

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

WRIT PETITION NO. 1079 OF 2014

Sakhubai w/o. Shankar Ghatyal and ors. ... Petitioners.

V/s.

State of Maharashtra and ors. ... Respondents.

WITH

CHAMBER SUMMONS NO. 196 OF 2016

IN

WRIT PETITION NO. 1079 OF 2014

Sakhubai w/o. Shankar Ghatyal and ors. ... Applicants

In the matter between

Sakhubai w/o. Shankar Ghatyal and ors. ... Petitioners.

V/s.

State of Maharashtra and ors. ... Respondents.

And

Nusli N. Wadia and ors ... Proposed
Respondents

Mr. V.S. Pandey I/b Mr. S.U. Pandey for the
Petitioners/Applicants.

Mr. G.W. Mattos, AGP for Respondent – State.

Mr. Bhupendra Singh for Respondent No.3.

CORAM : R.M. BORDE AND V.L. ACHLIYA, JJ.

DATE : 1st FEBRUARY 2019.

P.C.:

1] The petitioners have presented the instant petition praying
the following reliefs:

*“(a) This Hon’ble Court in exercise of its extra-ordinary writ
jurisdiction under Article 226 of the Constitution of India be*

pleased to issue suitable and appropriate writ, orders and directions to the Respondents Authorities to the effect that the PLAN annexed with the Consent Terms dated 3.12.1979 in Writ petition no. 1465/1975 be appropriately modified so as to be in consonance with and in accordance with “the Authenticate plan” appended with the communication dated 3.8.2013 from the Chief Conservator & Director of Forest, Sanjay Gandhi National Park to the Principal Secretary of Forest Department, Government of Maharashtra in order to depict and indicate CORRECT FACTUAL SITUATION as to occupation and possession over the lands in question.

(b) This Hon’ble Court FURTHER in exercise of its extraordinary writ jurisdiction under Article 226 of the Constitution of India be pleased to issue appropriate writ, order or directions in the nature of mandamus or any such other appropriate writ, order or directions thereby ordering and directing the Respondent Authorities that after appropriately modifying the PLAN annexed with Consent Terms dated 3.12.1979 in Writ Petition No. 1465/1975 to pass appropriate orders thereby excluding the land area admeasuring 3 Acres and 25 Gunthas in possession, occupation and enjoyment of the Petitioners; from FOREST LANDS, in accordance with and in consonance with the PLAN authentically prepared and annexed with communication dated 3.8.2013 of the Chief Conservator of Forest, Sanjay Gandhi National Park.”

2] The Consent Terms dated 3rd December 1979 in Writ Petition No. 1465 of 1975 have been recorded between Nusli N. Wadia and others (Petitioners) V/s. N.J. Joshi and others (Respondents). The subject mater in the aforesaid dispute appears to be 1488 Acres and 33 Gunthas of land comprising of 848 Acres 20 Gunthas and

12 Annas shown in the plan. Out of which, possession of land comprising of 841 Acres 29 Gunthas and 8 Annas is recorded to have been handed over by the petitioners to the Forest Department of the Government on 9th September 1975 and it has been agreed that the petitioners shall not claim the same before the High Court in the aforesaid proceedings which lawfully vested in the Government on 30th August 1975, i.e., the date on which the Maharashtra Government Forest Acquisition Act, 1925 came into force. Subsequently, the Forest Department has received 6 Acres 31 Gunthas in the year 2005.

3] Insofar as balance area comprising 640 Acres 12 Gunthas and 4 Annas shown separately in the plan is concerned, certain arrangements have been arrived at between the parties and it has been agreed that the same will not be claimed by the Government as such. Admittedly, the petitioners are not parties to the Consent Terms since they were not party to the litigation. As the petitioners were not parties to the Consent Terms, it is doubtful as

to whether any arrangements those have been arrived at or agreement reached between the parties could bind the petitioners.

4] The petitioners claim their entitlement in respect of some area out of Survey No.239 (part) ad-measuring about 3 Acres 11 Gunthas and 12 Annas. It has been pointed out that there was some litigation in the shape of Suit No. 54 of 1967 between the predecessor of respondent No.3 and the predecessor-in-title of the petitioners which has culminated in recording Consent Terms and the suit appears to have been disposed of in view of the Consent Terms recorded on 1st day of January 1970. It appears that the Consent Decree has been recorded on 15th January 1970. The petitioners who claim to be successors of the defendant in Suit No. 54 of 1967 has presented a suit bearing Suit No. 1426 of 1996 and had claimed the following reliefs:

“(a) that this Hon’ble Court be pleased to declare:

