

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION (L) NO.1776 OF 2019

Raju B. Vaswani	...	Petitioner
Vs.		
State of Maharashtra and others	...	Respondents

Mr. Vincent D'Silva for Petitioner.
Mr. Amit Shastri, AGP for Respondent No.1-State.
Mr. Kedar Purav for Respondent Nos.2 to 4.
Mr. C. K. Tripathi for Respondent Nos.5 to 7.

CORAM : UJJAL BHUYAN, J.
Reserved on : JANUARY 06, 2020
Pronounced on : JUNE 09, 2020

ORDER:

Heard Mr. Vincent D'Silva, learned counsel for the petitioner; Mr. Amit Shastri, learned AGP for respondent No.1-State; Mr. Kedar Purav, learned counsel for respondent Nos.2 to 4; and Mr. C. K. Tripathi, learned counsel for respondent Nos.5 to 7.

2. By filing this petition under Articles 226 and 227 of the Constitution of India, petitioner has sought for the following reliefs:

1. To set aside and quash order dated 12.02.2019 passed by respondent No.4 i.e., Estate Manager-1, Konkan Housing and Area Development Board;
2. To declare that the property admeasuring about 120 square metres covered by plot No.177 of Survey No.29A situated at Alibaug, District Raigad in the State of Maharashtra is lawfully transferred and regularized in the name of the petitioner and that petitioner is the owner of the said property;
3. Respondent Nos.2 to 4 be jointly and severally ordered and directed

to remove any obstruction and / or encroachment over the said property and to hand over the peaceful and vacant possession with proper demarcation of the said property to the petitioner.

2.1. An interim prayer has been made to the effect that during the pendency of the writ petition respondent Nos.1 to 4 be jointly and severally directed not to transfer and / or regularize the said property in the name of any other person as well as not to sell, transfer, assign or create any third party rights over the said property.

3. Case of the petitioner is that deceased Anil Sitaram Talawdekar during his lifetime was allotted non-agricultural plot of land by respondent Nos.2 and 3 at plot No.177 of Survey No.29A admeasuring about 120 square metres situated at Alibaug, District Raigad in the State of Maharashtra (for short 'the said property' hereinafter). It is stated that the said allotment was made prior to 1994.

4. In the year 1994, Anil Sitaram Talawdekar agreed to sell the said property to the petitioner. In this connection it is stated that Anil Sitaram Talawdekar had executed several documents all dated 19.03.1994 in favour of the petitioner for the purpose of sale, transfer and assignment of his right, title and interest in respect of the said property for agreed consideration. For this purpose petitioner paid Anil Sitaram Talawdekar a sum of Rs.45,000.00 whereafter the latter executed in favour of the petitioner agreement for sale, irrevocable power of attorney, affidavit and indemnity bond in the year 1994 besides handing over original title documents to him. According to the petitioner, as per the said documents Anil Sitaram Talawdekar had sold, transferred and assigned all his right, title and interest over the said property to the petitioner. In May 1995, petitioner was put in physical possession of the said property but without any physical demarcation.

5. However, petitioner could not approach respondent No.2 i.e., Maharashtra

Housing and Area Development Authority (MHADA) and respondent No.3 i.e., Chief Officer, Konkan Housing and Area Development Board, a unit of MHADA, for transfer / regularization of the said property due to lack of knowledge, business commitments besides financial and domestic issues. However, when the petitioner learnt from reliable sources that Anil Sitaram Talawdekar was trying to sell / assign the said property to some other person and defeat the rights of the petitioner, he submitted letter dated 19.01.2015 to the said respondents asserting his right over the said property and requesting them not to transfer the said property in the name of any other person.

6. When the petitioner went to the office of MHADA to get the said property regularized in his name, he was told that unless the transfer documents were registered, his request would not be considered. Thereafter, a fresh agreement for sale was made on 22.09.2015 between Anil Sitaram Talawdekar and the petitioner. It is further stated that the said agreement for sale was lodged for registration in the office of the Sub-Registrar at Alibaug after payment of stamp duty. Subsequently, the agreement for sale was registered.

