

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

**CHAMBER SUMMONS NO. 1406 OF 2018
IN
EXECUTION APPLICATION NO. 237 OF 2014**

Reliance Infrastructure Ltd. (formerly Reliance Energy Ltd.)	...	Claimants/Applicants/ Decree Holder
Versus		
Municipal Commissioner & Ors. And Sabhajeet M. Yadav & Ors.	...	Respondents Applicants/Obstructionists

Mr. Samir Sarambalkar for the Applicant.
 Ms. Anjali Chandurkar a/w Mr. Tushad Kakalia, Mr. D.J. Kakalia and Mr. Paresh Patkar i/b Mulla and Mulla and Craige Blunt and Caroe for Decree Holder.
 Mr. D.S. Shingade a/w Mr. D.J. Subhash for M.C.G.M.

CORAM : R.I. CHAGLA, J.

DATED : 6th SEPTEMBER, 2019.

P.C. :

1 This Application has been taken out by the Obstructionists seeking dismissal of the Execution Application No.237 of 2014 and for a direction against the decree holder to bring on record all evidences that Survey No.109 was allotted to them under the Town Planning Scheme.

2 The learned Counsel for the Decree Holder has referred to the previous orders passed by this Court and which have been expressly

referred to in the order dated 09.02.2018 passed by this Court. In the said order G.S. Patel, J. had referred to the judgment and decree of Pendse, J. which determined the allotment of Final Plot Nos.102-103. In the judgment of Pendse, J. it is held that the possession of the third Respondent therein was that of a trespasser to whom no rights accrued. G.S. Patel, J. has thus held that “whatever rights the third Respondent may have in this final plot, the same came to an end on 01.08.1959 in view of the provisions of Section 53(b) of the Bombay Town Planning Act, 1954....”. The Corporation was directed to take necessary steps under the provisions of law to put the Decree Holder herein in possession of the final plots allotted to them.

3 It is necessary to note that the Supreme Court had also dismissed the Special Leave Petition from Pendse, J’s order on 08.02.1982, but left it open for a decision in the civil proceedings of all questions as to the claim to the title by adverse possession. The predecessor of the obstructionist accordingly filed a long cause Suit No.5134 of 1976 in the City Civil Court at Mumbai. That Suit was dismissed on 30.06.1993. A First Appeal was preferred by the Pandey family, occupants of the said final plots and this was disposed of by an elaborate decision of Karnik, J. delivered on 4th and 5th December, 2008. The plea of adverse or hostile possession was rejected in that order. It was held by the learned Judge

that what the Appellants before him were doing was taking not alternative pleas but mutually destructive pleas. The Pandey family appealed to the Supreme Court. So did some of the occupants of the structures of the said final plot Nos.102-103 and this was heard by the Supreme Court and Special Leave Petition was dismissed.

4 It has been recorded by this Court in the said order of G.S. Patel, J. dated 09.02.2018 that nearly 40 years after Pendse, J's. order, the allottee/Decree Holder herein still does not have possession of Final Plot No.102 and it is the obligation of the M.C.G.M. to clear all the hutment dwellers on the final plot Nos.102-103.

5 In spite of the matter being concluded, this application has been taken out by the obstructionists. They still contend that Survey No.109 had been allotted to them under the Town Planning Scheme. The learned Counsel for the Obstructionists has also sought for records from the Decree Holder as to whether Survey No.109 is the same as final plot Nos.102-103. In the subsequent order passed by Karnik, J. in the Pandey's family First Appeal, Paragraph 3 opens thus:

“A plot of land bearing Final Plot No.102, Survey No.109, Hissa No.4 (City Survey No.33 part), admeasuring about 874 sq. yds. or thereabout (for short ‘the suit property’) was purchased by Burjor Navrozji Wadiwala from Avelin Gustin D’Souza under a sale deed dated 30th April 1946

registered in the office of the Sub-Registrar at Sr. No.489 of the year 1946 (Exhibit B).

This Court in order dated 09.02.2018 has thus held that no question can be posed as to whether the final plot No.102 is and was on survey No.109 as this has been concluded by this Court. It has further been held by this Court that this matter cannot be re-agitated by the Obstructionists and the only attempt being made by the Obstructionists is to prevent execution of a decree which was passed several years ago, i.e. on 28.06.1979.

6 The order of G.S. Patel, J. dated 09.02.2018 has been upheld in Appeal by the Division Bench of this Court on 11.06.2018 wherein it has been observed that :

“We are surprised as to how such a plea can be raised after so many years and more particularly when it had failed in the previous proceedings as noted above. The Principle of res-judicata/constructive res judicata surely applies. Such a plea affecting the sanctity of the judicial orders which have attained finality an neither be imagined much less accepted.”

7 There is accordingly no merit in the Application of the Obstructionists and the Application is accordingly dismissed with no order as to costs.

(R.I. CHAGLA, J.)