

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 1986 OF 2018**

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Laxmi Industrial Estate,
A registered partnership firm,
Registered under the provisions of
the Indian Partnership Act, 1932,
having Their offices at 99, Jawahar
Nagar, .. Petitioners
Goregaon (West), Mumbai-
400051

Vs.

1. The State of Maharashtra
Greater Mumbai,
Through Ministry of Revenue,
having office at Mantralaya,
Mumbai-400032
2. The Collector, Mumbai Suburban
District, having his office at 10th
floor, New Administrative
Building, Bandra Kurla Complex,
Bandra (East), Mumbai-400 051
3. Crystal Pride Developers,
A firm having their offices at BKC,
Bharat Nagar, Bandra (East),
Mumbai -400051
4. Slum Rehabilitation Authority,
having its Administrative Office at
Professor Anant Kanekar Marg,
Bandra (East), Mumbai-400 051 .. Respondents

....

Mr. Amogh Singh a/w Mr. Abhishek S. Mishra & Mr. Vatsal C.
i/by Bhavin R. Bhatia for Petitioner

Mr. Milind More, Additional Govt. Pleader for State-
Respondent Nos. 1 and 2

Mr. Mayur Khandeparkar a/w Ms. Dhvani Bokaria i/by M/s.
Purnanand & Co. for the Respondent No.3

Mr. Vijay D. Patil Advocate for Respondent No.4-SRA

....

**CORAM : PRADEEP NANDRAJOG, C.J. &
SMT. BHARATI DANGRE, J.**

**RESERVED ON : JANUARY 13, 2020
PRONOUNCED ON: JANUARY 22, 2020**

JUDGMENT [PER PRADEEP NANDRAJOG, C.J.]:

1. The Writ Petitioner had filed a Revision under Section 247 of the Maharashtra Land Revenue Code, 1966 before the State of Maharashtra which was registered as No. Land 2614/M.No. 33/L-3. The same has been dismissed by the Hon'ble Minister for Revenue vide order dated 24th November 2017 (Date wrongly typed as 29th November 2017 in the Writ Petition and the prayer clause thereof). As a result of the Revision being dismissed the order dated 19th March

2011 passed by the Collector Mumbai Suburban in the Appeal filed by the petitioner stands confirmed.

2. For record, it may be noted that the Collector's order dated 19th March 2011 grants non-agricultural permission under Section 44 of the Maharashtra Land Revenue Code in favour of the Crystal Pride Developers; respondent No.3 in the Writ Petition in respect of land bearing Survey No. 41/1/A, CTS No. 1/A/286 village Oshiwara Taluka Andheri, Mumbai.

3. The 3rd respondent had purchased the said property vide Deed of Conveyance dated 30th May 2010. The petitioner claims title to the said land.

4. The case of the petitioner is that no permission could be granted to respondent No.3 to construct on the subject land because as per the Development Plan it was reserved as a recreational ground. It is the further case of the petitioner that conditions of non-agricultural permission granted have been breached inasmuch as the 3rd respondent altered the Scheme of Development from a Development under Regulation 33(5) of the Development Control Regulations, 1991 to that under Regulation 33(14)(d).

5. The stand of the respondent No.3 was that the petitioner has filed a substantive Civil Suit bearing No. 711/2011 which is pending on the Original Side of this Court claiming ownership of the land with a prayer that the Conveyance Deed in favour of the respondent No.3 be cancelled.

6. During arguments of the Writ Petition on 13th January 2020 the central issue which emerged was to the *situs* of the recreational ground shown in the Development Plan i.e. whether the site fell in CTS No. 627 owned by the petitioner or it fell on the land comprised in CTS No. 1/A/286 belonging to respondent No.3 under Deed of Conveyance dated 30th May 2010, and thus we lodge a caveat that the present decision treats respondent No.3 as the owner of the land and we also record that title of the petitioner in said land currently awaits adjudication under Suit No.711/2011 filed by the petitioner who claims ownership right.

7. The undisputed position of both the litigating parties is that a Development Plan has been notified and the subject property is comprised in the area earmarked as a residential zone. The residential zone has areas earmarked as recreational

and areas earmarked as residential.

8. It is thus a case where the Development Plan has to be prepared to the same scale as the Revenue Plan and thereafter superimpose the former on the latter to determine where the land as per revenue map is located on the Development Plan.