(i) that the purported Consent Decree dated 15th January, 1970- Ex.’K’ hereto passed in High Court Suit No. 54 of 1967 was and is null and void and the same is not binding on the Plaintiff or any person claiming through or under him;

(ii) that the said decree is null and void; and not enforceable against the Plaintiff;

(iii) that the Plaintiff is the owner of and is entitled to the possession, use and enjoyment – to the exclusion of the Defendants, of the said properties describes in Ex."A' hereto and that the Defendants have no right, title, interest or claim of any nature whatsoever so as to interfere or obstruct the possession, use and enjoyment of the said property and each and every part thereof by the Plaintiff;

(b) That this Hon'ble Court be pleased to order and decree that the said Consent Decree dated 15th January, 1970 – Ex."K" hereto, be cancelled and all steps taken pursuant thereto by any of the Defendants or anybody claiming through by or under them or acting at their instance are null and void and the Defendants be ordered the restoration of status quo ante in respect of the Plaintiff's right, title and interest in the properties described in Ex.'A' hereto:

(c) that by a permanent order and injunction of this Hon'ble Court, the Defendants by themselves, their servants, agents, offices and subordinates be restrained from in any manner interfering with, obstructing or preventing or intermeddling with the Plaintiffs' exclusive possession, use, enjoyment, development and constructing and exploitation of the properties described in Ex.'A' hereto and/or claiming any right, title or interest therein in any manner whatsoever:

(d) that by a mandatory order and direction of this Hon'ble Court, Defendants No.3 and 4 be ordered and directed to forthwith restore the structures on properties described in Ex.'A' hereto to status quo ante before their demolition and/or affecting construction then standing thereon; or

(e) In the alternative to the prayer (d) above, the Plaintiff be allowed to restore the status quo ante of the said properties as they existed prior to wrongful action of Defendants Nos. 3

and 4 subject to the Plaintiff's right to recover from Defendants Nos.3 and 4 the costs, charges and expenses and that may be incurred by him for such restoration of status quo as also the compensation in respect thereof:

(f) that by an order and decree of this Hon'ble Court, Defendant Nos.1 and 3 be ordered and decreed to pay to the Plaintiff a sum of Rs.50 Lakhs as and by way of damages for wrongful actions and also to pay to the Plaintiff all the income and profits derived by them from and out of the said properties and interest on all the aforesaid amounts at 21% per annum from the date of institution of suit till payment or realisation.

(g) that pending the hearing and final disposal of the Suit, the Defendants by themselves, their servants and agents be restrained by an order and in junction of this Hon'ble Court from in any manner entering upon or remaining on the properties described in Exh.'A' hereto or any part thereof and they be also restrained from in anyway disturbing the possession, use and enjoyment as also development, exploitation and/or construction on the said properties or any part thereof by the Plaintiff or any persons claiming through or under him:

(h) that pending the hearing and final disposal of the suit, by a mandatory order and direction of this Hon'ble Court, Defendant Nos.3 and 4 be ordered and directed to restore status quo ante with regard to the structures which existed prior to the said wrongful act of demolition by Defendant Nos.3 and 4; or in the alternative, the Plaintiff be allowed to restore the said status quo ante initially at his costs, subject to recovery of costs. Charges and expenses that may be incurred or spent by him for the said purpose;

(i) for ad-interim reliefs in terms of prayers (g) and (h) above;

(j) that the Defendants be ordered to pay the Plaintiff's costs including costs under order XXA of the Code of Civil Procedure, 1908;

(k) Such further orders be passed, directions be given and inquiries be made as this Hon'ble Court may deem fit in the nature and circumstances of the case."

5] It is contended that the suit presented by the petitioners is pending before the competent Court. So far as the entitlement of the petitioners in relation to the property which they have claimed has not yet been established since the suit presented by them is pending and has not been disposed of. The entitlement of the petitioners in relation to the property claimed would be determined at the conclusion of the suit presented by them. As on today, the petitioners have failed to establish their entitlement in relation to the property. Admittedly, as has been recorded above, the petitioners are not parties to the Consent Terms recorded between respondent No.3 and N.J. Joshi and ors.. The petitioners may have to independently establish their entitlement and thereupon only it would be open for them to claim appropriate reliefs in respect of modification of the plan prepared by the State Government, which is a part of the Consent Terms arrived at

between respondent No.3 and N.J. Joshi and ors. The reliefs claimed by the petitioners at this stage, in view of pendency of the suit presented by them, are not liable to be granted. The petition is devoid of any substance and the same is dismissed accordingly.

6] In view of dismissal of the instant petition, Chamber Summons No. 196 of 2016 does not survive and the same is disposed of.

(V. L. ACHLIYA, J.)

(R.M.BORDE, J.)