

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

WRIT PETITION NO. 4610 OF 2011

Smt. Sushila Vishnu Bendre } and Anr.	}	Petitioners
versus		
Pune Municipal Corporation } and Ors.	}	Respondents

Mr.A.V.Anturkar-Senior Advocate with
Mr.S.B.Deshmukh for the petitioners.

Mr.Abhijit P. Kulkarni for respondent
nos.1 and 2.

Ms.A.A.Purav-AGP for respondent nos. 3
and 4.

Mr.Girish S. Godbole with Mr.S. S.
Kanetkar for respondent no.5.

**CORAM :- S. C. DHARMADHIKARI &
G. S. PATEL, JJ.**

DATED :- JUNE 3, 2019

P.C. :-

1. By this petition under Article 226 of the Constitution of India, the petitioners seek, essentially, the following reliefs:-

(A) That this Honourable Court be pleased to issue a writ mandamus or writ in the nature of mandamus or any other appropriate writ, direction or order under Article 226 of the Constitution of India, 1950, holding that Final Plot No.29 TPS III, Pune, Sane Guruji Nagar, PMC Colony is not the property, which is vested with the Municipal corporation viz. The Respondent No.1 herein and be pleased to quash and set aside the resolutions passed by the Municipal Corporation for inviting bid documents for re-development of PMC Colony as Final Plot No.29 TPS III, Sane Guruji Nagar, on BOT basis as well as the bid

documents invited by it.

(B) That this Honourable Court be pleased to issue a writ mandamus or writ in the nature of mandamus or any other appropriate writ, direction or order under Article 226 of the constitution of India, 1950, directing the Respondent No.1 and 2 to consider the proposal of the Petitioners on the same land on which the proposal of Shri. Ghorpade has considered in respect of Final Plot No.230, 155 and 159 of TPS III Pune and take the decision on the representations made by the Petitioners within such time as the Honourable Court may deem fit.

2. The submission of Mr.Anturkar learned senior counsel appearing for the petitioners is that section 88 of the Maharashtra Regional and Town Planning Act, 1966 (hereinafter referred to as “the MRTP Act”) employs the words “all lands required by the Planning Authority shall, unless it is otherwise determined in such scheme, vest absolutely in the Planning Authority free from all encumbrances”. Mr.Anturkar would submit that clause (b) of section 88 presently need not be looked into.

3. Mr.Anturkar’s submission is founded on a factual aspect, particularly to the effect that a registered lease deed with respect to the property, namely, Survey No.138C (Ambil Odnā Colony, Sadashiv Peth, Pune 411 030) was executed. The lease was created by the owner-predecessor-in-title of the petitioners, namely, Dattatray in favour of the Pune Municipal Corporation. He allowed the property to be used for 99 years for municipal

housing. The description of the property is to be found, according to Mr.Anturkar, in the records, but what the argument is based on is that there is a town planning scheme of the Pune Municipal Corporation. In that, and in Form 'B', Plot No.29 admeasuring 4 acres and 31 gunthas has been shown for "municipal housing". There are several such properties of the Municipal Corporation and therefore, what was essential, according to Mr.Anturkar, is that these properties ought to be designated as reserved and merely saying that they were taken over for municipal purpose is not enough. The petitioners have been requesting the Municipal Corporation to indicate from the records as to which plot was left to the petitioners in lieu of the suit property/leased land. However, the Municipal Corporation has been unable to demonstrate from the existing records as to whether any allotment was made in favour of the petitioners. It is only when a private party, namely, respondent no.5 was inducted or came on the scene that the Municipal Corporation sought to contend that the petitioners are not entitled to question the proceedings and which have been concluded decades ago.

4. On a closer scrutiny of Mr.Anturkar's submission, we do not find that it can be accepted. The MRTP Act contains Chapter V titled as "Town Planning Schemes". "Making of Town Planning

Schemes” is the sub-heading and that aspect is dealt with by section 59 onwards. The power is conferred in the Planning Authority to resolve and make town planning schemes. What happens when that resolution is declared is then set out in subsequent provisions. By means of notice, a draft is published and therein, the inclusion of additional area is permissible by virtue of any representation being considered in that regard. That is an aspect covered by section 62. The State Government has a power and which is overriding to require the Planning Authority to make scheme. The contents of the draft scheme are set out in section 64 and thereafter, there is a clear mandate flowing from section 65. That is that every reconstituted plot shall be determined, so far as may be, to render it suitable for building purposes and where a plot is already built upon, to ensure that the buildings, as far as possible, comply with the provisions of the scheme as regards open spaces. There is a formulation of final plot by reconstitution, if necessary, and by the permissible modes indicated in sub-section (2) of section 65. There is a compensation contemplated and once the objections to the draft scheme are considered, the sanction to the draft scheme is provided by section 68. The effect of that is set out and presently, we are not concerned with the amendments, but the amended provision and that is imposing restriction on use and

development of land after declaration of town planning scheme. It is, therefore, clear from the provisions that if there are disputes about ownership, those can also be resolved and with the aid of the civil court. Even the Arbitrator contemplated by the Chapter can decide several issues as enumerated in subsequent provisions and there is a provision of an appeal. There is a Tribunal of Appeal and which also is referred. Once there is a preliminary scheme, the sanction to the same is contemplated by section 86, after which, if there is no withdrawal, the preliminary scheme, by section 88, has the effect contemplated in law and canvassed before us by Mr.Anturkar.