9. A perusal of the non-agricultural permission order dated 19th March 2011 passed by the 2nd respondent in favour of the 3rd respondent is in the context of development for residential purpose. The said order clearly states that it is only for fiscal purpose i.e. realization of the non-agricultural use assessment. The Notification dated 6th March 2008 issued under Section 113(1) of the Maharashtra Land Revenue Code read with Rule 16(3) of Maharashtra Land Revenue Conversion of Use of Land and Non-Agricultural Assessment Rules, 1969 clearly enumerate that the standard rate for non-agricultural assessment in respect of land user used for residential building is common so long as user remains residential. The 3rd respondent has paid the necessary assessment @ 9% per square meter.

10. A perusal of the revisional order dated 24th

November 2017 would show that the revisional authority has held that the petitioner has not made good the submission of the Non-agricultural order being faulted with reference to the proposal submitted under the Development Control Regulations for residential use. The land required for recreational purpose is beyond the boundary wall of the land of the 3rd respondent. Pertinently, when the petitioner sought regularization of a Mezzanine floor constructed on its plot, holding that the petitioner had to make available land for recreational purpose and thus while making claim for entitlement to a covered area comprising different floors of the building could not take the benefit of the entire land; meaning thereby, the recreation area fell within the boundaries of the land of the petitioner and we note that the said decision dated 14th March 2012 passed by the Additional Chief Secretary is pending adjudication in Writ Petition No.1378/2012 filed by the petitioner. We note that the Revenue Minister while deciding the Revision has noted afore-noted facts.

11. During arguments of the Writ Petition, learned counsel for the petitioner relied upon an order dated 27th November 2009 passed by the Collector and a Property Registration Card showing recreational ground on CTS

No.1/A/286, to which the learned counsel for the 3rd respondent urged that this was an incorrect observation and had been subsequently corrected and rectified. Learned counsel drew our attention to a Report dated 7th July 2010 prepared by Municipal Corporation, Greater Mumbai as per which the Development Plan records that land reserved for recreation ground was in CTS No. 627. The relevant part of the Report relied upon by learned counsel for the 3rd respondent reads as under:

“13. Development Plan Remark issued to applicant in 2009.

It is seen from the copy of development plan remark issued M/s. Dalal Joshi & Associates issued under no. ChE/189/DPWS/K/W dtd. 20.05.2009, wherein it was mentioned that the land bearing CTS No. 627 of Village Oshiwara is partly reserved for the public purpose of Recreation Ground. The land under reference is mostly situated in Special Industrial Zone (I-3) & partly in a Residential Zone and abuts the reservation of Regional Transport Office. The said remark is issued in computerized print out GIS format as per Present Practice.

It is to be specially mentioned here that Ownership of land & demarcation CTS as well as village boundary is in the Preview of collector/CTSO. Only position reservation is to be marked (after demarcation of reservation by MCGM) based on City

Survey boundaries by CTSO.

Further it is seen from the development remarks issued under CHE/5624/DPWS dtd 05.10.1993, wherein Zonal boundary between Special Industrial Zone (I-3) and Residential zone (R) & eastern boundary of Recreation Ground reservation coincides is at a distance about 536 mt. from edge of 27.45 mt Road.

However as per S.R.D.P. of K/West ward the zonal boundary between Special Industrial Zone (I-3) & residential Zone (R) and eastern boundary of RG reservation is at a distance of about 540 mt & 480 mt respectively from 27.45 mt wide D.P. Road therefore the said remarks are not issued in Consonance with SRDP Provision.

Considering the facts mentioned above and the provisions of Sanctioned Revised Development Plan of K West Ward it is to mention here that the reservation of Recreation Ground is situated on Land bearing CTS No. 627 of village Oshiwara S. No. 41 (Pt) of village Oshiwara (i.e. towards Eastward side of Oshiwara Village Boundary). However the Development is already CARRIED OUT ON LAND BEARING CTS No. 627 of Village Oshiwara and hence the Recreation Ground reservation as per SRDP of K/West ward is situated on existing bldgs. of Laxmi Industrial Estate for which occupation is already granted in year 1984 i.e. before Sanctioned Revised Development Plan. Further separate P.R. Card for newly form CTS No. 1/1A/286 of Village Oshiwara does not show Ownership aspect. However, Recreation Ground reservation is shown on

newly created plot no. 1 having new proposed CTS No. 1A/286 collector (MSD) will be also requested to take the cognizance of Recreation Ground reservation as per SRDP of K/West which is situated on land bearing CTS No. 627 of Village Oshiwara.

