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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.1724 OF 2019
WITH
NOTICE OF MOTION NO.199 OF 2017

Deepak V. Thakkar	...Petitioner
V/s.	
The Deputy Collector (ENC) & Competent Authority, Borivali & Ors.	...Respondents

WITH
WRIT PETITION NO.319 OF 2014

M/s.Western Developments	...Petitioner
V/s.	
The State of Maharashtra & Ors.	
...Respondents	

Mr.S.G. Surana with Mr.Madhur S. Surana for the Petitioner in Writ
Petition No.319 of 2014 and for the Respondent No.3 in Writ Petition
No.1724 of 2019.

Mr.Ganesh Vaidya with Mr.Mukesh J. Pabari for the Petitioner in Writ
Petition No.1724 of 2019 and for the Applicant in Notice of Motion
No.199 of 2017.

Mr.Hemant Haryan, A.G.P. for the State – Respondent Nos.1 and 2 in
Writ Petition No.319 of 2014 and for the Respondent Nos.1 and 5 in
Writ Petition No.1724 of 2019.

Mr.Jagdish G. Aradwad (Reddy) with Mr.Arvind Aswani for the
Respondent No.3 in Writ Petition No.329 of 2014 and for the
Respondent No.2 in Writ Petition No.1724 of 2019.

Mr.G.S. Vaidya for the Respondent No.4 in Writ Petition No.329 of
2014.

Mr.Ashish Kamat I/b Mr.Chandrakant N. Gole for the Respondent No.4 in Writ Petition No.1724 of 2019.

CORAM : R.D. DHANUKA, J.
DATE : 11TH JULY, 2019.

P.C. :-

1. In Writ Petition No.1724 of 2019, the petitioner (original appellant) before the Slum Tribunal, the petitioner has impugned the order dated 13th November, 2013, dismissing Appeal No.27 of 2013 passed by the respondent no.3 herein M/s.Western Developments a party before the Slum Tribunal has also impugned part of the order dated 16th August, 2013 passed by the respondent no.5 condoning delay in filing the appeal by preferring Writ Petition No.1724 of 2019. By consent of parties, both the writ petitions and the notice of motion were heard together and are being disposed of by a common order. Some of the relevant facts for the purpose of deciding these petitions are as under:

2. The petitioner in Writ Petition No.319 of 2014 claims to be the owner of the property bearing CTS No.333, 334, 336, 337, 340, 341, 342 and 343 of village Kanheri, Borivali under various Deeds of Conveyance from the original owners. Mr.Khimji Thakkar claimed to be the sub-lessee in respect of the portion of the suit property bearing CTS No.332/8. It was the case of Mrs.Laxmibai Khimji Thakkar widow of Mr.Khimji Thakkar that upon the demise of

Mr.Khimji Thakkar, the suit property admeasuring 138.30 sq. mtrs. was inherited by her. Insofar as the petitioner in Writ Petition No.1724 of 2019 is concerned, he claims his title on the basis of a Will dated 18th March, 1998 executed by Mrs.Laxmibai Thakkar bequeathing the suit property along with suit structure identified as "Shri Ram Niwas" in favour of the petitioner. The said Mrs.Laxmibai Thakkar expired on 26th February, 2003.

3. On 21st July, 1986, the respondent no.1 issued a notification under section 4(1) of the Maharashtra Slum Areas Improvement, Clearance & Redevelopment Act, 1971 (Slum Act, 1971) declaring the larger portion of the land including CTS No.332/8 as a slum. The said notification was not challenged by Mrs.Laxmibai Thakkar though she was alive till 26th February, 2003.

4. It is the case of the respondent no.3 that the City Survey Officer passed an order on 28th July, 1965 recording that Mr.Khimji Thakkar had not produced any documents to prove his status as sub-lessee of the property in respect of the suit property bearing CTS No.232/8.

5. On 24th August, 2007, the Slum Rehabilitation Authority issued Annexure-II in respect of the larger property including the suit property. The authority also approved the building plan of composite building no.1 on 30th July, 2012 and issued the commencement

certificate on 29th October, 2012. On 2nd December, 2011, the authority issued Letter of Intent to the respondent no.4. On 3rd July, 2013, the structures on the suit property came to be demolished. On 30th October, 2012, the authority granted approval for construction of the composite building no.2.

