

pmw

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

SECOND APPEAL NO.631 OF 2015

Alkapuri Trust, Pune, A Public Charitable Trust
Through its managing trustee Shri. V.V. Badawe ... Appellant

Versus

The Pune Municipal Corporation ... Respondent

Mr. R.S. Apte, Senior Counsel i/b. Ms. Sheetal Kohad for the Appellant.
Mr. Rhishikesh M. Pethe for the Respondent.

CORAM : SMT. SADHANA S. JADHAV, J.

DATE : 11th FEBRUARY 2020.

P.C.:

1 Heard. The appellant herein impugns the judgment and order dated 17th January 2015 passed by the Ad hoc District Judge, Pune thereby confirming the judgment passed by the Civil Judge, Junior Division (P.M.C.) in Regular Civil Suit No.1193 of 2008 dated 5th November 2012. The substantial questions of law as framed by the appellant which fall for determination are as follows :

- (i) Whether the Corporation had an authority to acquire the suit property without following due process of law;
- (ii) Whether the Courts have failed to appreciate that the appellant was in undisputed possession of the suit plot;
- (iii) Whether the defendant was justified in acquiring the property for a meagre amount of Rs.1/- in absence of no objection from the society.

2 The facts of the case in short are as follows :-

. The plaintiff filed a suit seeking declaration, recovery of possession and perpetual injunction in respect of the suit property which was originally allotted to Alkapuri Co-operative Housing Society. The suit property is an open plot, allotted to the Society for the purpose of recreation and community meeting of the said Society. It was the contention of the plaintiff that the plaintiff was put into possession by the Society. The plaintiff had constructed a shed, a toilet, a compound wall and was using it as a nursery. That a public notice for acquisition was issued in the year 2007. The plaintiff had raised an objection to the said acquisition. On verifying the claim and objection, the suit property was acquired by the defendant Corporation on 31st July 2008 and the suit was filed on 1st August 2008.

3 It is pertinent to note that Alkapuri Co-operative Housing Society which had purportedly entrusted the possession to the plaintiff was not a party to the said suit. It was the contention of the plaintiff that on 5th September 2007 demolition squad of the defendant - PMC had grazed the compound wall and had caused severe damage to the gates and plants and on 17th December 2007 a public notice was given by PMC that it intends to acquire the land for nominal value of Rs.1/- as the suit property was being misused by the Society. According to the plaintiff, the suit property was a

private property. The plaintiff is a Society which is registered under the Bombay Public Trusts Act, 1950. It was the contention of the defendant-Corporation that on 22nd November 1980 the defendant had sanctioned layout in respect of the suit property and as per the said sanctioned layout, the said suit property was divided into 26 different plots and the suit property which was admeasuring about 2472 sq. meters was reserved as open space.

4 The Court cannot be oblivious of the fact that firstly the suit was not maintainable by the Trust as it was an independent entity which could not have claimed title to the suit property as the same was not allotted to the plaintiff in accordance with law. The plaintiff had no title to the suit property. The Society had allegedly given the possession of the open plot to the Trust by passing certain resolutions which do not form part of the record before the Charity Commissioner. One of the Resolutions i.e. Resolution No.9 dated 18th July 1991, open space was handed over to Alkapuri Co-operative Housing Society after execution of “bshade patta” subject to the condition that the Trust is enrolled as a member of the Alkapuri Co-operative Housing Society. There was also a resolution dated 28th February 1990 which showed that a lease agreement was executed between the parties. It is pertinent to note that none of the documents were placed on record before the Court. The said documents were not

proved in accordance with law under the Indian Evidence Act. The fact that a Co-operative Housing Society was not made a party, the said resolutions so passed by the Society could not have been taken into consideration. The suit was bad for non-joinder of necessary parties.

5 It is an admitted position that the plaintiff could not prove before the Court the manner in which he was put into possession and the mode of putting him into possession. The entrustment was not translated into any document which could be considered by the Court in accordance with law. Therefore, necessary substantial question of law which needs to be framed even at this stage, would be as follows :-

- (i) Whether the suit would be bad for non-joinder of necessary parties?
- (ii) Whether the plaintiff had locus to file the suit against the defendant?

6 The documents which were purportedly put on record by the plaintiff were the documents pertaining to the resolutions passed by the Society. It is the contention of the appellant that in absence of objection from the Society concerned whether the PMC could acquire the same.

7 Rule 13.3.1.5 of the DCR reads thus :

“Whenever called upon by the Planning Authority to do so, under provisions of section 202, 203 of BPMC Act areas under roads and open space in Bye-law Nos.12.3 to 12.5, 13.3 shall

be handed over to the Planning Authority after development of the same for which nominal amount (of Re.) shall be paid by the Planning Authority. In case of the owners who undertake to develop the open spaces for bonafide reasons as recreational community open spaces, the Authority may permit the owner to develop the open space unless the Authority is convinced that there is misuse of open spaces in which case the authority shall take over the land.”

8 Bye-laws of the Society were not before the Court. The Society itself had no authority to create a third party interest without obtaining permission from the defendant – Corporation or the Planning Authority. It was therefore clear that the Society had created a third party interest without obtaining any permission from the Planning Authority as per the sanctioned layout and therefore, the Corporation was justified in acquiring the said suit property as per DC Rules No.13.2.1.5. In view of this, it cannot be said that the Corporation has acquired the property without following due process of law, in fact, the Corporation had followed the due process of law by issuing a notice, calling for objections and then making the intention clear to acquire the said property under the Rules for a nominal value of Rs.1/-. It cannot be said that the Trust was in undisputed possession of the suit property as the Court has observed that even according to the plaintiff, he had no knowledge as to whether the Society or any member of the Society had raised any objection to the possession of the Trust before the defendant - PMC in respect of the acquisition of suit

property. He had examined the Trustees who happened to be members of the Society and yet they could not satisfy as to whether the Society had any objection or not. It is admitted by the Trustee that the objections were raised by the Society and that the documents are in custody of the Society. The suit was bad for non-joinder of necessary parties.

9 The plaintiff had no locus to file a suit since the suit plot was allotted to the Society which had no objection to the land being acquired by defendant No.1. The plaintiff had encroached upon the suit plot. There is no documentary evidence to substantiate the entrustment of property in favour of the plaintiff in accordance with law. Both issues are answered accordingly.

10 In view of the above observations, second appeal being sans merit deserves to be dismissed and is accordingly dismissed and disposed of.

(SMT. SADHANA S. JADHAV, J.)