5. The factual aspect is that the petitioner is claiming to reopen all matters concluded by the Arbitrator's decision and which was rendered way-back in the year 1970. It is not that these proceedings before the Arbitrator are in the nature of any private hearing or hearings to which people like the petitioners have no access. The petitioners can very well participate and bring to the notice of the Arbitrator all matters concerning the scheme and its implementation. The petitioners have, from the time the scheme has been rendered, the compensation has been determined, never questioned that no plot was allotted to the predecessor or to the petitioners themselves.

6. In the very first affidavit, which has been filed and based on public records, the Municipal Corporation asserts that the petitioner is trying to reopen old matters and issues. The petitioner says that prior to 1966 there was no scheme finalised. Contrary thereto, the Town Planning Scheme Pune-3 was finalised and for implementation thereof, Mr.V.K.Bakre was appointed as Arbitrator by the Government. The properties bearing Survey Nos. 136, 137, 138A, B and C were very much before the Arbitrator and subject matter of the proceedings in that regard. The Arbitrator rendered a decision, the gist of which is enumerated in para 2 of this affidavit and that is why the Municipal Corporation employs the words “admittedly”. It says that in lieu of the old Survey No.138C, the petitioner has been given land from the old Survey Nos.136 and 137 admeasuring about 15277 square meters. The issue regarding ownership about final plot number 29 has been clarified and Mr.Anturkar would read but one clause from this paragraph of the affidavit. If that is read in its entirety, it is clear that the whole scheme was settled and the dispute was decided by the Arbitrator. It is, therefore, clear that insofar as the facts are concerned, the petitioner cannot make a grievance with regard to non-allotment of final plot. The area statement and all the documents relied upon would denote that this is a clear case where the petitioners

are admitting that the procedure that is contemplated by law, was followed.

7. What we have on record then before us are the further affidavits, which have been filed pursuant to an observation in one of the orders of this court. The petitioners may rely upon the affidavit, copy of which is at page 157 of the paper book and which is stated to be a further affidavit. However, that is filed pursuant to an order of this court. In that affidavit as well, the petitioner says that the property which is allegedly given in lieu of the original plot is not the one referred to in the affidavit of the Municipal Corporation. The petitioners themselves refer to the 7x12 extracts and then say that nothing has been allotted to them, as asserted, from Survey Nos. 136 and 137. The petitioner may rely upon a 7x12 extract, but that is not a document based on which we can accept the contentions of Mr. Anturkar. In the decision of the Arbitrator, there is a specific reference to certain documents. The assertion in the affidavit filed by the petitioners would show that the petitioners make very guarded statements. In fact, the petitioners themselves say that the original plot and final plot table would show that total area of Survey Nos. 136 and 137 was 6 acres and 36 gunthas. Actually the area was 6 acres and 4.3 gunthas. If the petitioners were never allotted any such land in lieu of the original plot or the ownership plot, then there

was no occasion for the petitioner to refer to the areas of Survey Nos. 136 and 137. To our mind, therefore, these are not matters which are still at large but are fully covered by the public documents.

8. In response, respondent no. 5, with reference to the statutory documents, would state that the petitioners are indirectly seeking ownership rights in respect of the property. In fact the subject matter of the dispute was that a piece of land was included in the town planning scheme and the same has been given final plot number after completing the inquiry by an Arbitrator under section 72 of the MRTP Act. Thereafter, the final scheme was forwarded to the State Government under section 86. Once the petitioners know that the inquiry has been conducted and thereafter a final scheme has been sanctioned in the year 1970, no steps were taken for claiming ownership rights over the said property nor they have adopted any proceedings to challenge the decision of the Arbitrator. The petitioners cannot, therefore, after a gap of several years, question these proceedings. We cannot, therefore, in the backdrop of these facts and circumstances, accept the argument of the petitioners that they have not been allotted any final plot or the town planning scheme is not in consonance with section 88 of the MRTP Act.

9. The further affidavit at page 228 onwards would denote that none of the assertions of the petitioners can be accepted. To our mind, this is a clear attempt to reopen the proceedings concluded by the final decision or the award of the Arbitrator and the sanction to the town planning scheme.

10. As a result of the above discussion, we do not find any merit in the writ petition. It is dismissed. There would be no order as to costs.

(G.S.PATEL, J.)

(S.C.DHARMADHIKARI, J.)