7. Anil Sitaram Talawdekar expired on 24.06.2016.

8. Thereafter, petitioner moved respondent Nos.2 and 3 for transfer / regularization of the said property from the name of Anil Sitaram Talawdekar to his name. For this purpose necessary transfer premium and incidental dues were paid. Accordingly, order dated 15.07.2016 was issued by the office of respondent No.3 transferring / regularizing the said property in the name of the petitioner.

9. Petitioner has stated that in his absence respondent No.7 tried to grab the said property. On complaint made by the petitioner and at the intervention of the local police, respondent No.7 removed himself from the said property. Petitioner has further stated that he does not know respondent No.7 and had not made any

kind of transaction with him. However, he received a caveat sent by respondent No.7 wherein it was mentioned that respondent No.7 had purchased the said property from Anil Sitaram Talawdekar in the year 2015 by a registered deed and was in possession of the same. It was only then that petitioner could come to know about the alleged purchase of the said property by respondent No.7.

10. Office of respondent No.2 informed the petitioner vide letter dated 29.04.2017 that complaints were received against him in respect of the said property. In this connection, a hearing was fixed on 15.05.2017 which was re-fixed on 20.05.2017. Petitioner also filed written submissions on 23.05.2017 along with relevant documents before respondent No.2.

11. Petitioner has alleged that he did not receive any decision from respondent Nos.2 and 3 from 23.05.2017 till 11.02.2019. Much later, when the petitioner had visited the office of respondent No.4, he was handed over a copy of order dated 12.02.2019 passed by respondent No.4 cancelling regularization of the said property in the name of the petitioner.

12. Aggrieved by the said order, petitioner wrote to respondent No.4 vide letter dated 21.02.2019 for re-examining the issue. This was followed by petitioner's letter dated 25.02.2019 to respondent No.3 and pleader's notice dated 27.02.2019 to both the above respondents. Petitioner also issued public notice in the print media regarding his right and interest over the said property. However, no remedial measures were taken by the said respondents.

13. Aggrieved, petitioner has preferred the present writ petition seeking the reliefs as indicated above.

14. Basic contention of the petitioner is that documents once executed could not have been cancelled by respondent No.4; only a civil court of competent

jurisdiction has the power and authority to cancel such documents. Impugned order reflects arbitrary exercise of power and is in violation of the principles of natural justice. Petitioner's right over the property could not have been nullified in such a manner.

15. This Court by order dated 18.07.2019 granted ad-interim relief to the petitioner as sought for.

16. In their joint affidavit in reply respondent Nos.5 and 6 stated that late Anil Sitaram Talawdekar was the husband of respondent No.5 and father of respondent No.6. Respondent No.2 allotted open plot No.113 to Anil Sitaram Talawdekar by a registered lease agreement bearing registration No.1450 dated 30.05.1991 (registered at Alibaug). Subsequently, the number of the said plot of land was changed from 113 to 177 and in this connection deed of rectification dated 09.06.1994 was executed between respondent No.2 and Anil Sitaram Talawdekar.

16.1. It is stated that late Talawdekar was residing at Malad, Mumbai and was finding it difficult to manage the said plot of land situated at Alibaug. It is further stated that late Talawdekar came in contact with the petitioner who was acting as an agent in the premises of respondent No.2. In order to ensure that the property was properly managed and official formalities for transfer of the same could be completed, late Talawdekar appointed the petitioner as his constituted attorney by a power of attorney dated 19.03.1994 which was however unregistered.

16.2. It is the case of respondent Nos.5 and 6 that when late Talawdekar came to know that the petitioner was not discharging his duties, he cancelled the power of attorney besides instructing the petitioner not to act in terms of the same.

16.3. When late Talawdekar came to know sometime in the year 2013 that inspite of cancellation of power of attorney, petitioner was misusing the same, he

published a public notice dated 17.10.2013 in the newspaper 'Raigad Times' stating that petitioner was in no way connected or concerned with the said plot of land as the related power of attorney dated 19.03.1994 was cancelled way back in 1995.