6. On 13th November, 2013, the petitioner filed Appeal No.27 of 2013 before the Slum Tribunal impugning the notification dated 21st July, 1986. The petitioner also filed an application before the High Power Committee. The High Power Committee passed an order on 5th July, 2014 rejecting the Application No.326 of 2013 filed by the petitioner *inter-alia* impugning the Letter of Intent issued by the authority on various plots including the suit plot. However, in the said order, the High Power Committee made it clear that insofar as the construction on the land bearing CTS Nos.332, 332/1 to 332/8 is concerned, the same would be adequately secured by directing the authority to allow M/s.Western Developments to proceed with the implementation of the slum rehabilitation scheme but not allowing the construction of the part of the component entitlement for the area of land bearing CTS Nos.332/1 to 332/8 of village Kanheri, Taluka Borivali. The petitioner impugned the said order passed by the High Power Committee by filing Writ Petition No.2797 of 2014.

7. By an order dated 7th May, 2015 passed by the Division

Bench of this Court, the said writ petition came to be dismissed. This Court observed that this Court did not propose to go into the question as to whether the petitioner has any right or not. The parties can very well agitate insofar as the issue of title is concerned. This Court accordingly did not interfere with the order passed by the High Power Committee. A Special Leave Petition filed by the petitioner bearing No.1928 of 2016 arising out of the order passed by the Division Bench of this Court came to be dismissed on 18th March, 2016.

8. The Slum Tribunal rejected the appeal filed by the petitioner by a detailed judgment dated 18th November, 2013. One of the ground on which the appeal preferred by the petitioner before the Slum Tribunal was that the petitioner had not obtained the probate in respect of the alleged Will of Mrs.Laxmibai Thakkar. This Court in this writ petition passed a detailed order rejecting the interim relief prayed by the petitioner on 3rd February, 2015 on various grounds.

9. The respondent no.3 has constructed two buildings pursuant to the Letter of Intent issued by the authority. In view of interim protection granted by the authority in favour of the petitioner, the respondent no.3 did not carry out any construction insofar as the area admeasuring 138.30 sq. mtrs. is concerned. The authority has already issued a partial occupation certificate on 6th March, 2019.

10. Learned counsel for the petitioner submits that the petitioner has now obtained a probate from this Court after the date of the impugned order passed by the Slum Tribunal is concerned in Writ Petition No.339 of 2013 by an order passed by this Court on 12th June, 2013. It is submitted by the learned counsel that the rights of the predecessor of the petitioner are already established and are duly noted by the Slum Tribunal in the impugned order. He submits that the rights of her predecessor were never disputed by the respondent no.3 at any point of time. Since the petitioner is claiming through Mr.Laxmibai Thakkar, the rights of the petitioner in respect of the suit cannot be disputed by the respondent no.3.

11. Learned counsel for the petitioner invited my attention to various annexures to the petition and would submit that the Slum Tribunal ought to have interfered with the notification declaring the entire property as slum in view of the petitioner having interest in the suit property and being aggrieved person.

12. Mr.Kamat, learned counsel for the respondent no.4 and Mr.Surana, learned counsel for the respondent no.3 invited my attention to various annexures to the writ petition and the affidavit in reply. It is submitted that since rights of the predecessor of Mrs.Laxmibai Thakkar itself was not established before the City Survey Officer and thereafter by establishing the title by filing

appropriate civil suit, the question of the petitioner succeeding any right in the suit property did not arise.

13. It is submitted by the learned counsel for the respondent nos.3 and 4 that the Slum Tribunal rightly made it clear in the impugned order that the said Tribunal had no jurisdiction to decide the issue of title in respect of the suit property claimed by the petitioner. They submit that the observations made by the Slum Tribunal in the impugned order itself would not establish any title in favour of the petitioner.

14. It is submitted by the learned counsel that this writ petition filed by the petitioner impugning the order passed by the Slum Tribunal has become infructuous on the ground that the entire scheme sanctioned by the authority under the impugned notification which was the subject matter of the appeal before the Slum Tribunal has been already completed. The occupation certificate has been already granted by the authority and thus nothing survives in this writ petition.

15. Learned counsel for the respondent nos.3 and 4 would submit that in any event the Slum Tribunal even otherwise could not have set aside the entire notification which was in respect of the larger property when there was no challenge to the validity of the notification in respect of the larger property.

16. It is submitted by the learned counsel for the respondent nos.3 and 4 that though the Division Bench of this Court repeatedly in the earlier round of litigation made it clear that the title issue could not be decided by the authority and the same will have to be agitated upon in an appropriate proceedings, the petitioner did not file any suit so far.

