defendant Nos. 1 to 4 also made averments in their application below Exhibit-80 to frame the issue on the basis of the provisions of Maharashtra Project Affected Displaced Persons Rehabilitation Act. He relies on proposed issue Nos. 19, 21 and 23 which reads thus :-

“19) Whether Maharashtra Project Affected Displaced Persons Rehabilitation Act is applicable?

21) Whether the sale Deed of Plaintiff ab initio void as per sec.12 of Rehabilitation Act?

23) Whether the Dist. Collector permission is required U/s. 12 of Rehabilitation Act for transfer of suit land?”

9. The learned Senior Counsel for respondent No.1 submits that the order passed by the trial Court dated 13.08.2013 below Exhibit-80 was not challenged either by the petitioner i.e. defendant Nos. 5 and 6 and or by original defendant Nos. 1 to 4. Therefore, there is no question of allowing the present writ petition. Same is required to be dismissed with cost.

10. I heard both the sides at length. It is to be noted that bare reading of the plaint shows that there is no dispute and/or issues about validity of sale deed dated 29.09.1995 between respondent No.1/original plaintiff and defendant Nos. 1 to 4 in Special Civil Suit No.114 of 2014. Plaintiff has filed suit for declaration that the sale deed dated 18.06.2008 which was executed by defendant Nos. 1 to 4 in favour of petitioner i.e. defendant Nos. 5 and 6 is illegal, void ab initio and not binding on them. Therefore, there is no question of framing the issues as claimed by the petitioner as per provisions of Maharashtra Project Affected Displaced Persons Rehabilitation Act, 1986 in respect of sale deed dated 29.09.1995. Not only that, issue No.1 in Exhibit-77 shows that trial Court has already framed the issues pressing burden on plaintiff to prove whether plaintiff is owner of the suit property. That issue No.1 reads thus :

“1. Whether the plaintiff has proved that plaintiff is owner of the suit property?”

11. The contention raised by the advocate for petitioners/defendant Nos. 5 and 6 that as per Order 14 Rule 5 (1) of Civil Procedure Code, if any objection raised in their pleading, the duty cast upon the Court to frame the issue. Bare reading of issues below Exhibit-77 shows that Court has already framed relevant issues. Therefore, there is no question of allowing the present writ petition.

12. Hence, writ petition stands rejected.

13. No order as to costs.

(K.K. TATED, J.)