16.4. In October, 2014 late Talawdekar and respondent No.7 came to an understanding that the former would sell and the latter would buy the right, title and interest over the said plot of land for total consideration of Rs.12,96,000.00. On payment of the aforesaid agreed consideration amount, late Talawdekar executed registered power of attorney dated 24.02.2015 in favour of respondent No.7 and his relative Smt. Usha Sanjay Adhikari. Thereafter physical possession of the said plot of land was handed over to respondent No.7 and Smt. Usha Sanjay Adhikari who are in exclusive possession and enjoyment over the said plot of land since then.

16.5. Because of ill health the documentation process could not be completed by late Talawdekar. However, in April, 2016 respondent No.7 had contacted respondent No.6 and his father, late Talawdekar enquiring about a document dated 22.09.2015 (agreement for sale) allegedly executed in favour of the petitioner in respect of the said plot of land. It is stated that late Talawdekar had denied execution of any such document in favour of the petitioner. It is further stated that the said document was a forged and a fabricated one. In this regard a public notice dated 23.05.2016 was published in 'Raigad Times' denying execution of any such document.

16.6. Before sale deed could be executed between Anil Sitaram Talawdekar on the one hand and respondent No.7 and Smt. Usha Sanjay Adhikari on the other hand, the former i.e., father of respondent No.6 died on 24.06.2016.

16.7. On request of respondent No.7, respondent Nos.5 and 6 as the legal heirs of

Anil Sitaram Talawdekar lodged complaint against the petitioner in the office of respondent No.2 for making fake documents and staking false claim on the basis thereof in respect of the said property. In this connection show cause notice dated 12.05.2017 was issued to the petitioner whereafter order dated 12.02.2019 was passed cancelling the alleged transfer made by respondent No.2 i.e., MHADA in favour of the petitioner.

16.8. It is stated that after the order dated 12.02.2019 was passed, respondent Nos.5 and 6 executed conveyance deed dated 07.03.2019 in favour of respondent No.7 as he had already paid the entire consideration amount in respect of the said plot of land to late Talawdekar. In fact, respondent No.2 by order dated 26.02.2019 had transferred the said plot of land in the name of respondent No.7 and Smt. Usha Sanjay Adhikari. According to respondent Nos.5 and 6, respondent No.7 and Smt. Usha Sanjay Adhikari are now in use, occupation and possession of the said plot of land.

16.9. Claim of the petitioner that he had acted on the basis of the unregistered power of attorney dated 19.03.1994 and agreement for sale dated 22.09.2015 has been denied by the answering respondents. The so called power of attorney dated 19.03.1994 was an unregistered document and was in any case cancelled by late Talawdekar.

16.10. Stating that filing of the writ petition is a gross abuse of the process of law, respondent Nos.5 and 6 seek dismissal of the writ petition with cost.

17. Respondent No.7 has also filed affidavit in reply. Stand taken by respondent Nos.5 and 6 have been reiterated by respondent No.7. He has stated that the unregistered power of attorney dated 19.03.1994 whereby Anil Sitaram Talawdekar had appointed the petitioner as his power of attorney holder was cancelled in the year 1995 itself. When information was received sometime in the

year 2013 that the petitioner was misusing the said power of attorney even after cancellation, late Talawdekar published a public notice in the 'Raigad Times' on 17.10.2013 stating that petitioner was in no way connected with the said plot of land and could not act pursuant to the power of attorney dated 19.03.1994 as it was cancelled in 1995 itself.

17.1. Respondent No.7 has stated that he came in contact with Anil Sitaram Talawdekar in October, 2014 and following negotiations and discussions it was agreed upon that Anil Sitaram Talawdekar would sell, transfer and assign all his rights, title and interest over the said plot of land to respondent No.7 and his relative Smt. Usha Sanjay Adhikari for a total consideration of Rs.12,96,000.00. It was further agreed upon that on receipt of the consideration amount, Anil Sitaram Talawdekar would execute a registered irrevocable power of attorney in favour of respondent No.7 and his relative Smt. Usha Sanjay Adhikari.