17. It is submitted by the learned counsel for the respondent nos.3 and 4 that during her life time Mrs.Laxmibai Thakkar for more than 14 years did not challenge the notification and thus the petitioner who claims through Mrs.Laxmibai Thakkar even otherwise could not have challenged the said notification after more than 14 years.

18. Learned counsel for the petitioner in rejoinder submits that the City Survey Officer has not rejected the claim of the petitioner on pro-rata basis in the entry brought to my notice as canvassed by the respondent nos.3 and 4 and would submit that on the contrary by the said order, the rights of the predecessor in title of the petitioner are established.

19. It is not in dispute that the petitioner is claiming right through Mrs.Laxmibai Thakkar, who was claiming the right through her husband. The petitioner is claiming title on the basis of a probate granted by this Court by an order dated 10th June, 2014 in Probate

Petition No.339 of 2013. It is not in dispute that the predecessor in title of the petitioner herself did not challenge the slum notification for more than 14 years. Be that as it may, since the said notification was for several plots of land, the Slum Authority even otherwise could not have set aside the said notification even if the petitioner would have being an aggrieved person claiming the right in a smaller portion of land i.e. 138.30 sq. mtrs.

20. This Court has recorded the detailed reasons while rejecting interim reliefs in favour of the petitioner in this writ petition. The Division Bench of this Court in the order dated 7th May, 2015 in the writ petition arising out of the order passed by the High Power Committee had made it clear that this Court did not propose to go into the issue as to whether the petitioner has any right or not. This Court had also made it clear that the parties can very much agitate insofar as the issue of title is concerned by filing appropriate proceedings. A Special Leave Petition filed against the said order of the Division Bench is rejected.

21. In my view, even if the petitioner asserts his claim on the basis of the order dated 10th June, 2014 passed by this Court in Testamentary Petition No.338 of 2013, it is well settled position of law that the Testamentary Court does not decide the title in respect of the property of the deceased testator. The title claimed by the petitioner

can be agitated upon only in an independent proceedings before the Civil Court. The City Survey Officer also does not decide the title in the property.

22. The Letter of Intent issued in favour of the respondent no.3 has been fully implemented by the respondent no.1. The flat purchasers in the buildings constructed by the respondent no.3 have formed a co-operative society who is respondent no.4 before this Court. In my view, no case is thus made out by the petitioners for interference with the impugned order passed by the Slum Tribunal.

23. In view of the interim protection granted by the High Power Committee on 5th July, 2014 in an Application No.326 of 2013 directing the authority to allow M/s.Western Developments to proceed with the implementation of the slum rehabilitation scheme however, not allowing the construction on part of the said building in proportionate of pro-rata entitlement being the area of land bearing CTS Nos.332, 332/1 to 332/8 of village Kanheri, Taluka Borivali, the respondent no.3 has admittedly not utilized the sale FSI available on the said plot bearing CTS Nos.332, 332/1 to 332/8 while constructing.

24. In my view, it is for the petitioner to decide whether to file a civil suit or not for adjudication of his alleged title in respect of the land bearing CTS Nos.332, 332/1 to 332/8 of village Kanheri, Taluka

Borivali admeasuring 138.30 sq. mtrs.

25. I therefore, pass the following order :-

- a). Writ Petition No.1724 of 2019 is dismissed.
- b). In view of dismissal of Writ Petition No.1724 of 2019, Notice of Motion No.199 of 2017 and Writ Petition No.329 of 2014 filed by M/s.Western Developments do not survive and are accordingly disposed of.
- c). Rule is discharged in both the writ petitions.
- d). Interim protection granted by the High Power Committee in Application No.326 of 2013 on 5th July, 2014 to continue for a period of 12 weeks from today. It is made clear that the interim protection continued by this Court will stand vacated automatically after expiry of 12 weeks unless any further interim relief is granted in favour of the petitioner by appropriate court.
- e). If any civil suit or any appropriate proceedings are filed by the petitioner within 12 weeks from today, the same shall be decided on its own merits. If the petitioner choses to file any proceedings, a copy thereof shall be served upon the respondent nos.3 and 4 in advance.
- f). Mr.Surana, learned counsel for the respondent no.3 seeks liberty to withdraw a sum of Rs.5,00,000/- deposited by his client pursuant to an interim order passed by this court on 3rd February,

2015 with accrued interest thereon.

g). The Prothonotary & Senior Master of this Court is directed to permit the respondent no.3 to withdraw the said sum with accrued interest within two weeks from the date of communication of this order.

h). All parties as well as the Prothonotary & Senior Master of this Court to act on the authenticated copy of this order.

(R.D. DHANUKA, J.)