

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION No. 1122 OF 2012

IN

WRIT PETITION No. 5177 OF 2009

...

Harish Pranlal Vora (deceased)

through his legal heirs and representatives ...Applicants/Petitioners

Vs.

The Commissioner,

Pune Municipal Corporation & Ors.

...Respondents

...

Mr. Mangal Bhandari a/w. Khushbu Prabhu for theApplicant/Petitioner.

Mr. R. M. Pethe for the Respondent Nos. 1, 3 and 4.

Ms P. N. Diwan, AGP for the Respondent Nos. 2 & 5-State.

...

CORAM : A.A. SAYED &**SMT. ANUJA PRABHUDESSAI, JJ.****DATED : 11 NOVEMBER 2019****P.C.:**

Though the heirs and legal representatives of the deceased Applicant/Petitioner have been brought on record in the Writ Petition, such amendment has not been made in the present Civil Application. Leave to amend the Civil Application to bring on record the heirs and legal representatives of the deceased Applicant/Petitioner, as carried out in the Writ Petition.

2. We have perused the order dated 12 April 2018 of the Division Bench of this Court (Coram: A.S.Oka & Riyaz I. Chagla,JJ.) wherein it is stated that the above Civil Application be placed before the Bench of which one of us (A. A. Sayed, J) is a party after taking appropriate orders from the Hon'ble Acting Chief Justice on the administrative side. It is further stated in the said order that after the present Civil Application is disposed of, the Petition shall be placed for final hearing on appropriate weekly board. The present Civil Application is accordingly listed before this Bench.

2. The prayers sought in the Civil Application read as follows:

(a) that the Hon'ble Court be pleased to allow the Applicant Petitioner to withdraw/recall the following statement made on February 17, 2010 viz.

“Learned Counsel for the Petitioner does not want to press this challenge as well as prayer clause (a) of the Writ Petition in respect of not pressing for his challenge u/s 127 of the MRTP Act, 1966.”

(b) that the Applicant-Petitioner be permitted to amend the Petition in terms of the Schedule annexed hereto.

(c) In the alternative to prayers (a) and (b) hereinabove, the Hon'ble Court be pleased to allow the Applicant-Petitioner to amend the Petition in terms of para 11 hereinabove.

3. Learned Counsel for the Applicants/Petitioners has made the following submissions:

(i) The Applicants/Petitioners be allowed to withdraw the statement made by learned Counsel for the Original Applicant/Petitioner as recorded in the order dated 17.02.2010.

(ii) The concession of law given by an Advocate is not binding upon the parties or the Court and there is no estoppel against the law.

(iii) The Court has inherent powers under section 151 of Civil Procedure Code to recall its order.

(iv) The Applicants/Petitioners may be allowed to amend the Petition as an alternate prayer and add the grounds for pressing the challenge that section 127 of the MRTP Act, 1966 is not applicable and rejecting the notice dated 1-09-2008 issued under section 127 of the MRTP Act.

(v) That if there is change in law, the same would be ground for amendment in a pending lis.

4. Learned Counsel for the Applicants/Petitioners, in support of his contentions, placed reliance on the following judgments:

(i) Himalayan Cooperative Group Housing Society v/s. Balwan Singh,

(2015) 7 SCC 373;

(ii) Director of elementary Education, Odisha Director v/s. Sri Pramod Kumar Sahoo, 2019 SCC Online SC 1259;

(iii) Jet Plywood P. Ltd. v/s. Madhukar Nowlakha & Ors., 2006(3) SCC 699;

(iv) Ramavtar Gupta v/s. Manak Raj and anr., AIR 1978 Raj 186;

(v) Mahila Ramkali Devi & Ors. v/s. Nandram & Ors., (2015) 13 SCC 132;

(vi) Shikharchand V/s. D.J.P.Karini Sabha, AIR 1974 SC 1178;

(vii) Mohinder Kumar Mehra v/s. Roop Rani Mehra and ors., (2018) 2 SCC 132;

(viii) Lakshminarayan Guin & Ors. v/s. Niranjan Modak, AIR 1985 SC 111;

5. Learned Counsel for the Respondents Nos.1, 3 & 4, on the other hand, submitted that any change in law would not entitle the Applicants/Petitioners to renege on the statement which was made to the Court by the learned Counsel. There is nothing to suggest that the statement was not made on instructions of the Original Applicant/Petitioner. The Original Applicant/Petitioner has not taken any action against the Advocate who had given the concession. Hence, the Applicants/Petitioners

cannot resile from the statement which made to the Court or seek any amendment which nullifies the statement made to the Court.