17.2. It is stated that respondent No.7 thereafter paid the entire consideration amount of Rs.12,96,000.00 to Anil Sitaram Talawdekar between October, 2014 to February, 2015 whereafter late Talawdekar executed registered power of attorney dated 24.02.2015 in favour of respondent No.7 and Smt. Usha Sanjay Adhikari. It was clearly mentioned in the power of attorney that the entire consideration amount was paid whereafter physical possession of the said plot of land was handed over to respondent No.7 and Smt. Usha Sanjay Adhikari.

17.3. Respondent No.7 has stated that he along with Smt. Usha Sanjay Adhikari are in exclusive use, occupation, possession and enjoyment of the said plot of land.

17.4. It is further stated that when respondent No.7 came to know that petitioner was misusing the unregistered power of attorney dated 19.03.1994 which was in fact cancelled and that on such basis got executed document of transfer i.e.,

agreement for sale dated 22.09.2015, he brought it to the notice of Anil Sitaram Talawdekar who categorically stated that after cancellation of the unregistered power of attorney dated 19.03.1994 he had never executed the said document dated 22.09.2015 in favour of the petitioner. Moreover petitioner never paid the consideration amount. Accordingly a public notice in this regard was issued by Anil Sitaram Talawdekar on 23.05.2016 in 'Raigad Times' specifically mentioning that any document purported to be a document of transfer allegedly executed by him in favour of the petitioner in respect of the said plot of land was a forged and a fabricated one.

17.5. After issuing the public notice as above and before executing the final land documents, respondent No.7 was informed that Anil Sitaram Talawdekar expired on 24.06.2016 leaving behind respondent Nos.5 and 6 as his only surviving legal heirs.

17.6. Respondent Nos.5 and 6 thereafter lodged complaint against the petitioner before respondent No.2 alleging that petitioner had forged and fabricated documents to grab the said plot of land. Acting on the said complaint, respondent No.2 issued show-cause notice dated 29.04.2017 to the petitioner. Further notice dated 12.05.2017 was issued regarding hearing fixed on 20.05.2017.

17.7. In the meanwhile respondent No.7 and Smt. Usha Sanjay Adhikari instituted Special Suit No.143 of 2018 in the Court of Civil Judge, Senior Division, Alibaug for specific performance of contract and for cancellation of the alleged transfer document (agreement for sale) dated 22.09.2015 in respect of the said plot of land. In the said suit, respondent Nos.5 and 6 as well as the petitioner have been arrayed as defendant Nos.1, 2 and 3.

17.8. Pursuant to the show cause notice, a hearing took place regarding the complaint made against the petitioner by respondent Nos.5 and 6. Petitioner and

all other stakeholders were heard. Thereafter, the Estate Manager i.e., respondent No.4 passed the order dated 12.02.2019 cancelling the deed of transfer (agreement for sale) dated 22.09.2015.

17.9. After the order dated 12.02.2019 was passed by respondent No.4, agreement dated 07.03.2019 came to be executed in favour of respondent No.7 and his relative Smt. Usha Sanjay Adhikari by respondent Nos.5 and 6 in respect of the said property. As a matter of fact, respondent No.2 had passed order dated 26.02.2019 transferring the said plot of land in favour of respondent No.7 and his said relative. It is stated that pursuant to such transfer, respondent No.7 has been paying service charges regularly to respondent No.2 in respect of which corresponding receipts have been issued.

17.10. Respondent No.7 has contended that as per Section 17(9)(a) (sic) of the Registration Act, 1908, it is necessary for a power of attorney dealing with transfer of property for consideration to be registered. This has been made amply clear by the Additional Collector of Raigad District in his notification dated 30.07.2010. Therefore, no reliance can be placed by the petitioner on the unregistered power of attorney dated 19.03.1994 which in any case was cancelled by the executor. Regarding the subsequent document of transfer i.e., agreement for sale dated 22.09.2015 it is stated that admittedly the said document is a forged one. Narrative presented by the petitioner is unbelievable as he could not have waited for long 21 years for establishing his right over the said plot of land if he had indeed purchased the same. Order dated 12.02.2019 was rightly passed by respondent No.4 because the purported transfer of the said plot of land to the petitioner vide order dated 15.07.2016 was on the basis of forged document. Therefore, writ petition should be dismissed.

