

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.1013 OF 2013

Shri Ladkya Sitaram Mhatre
since deceased through legal heirs
Smt.Tara Ladkya Mhatre and Ors. ... Petitioners

Versus

Panvel Municipal Council and Ors. ... Respondents

Mr.S.M.Kamble, for the Petitioners.

Mr.Chandrakant V. Solaskar for
Respondent No.1.

Mr.Sunil G. Karandikar for Respondent
Nos.2 to 5.

Mr.Bhushan Walimbe a/w Mr.Amit
Chavan for Respondent No.6.

CORAM :- S. C. DHARMADHIKARI &
SANDEEP K. SHINDE, JJ.

DATE :- JULY 26, 2019

P.C. :-

1. The petitioners in this petition under Article 226 of the Constitution of India are seeking a writ of mandamus or any other writ, order or direction in the nature thereof directing the first respondent to hand over peaceful and vacant possession of final plot No.368 situate at Village Panvel, Taluka Panvel, District Panvel to the petitioners.

2. The writ petition is filed on 5th November, 2012.

3. It is claimed that the petitioners' predecessor, one Sitaram Budhya Mhatre was a protected tenant in the land bearing Survey No.351, Hissa No.2/10 situate at Village Panvel, Taluka Panvel, District Panvel prior to the tiller's day. On the tiller's day, the Bombay Tenancy and Agricultural Lands Act, 1948 (for short, "B.T.A.L. Act") extended the protection to this tenant and that is why he is a protected tenant. On 24th October, 1989, there was a sale deed executed in respect of final plot No.368. That sale deed is executed by and between the husband of respondent No.1 and father of respondent Nos.2 to 5 so also the seventh respondent-Trust.

4. The petitioners say that the petition pertains to this final plot No.368 admeasuring 1083 sq.mtrs. situate at Village Panvel, Taluka Panvel, District Panvel.

5. It is claimed that the petitioners' predecessor was cultivating the property since 1st April, 1957, but as the owner of the land was the certified Trust, a purchase price under Section 32G of the B.T.A.L. Act could not be fixed as per the provisions of that Act. An inquiry was held under Section 70 Clause (b) of the B.T.A.L. Act and the Mamlatdar entered the name of Sitaram Budhya Mhatre as protected tenant in Survey No.351, Hissa No.2/10. The predecessor of respondent Nos.2 to 5 filed an

application before respondent No.8 for declaration that the predecessor of the petitioners was not a tenant in original Survey Nos.245 and 246, Panvel from which final plot No.368 is carved out. Tenancy Case No.10 of 2008 is related to this dispute. The declaration that was claimed had no basis as respondent Nos.2 to 5 were not the owners of Survey Nos.245 and 246. Hence, the Tenancy case could not have been filed by them.

6. In any event, that Tenancy Case was decided on 19th December, 2009 and the authority held that neither the predecessor of the petitioners nor his legal heirs are tenants in respect of these plots.

7. Being aggrieved and dissatisfied with the same, Tenancy Appeal No.17 of 2010 was preferred before the Sub-Divisional Officer, Panvel and he dismissed the Appeal on 14th October, 2010. Thereafter the Revision Application was filed before the Maharashtra Revenue Tribunal and we are informed that the said Revision Application is also dismissed. That was dismissed by the Maharashtra Revenue Tribunal and a writ petition challenging that order of the Tribunal being Civil Writ Petition No.5140 of 2016 was also dismissed by the learned Single Judge of this Court on 8th July, 2019.

8. The argument is that the petitioners' predecessor was a protected tenant of a land bearing Survey No.351, Hissa No.2/10. This property belongs to a Trust. This property has been included in the Panvel Town Planning Scheme No.1 in the formation of Original Plot No.399. As the Original Plot No.399 was under reservation of Municipal Council, the final plot No.368 was allotted to the petitioners admeasuring 1083 sq.mtrs. in exchange of Original Plot No.399. The name of the petitioners' predecessor is recorded as co-owner in this final plot No.368 in Form-B. This plot is purchased by the husband of respondent No.1 and father of respondent Nos.2 to 5 from the Trust and after the death of one Bhupendra Maganlal Gandhi, respondent Nos.2 to 5 are now claiming to be the owners of this final plot which is open.

9. The petitioners claim that a sale deed was executed in relation to this plot. The petitioners therefore say that they can maintain this petition because original Survey No.351, Hissa No.2/10 is the land from which the original plot No.399 was carved out and since original Plot No.399 has two plots i.e. final plot Nos.414 and 415, but these two plots were reserved for Panvel Municipal Council, instead of these plots, the two persons, namely, Bhupendra Maganlal Gandhi and Sitaram Budhya Mhatre were allotted final plot No.368. When the said final plot

No.368 is made up of Survey Nos.245 and 246 from the area remaining after forming final plot Nos.365 and 366, then, the petitioners' case is that they are entitled for these plots.

10. We are shocked and surprised to know, after reading this writ petition and hearing Mr.Kamble, as to how these petitioners, who are aware of everything in relation to final plot No.368 and the Town Planning Scheme, did not object to what they are presently objecting, when the scheme was finalised.

11. The petitioners in this petition refer to Section 88 of the Maharashtra Regional and Town Planning Act, 1966, reproduce it and say that the Arbitrator stepped-in in accordance with law and his order has not been challenged till date. Therefore, the obligation of the first respondent is to hand over this plot in terms of the scheme finalised on the basis of the award of the Arbitrator.

12. We are not impressed by any of these arguments and for more than one reasons. The final plot is carved out after the scheme was settled by the order of the Arbitrator dated 14th October, 1980. It is inconceivable that till 2012, the petitioners were not aware of the fact that their predecessor and they have lost some rights in relation to plot No.368. No finalisation of plots

and no allotment is done ever by a back door method or behind the back of those who are interested in the same. The law says and in clearest terms that before the Arbitrator settles these rights in relation to final plots, these plots are carved out in terms of a scheme. That Town Planning Scheme is implemented by the competent authorities under the Maharashtra Regional and Town Planning Act, 1966. They inform the public. They issue the notices. The Arbitrator can hold a hearing and make an award. There are appeals and other remedies for aggrieved parties available. It is inconceivable that the petitioners were unaware of all this.

13. It is possibly aggrieved and dissatisfied with the success that said Bhupendra Maganlal Gandhi and his successors obtained in the litigation under the B.T.A.L. Act that the petitioners have moved this writ petition. We do not think that the claim of the petitioners, apart from being hopelessly delayed, has any *bona fides*.

14. In fact, in para 14 of the petition, it is stated that respondent Nos.2 to 5 are trying to defeat the rights of the petitioners and deprive the petitioners of their ownership right in 50% area of final plot No.368 by commencing construction activities on this plot with the help of respondent No.1 and one

M/S M.P.Associates, who is respondent No.6. If they are so successful, then, the petitioners' right would be defeated.

15. Knowing fully well that the remedy is not to file this writ petition, if such was the grievance, then, we are left wondering as to why the civil suit was not brought and until the construction activities commenced or being carried on. It, therefore, appears to be an attempt to knock out something from the respondents and the Trust, but having lost the battle in relation to the alleged agricultural land. In the circumstances, we find no merit in this writ petition and it is dismissed. There would be no order as to costs.

(SANDEEP K. SHINDE, J.)

(S.C.DHARMADHIKARI, J.)