6. We have heard the learned Counsel for the parties and perused the order dated 17-02-2010 wherein the statement of the learned Counsel for the Original Applicant/Petitioner is recorded. Paras 2 and 3 of the order dated 17-02-2010 of the Division Bench (Coram: D. D. Sinha and A. A. Sayed, JJ) reads as follows:

“ Heard learned Counsel appearing for the parties.

2. This writ petition is directed against the order dated 23rd September, 2008 passed by respondent No.1, whereby it has been held that the provisions of Section 127 of the Maharashtra Regional and Town Planning Act, 1966 are not applicable while rejecting the notice issued by the petitioner under Section 127 of the Act dated 1st September, 2008.

3. Learned Counsel for the petitioner does not want to press this challenge as well as prayer clause (a) of the writ petition. Learned Counsel for the petitioner states that the grievance of the petitioner is reflected in prayer clause (b) and its sub clauses. It is contended that the petitioner has issued notice to the Secretary, Urban Development Department dated 25th August, 2008 under Section 49(1) of the Maharashtra Regional and Town Planning Act, 1966 primarily on the ground that the petitioner was

unable to sell the land of the petitioner except at a lower price than then at which he might reasonably have been expected to sell, if it were not so designated or allocated. ”

7. In paras 2 to 11 of the present Civil Application it is averred as follows:

“2. The Applicant states that during the course of the admission-hearing dated February 17, 2010, the learned Counsel for the Applicant had made a statement that they do not want to press the challenge in respect of order dated September 23, 2008 u/s 127 of the said Act and consequently prayer (a) of the petition. The said statement was recorded in the order dated February 17, 2010.

3. The Applicant states that the applicant was not present at that date of hearing and the matter was adjourned for filing of reply by Respondents.

4. The Applicant states that thereafter reply was filed by the Respondents, and before another Bench, when the matter came up for admission-hearing on June 14, 2010, the matter was admitted.

5. The Applicant states that, even then the Applicant felt strongly that the beneficial provisions of sec.127 of the said Act were still available to him.

6. The Applicant states that the reasons for the said challenge as stated in the Petition are as under:

(a) That the notice u/s 127 of the said Act was rejected by the Respondents on the ground that the plots were neither under any reservation nor proposed to be acquired. It is contended that Section 127 applies if there is any one of the following:

(i) reservation, or

(ii) allotment/allocation, or

(iii) designation

None of the above words have been defined in the said Act. Hence, going by what is commonly known and understood by those words, admittedly there was a designation and allocation in respect of the said two plots of lands of the Applicant Petitioner, assuming that there was no reservation. But the reply/report and thinking on the part of the Respondents totally ignores the above provisions of the law, and has taken a myopic view that section 127 applies only if there is a reservation and not otherwise.

(b) That the Respondent authorities have failed to appreciate that the Petitioner's plot included in Hill top Hill Slope zone are reserved/designated for public purpose. It is submitted that the said Act only permits the Planning Authority to allocate, designate, reserve and or allot any land as permitted in section 22 of the said Act.

(c) The Pune Municipal Corporation having failed to acquire and or commence for its acquisition have rendered the Petitioner's plots released from reservation and or designation and have nor become available to the owner for Residential Development as permissible in the case of adjacent land.

7. The Applicant states that the Applicant has become aware very recently of a judgment of this Hon'ble Court in Writ Petition No.4642 of 2005, wherein it is held that the terms "allocating" "reserved" and "designation" are interchangeable. In view of this judgment given after the date of withdrawal of the said contention regarding sec.127 the Applicant states that his aforesaid contention automatically gets re-inforced, and becomes relevant and applicable.

8. Hence, as the present Writ Petition is admitted and is still pending final hearing, the Applicant feels that he is entitled and hence seeks leave of this

Hon'ble Court to revive the said earlier challenge regarding sec.127, by getting the said statement, viz.

"Learned Counsel for the Petitioner does not want to press this challenge as well as prayer clause (a) of the Writ Petition."

recorded in para 3 of the order dated February 17, 2010 withdrawn and/or recalled.

9. The Applicant also seeks leave/permission to amend the Petition by way of additional grounds in support of its challenge u/s 127 of the said Act in terms of the Schedule annexed hereto. It is submitted that the amendments sought are points of law and relevant for the Hon'ble Court to decide and arrive at a conclusion and can be argued and added at any stage before the final hearing of the Petition. It is further stated that with a view to bring clarity to the whole issue it is necessary to amend the Petition as per the Schedule annexed herewith.