18. Petitioner has filed rejoinder affidavit to the affidavit of respondent No.7. Petitioner has stated that the public notice dated 17.10.2013 did not speak about

the rights and interest created in the subject property. The said notice was not published in Mumbai. Therefore, neither the petitioner nor respondent Nos.2 to 4 were aware of the same. Petitioner has further stated that from 1994 onwards, no correspondence was made by Anil Sitaram Talawdekar or after his death by his legal heirs regarding cancellation of the power of attorney granted in favour of the petitioner. In fact petitioner has raised serious doubts about the public notice dated 17.10.2013 which it is alleged was manufactured by respondent No.7 and the legal heirs of late Anil Sitaram Talawdekar. Moreover, the second public notice dated 23.05.2016 is inconsistent with the first public notice thus reinforcing his doubts about the genuineness of the first public notice. Petitioner has asserted that the original documents of the property were handed over to him by Anil Sitaram Talawdekar in the year 1994 itself. Petitioner has further stated that though registered power of attorney was made by Anil Sitaram Talawdekar on 24.02.2015 appointing respondent No.7 and Smt. Usha Sanjay Adhikari as his constituted attorney, no sale agreement was made. Petitioner submits that respondent No.4 had mis-interpreted various file notings including the noting of the Law Department and thereafter decided to cancel regularization of the plot of land in favour of the petitioner vide the impugned order dated 12.02.2019.

19. Submissions made by learned counsel for the parties are on pleaded lines. Therefore, a detailed reference to the same is considered not necessary. However, the submissions so made have received the due consideration of the Court.

20. From the pleadings and submissions what has come to the fore is that the said plot of land was allotted by respondent No.2 to late Anil Sitaram Talawdekar on 30.05.1991. Late Talawdekar had appointed the petitioner as his power of attorney holder in respect of the said plot of land by an unregistered power of attorney dated 19.03.1994. According to the petitioner, he had paid a sum of Rs.45,000.00 to late Anil Sitaram Talawdekar whereafter he had executed an agreement for sale with the petitioner dated 19.03.1994.

21. A perusal of the agreement for sale dated 19.03.1994 would go to show that late Anil Sitaram Talawdekar i.e., the vendor had agreed to sell his rights, title, interest and claim over the said plot of land to the petitioner on consideration of Rs.45,000.00 which it is stated was paid. The vendor gave his consent for transfer / regularization of the said plot of land to the petitioner.

22. However, according to the petitioner's own stand, from 1994 onwards till 2015 i.e., for more than 20 years he did not take any steps for transfer / regularization of the said property in his name 'due to lack of knowledge and owing to his business commitments and domestic life at Mumbai'. Such a statement is not only vague but does not at all inspire the confidence of the Court. In paragraph 1 of the writ petition, petitioner has described himself as earning his livelihood by doing business of estate consultancy. Therefore, it is difficult to believe and accept that a person who is earning his livelihood by doing business of estate consultancy would not have knowledge about transfer / regularization of property by and before respondent No.2. Besides, as stated above, not taking steps for getting the said plot of land transferred to his name for more than 20 years after the agreement for sale dated 19.03.1994 raises serious doubts about the credibility and bonafides of the petitioner.

23. Though respondent Nos.5 and 6 as well as respondent No.7 in their respective affidavits have stated that the unregistered power of attorney dated 19.03.1994 was cancelled in the year 1995 itself, no such particulars or cancellation document have been placed on record.

24. Be that as it may, neither a power of attorney, whether registered or unregistered, nor an agreement for sale conveys title over land. There has to be a proper sale deed whereby the vendor conveys title to the vendee upon consideration paid. That apart, respondents are right in contending that under

Section 17(1A) of the Registration Act, 1908, a power of attorney containing power to transfer any property for consideration has to be necessarily registered. Admittedly, the power of attorney dated 19.03.1994 is an unregistered document with questionable validity in the eye of law. Even if this unregistered document is taken into consideration, all that it says is that Anil Sitaram Talawdekar had nominated, constituted and appointed the petitioner to be his attorney to do the acts mentioned therein which included representing late Talawdekar before various authorities including courts, appointing architects etc. for surveying and preparing plans for development of the said plot of land etc. Therefore, this document too does not in any manner convey title of the said property to the petitioner.