In view of the above facts the remarks issued by this office for the CTS No. 627 of Village Oshiwara issued to Shri. Bhavesh Parekh under CHE/189DPWS/KW dtd. 20.05.2010 is correct”.

12. Learned counsel for the 3rd respondent also drew our attention to a letter dated 30th December 2010 addressed by the MCGM to the Collector recording that a revised survey had been carried out by CTSO Andheri at site, vide MR No.295/2009 as per which reservation for recreational ground was on land bearing CTS No. 627, i.e. towards eastern side of Oshiwara Village Boundary. Relevant part of the letter which was highlighted by learned counsel for respondent No.3 reads as under:

“Collector (MSD)’s order dtd. 27.11.2009:-

As per Order from Hon. Court in light of Consent Terms decided between State Govt. of Maharashtra & M/s. Oshiwara Land Development Co. revised survey was carried out CTSO Andheri on site vide MR NO 295/09. The Collector MSD’s Order dtd. 27.11.2009 was submitted by Arch M/s. Dalal Joshi & Associates. It is

seen from the said order that new Property cards are open at East side of S. no. 41 (Pt) of Village Oshiwara.

The extract for Oshiwara village as mentioned in Collector (MSD)'s order dtd. 27.11.2009 which is reproduce as under:

<i>Sr. No.</i>	<i>Plot No.</i>	<i>Proposed CTS</i>	<i>Area in Sq. Mts.</i>	<i>Description</i>
<i>1</i>	<i>I</i>	<i>1A/286</i>	<i>5022.80</i>	<i>West side Laxmi Industrial Estate & also situated on East of Plot A as mentioned in Consent decree and also shown in D. P. Sheet.</i>
<i>2</i>	<i>II</i>	<i>1A/285</i>	<i>304</i>	<i>Existing Road</i>
<i>3</i>	<i>III</i>	<i>1A/284</i>	<i>756.80</i>	<i>Open Plot</i>
<i>4</i>	<i>IV</i>	<i>1A/283</i>	<i>206.20</i>	<i>Existing Road</i>
<i>5</i>	<i>V</i>	<i>1A/282</i>	<i>1354.50</i>	<i>Existing Garden</i>
	<i>Total</i>		<i>7344.50 Sq. mts.</i>	

While deciding the above order your office has not called any remarks/demarcation from Development Plan deptt for ascertaining the location of Recreation Ground.

However considering the facts mentioned above and the provisions of Sanctioned Revised Development Plan of K West Ward it is mentioned

here that the reservation of Recreation Ground is situated on land bearing CTS No. 627 of Village Oshiwara, S No. 41 (pt) of village Oshiwara (i.e. towards Eastward side of Oshiwara Village Boundary). Further separate P.R. Card for newly form CTS No. 1/1A/286 of Village Oshiwara does not shows ownership aspect. You are therefore requested to clarify the Ownership of CTS No. 1/1A/286 of Village Oshiwara.

You are also requested to take the cognizance of Recreation Ground reservation as per SRDP of K/West which is situated on land bearing CTS No. 627 of Village Oshiwara”.

13. We note that said letter along with D.P. remarks has been filed by the petitioner in Writ Petition No. 1905/2012 before this Court. We further find that the Collector's order dated 27th November 2009 has been challenged by the petitioner in this Court under Writ Petition No. 2563/2013 .

14. In view of the afore-noted admitted facts, on the issue of title to the land comprised in CTS No. 1/A/286 village Oshiwara, Taluka Andheri, Mumbai since a Civil Suit No.711/2011 is pending on the Original Side of this Court and additionally for the reason a Writ Court cannot decide a question of title the said issue has to await an adjudication in the Civil Suit. The issue concerning the *situs* of the

recreational ground with reference to the various orders passed by the authorities from time to time currently awaits adjudication in Writ Petition Nos. being W.P. No. 1378/2012, W. P. No. 1905/2012 and W.P. No. 2563/2013 in this Court.

15. Thus the instant Writ Petition is not a fit petition for us to grant any relief prayed for by the petitioner.

16. Clarifying that the issue of title would be decided in Civil Suit No. 711/2011 and the issue whether the land to be used for recreational purposes falls in CTS No. 1/A/286 or land comprised in CTS No.627 shall be decided in W.P. No. 1378/2012, W. P. No. 1905/2012 and W.P. No. 2563/2013, we dismiss the instant Writ Petition but without any order as to costs.

SMT. BHARATI DANGRE, J.

CHIEF JUSTICE