10. The Applicant says and submits that, in view of the change in the understanding and interpretation of law, after the date of the said withdrawal, the Applicant is entitled to both the aforesaid reliefs, viz., of revival of the challenge/prayer (a) and adding additional grounds linked thereto.

11. Without prejudice to the aforesaid, and in case the Hon'ble Court is not pleased to allow the aforesaid, the Applicant says and submits that the Applicant is entitled to and hence seeks leave of the Hon'ble Court to amend the Petition (i) to add the old prayer (a) afresh, (ii) to add all the existing grounds of challenge already mentioned/stated in the petition in regard to section 127, and also (iii) to add the additional grounds mentioned in the Schedule hereto, on the basis of change in law based on the aforesaid decision of this Hon'ble Court."

8. From the aforesaid averments in the Civil Application and perusal of order dated 17-02-2010, it is evident that on 17-02-2010 a 'conscious' statement was made to the Court by the learned Counsel for the Original Applicant/Petitioner that the Original Applicant/Petitioner does not want to press the challenge as well as prayer clause (a). The said prayer clause (a) reads as follows:

“(a) (i) That this Hon’ble Court be pleased to issue a Writ of Certiorari or any other appropriate writ, order or direction in the nature of certiorari to quash and set aside the said impugned order of Respondent No.1 contained in Letter dated 23-9-2008 holding that section 127 is not applicable, and rejecting the Petitioner’s notice u/s 127 dated 1-9-2008 to respondent No.1, and

(ii) That this Hon’ble Court be pleased to issue a Writ of Mandamus or any other appropriate writ, order or direction in the nature of mandamus declaring that the reservation, allotment or designation in respect of the said two plots of lands, being Plots No.116 and 117 out of survey No.121 and 122 (now designated as CTS No.851) situated at Rambag colony, Kothrud, Pune, is deemed to have lapsed and the said plots are deemed to be released from such reservation/allotment/designation and are available for

development as permissible in the case of adjacent land, which is residential.”

9. Perusal of para 7 of the Civil Application suggests that the Civil Application is filed after the Original Applicant/Petitioner became aware of a “recent” judgment of this Court in Writ Petition No. 4642 of 2005 which allegedly supported his case for grant of reliefs which were given up. That judgment of the Division Bench was delivered on 01.04.2011. It only reiterates the position in law and does not set aside any other judgment which takes a different view. The contention that there was a change in law therefore cannot be accepted. In our view, merely because the Original Applicant/Petitioner had become aware of “recent” judgment which allegedly supported his case for grant of reliefs which were given up, would not entitle the Original Applicant-Petitioner to resile from the conscious statement made to the Court by his Counsel. This is not a case where the Original Applicant/Petitioner claims that the concession made by his Counsel was not on his instructions. The presence or absence of the Original Applicant/Petitioner in Court at the time of making the statement by the learned Counsel would not take the case of the Applicants/Petitioners any further. It is noticed that even after the order dated 17.02.2010 was passed wherein the statement of learned Counsel for the Original Applicant/

Petitioner was recorded, the matter had been called out on several occasions before this Court and the Petition was ultimately admitted on 14.06.2010. The present Civil Application is filed on 22.12.2011 after about 22 months from the passing of the order dated 07.02.2010. In our view, there has to be some sanctity attached to the statement made by a Counsel before the Court, and the Original Applicant/Petitioner and he or his legal heirs cannot be permitted to renege from the statement made by the Counsel to the Court. The judgments relied upon by the learned Counsel for the Applicants/Petitioners would have no application in the facts of the present case. In the matter in hand, it is not the case of the Applicants/Petitioners that the statement was made by the learned Counsel was without the instructions of the Original Applicant/Petitioner. Merely because the Petition is pending, would be no ground to allow the Applicants-Petitioners to resile/withdraw from the statement. The Petition is pending so far as prayer clause (b) of the Petition in respect of the Notice u/s. 49 of the MRTTP Act which will be heard in due course.

10. In the circumstances, we are not inclined to grant relief to the Applicants/Petitioners either to withdraw the statement made by the learned Counsel for the Original Applicant/Petitioner as recorded in the order dated 07.02.2010 or to allow an amendment, to incorporate the same

ground/prayers which have already been given up by the Original Applicant/
Petitioner as recorded in the order dated 07.02.2010.

11. The Civil Application is dismissed.

(ANUJA PRABHUDESSAI,J.)

(A.A.SAYED, J.)