25. Though the petitioner has stated that he was put in physical possession over the said property in May, 1995, no possession certificate has been placed on record. His statement that he was put in physical possession over the said property without demarcation itself reveals that possession was not handed over because there cannot be handing over of possession of a property without demarcation of boundary.

26. But the fact that petitioner did nothing to cement his title over the said plot of land for more than 20 years after 19.03.1994 when agreement for sale of the said plot of land was made makes his claim highly suspect and questionable. That apart, if there was already an agreement for sale dated 19.03.1994, there was no reason or necessity to have another agreement for sale on 22.09.2015. Unlike the first agreement for sale dated 19.03.1994 where it was stated that the vendor had agreed to sell the said plot of land to the petitioner for a total consideration of Rs.45,000.00, which was stated as paid, in the second agreement for sale dated 22.09.2015 the vendor agreed to sell the same plot of land to the petitioner for a total consideration of Rs.12,96,000.00. There is no mention either in the agreement or in the pleadings about payment of the said consideration amount by

the petitioner to the vendor. But the most interesting aspect is that on 22.09.2015 when the said second agreement for sale was made, the vendor Anil Sitaram Talawdekar was very much alive; he having expired later on 24.06.2016. This agreement for sale was signed by the petitioner both on behalf of the vendor Anil Sitaram Talawdekar and the vendee i.e., himself. Though the petitioner signed on behalf of the vendor as his constituted attorney, there is no mention in the said agreement regarding the power of attorney dated 19.03.1994 which appointed him as his constituted attorney. There was also no mention about the previous agreement for sale dated 19.03.1994 or what happened thereto and thereafter in the second agreement for sale dated 22.09.2015. Moreover, this was only an agreement for sale with the condition that the said plot of land would be sold to the petitioner on payment of Rs.12,96,000.00. As indicated, there is no averment by the petitioner to the effect that he had paid the aforesaid amount. Therefore, the most basic condition for sale of the property i.e., payment of the consideration amount was not fulfilled by the petitioner. That apart, as already noted above, an agreement for sale cannot be equated with a sale deed and does not convey title.

27. Therefore, such a document cannot be relied upon and certainly does not inspire the confidence of the writ court.

28. In the circumstances passing of the impugned order dated 12.02.2019 cannot be faulted. Petitioner was given notice and was heard. In other words, he was fully aware of the allegations against him which he tried to meet in the hearing. There was no violation of the principles of natural justice and due procedure was followed before passing the impugned order. In judicial review, the writ court is concerned with the decision making process and not with the merit of the decision *per se*.

29. On the other hand, though not very relevant, respondent No.7 has placed on record a number of documents post the impugned order which go to show that he

has a better claim to the land in question. In addition, he has also instituted Special Suit No.143 of 2018 in the Court of Civil Judge, Senior Division, Alibaug for specific performance of contract wherein the legal heirs of late Anil Sitaram Talawdekar and the petitioner are the defendants.

30. In the above factual background, Court is not inclined to interfere with the impugned order dated 12.02.2019 that too in a proceeding under Articles 226 and 227 of the Constitution of India. In so far the prayer for declaratory writ is concerned i.e., for a declaration that petitioner is the owner of the said property having right, title and interest over the same, in the backdrop of disputed facts as noticed, the same would not be feasible. A writ proceeding is primarily concerned with enforcement of one's right and not for establishment of right. Therefore, it is open to the petitioner to move the civil court of competent jurisdiction to establish his right over the said property in question. The same cannot be gone into in a writ proceeding.

31. In view of the discussions made above, Court finds no merit in the writ petition which is accordingly dismissed. However, there shall be no order as to costs.

(UJJAL BHUYAN, J.)

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