

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

909 WRIT PETITION NO.7181 OF 2021

BHAUSAHEB HARIBHAU THOKE
VERSUS
THE MUNICIPAL COUNCIL PATHRI THROUGH ITS CHIEF OFFICER
AND ANOTHER

...
Advocate for Petitioner : Mr. S. S. Bora
AGP for Respondent no.2: Mr. Kiran B. Jadhavar
Advocate for Respondent no.1: Mr. Khandare h/f Mr. M. P. Tripathi

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CORAM : AVINASH G. GHAROTE, J.

DATED : 9th JULY, 2021.

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PER COURT : :

1. Heard Mr. Bora, learned counsel for the petitioner and Mr. Khandare for respondent no.1. The present petition takes exception to the action on the part of the respondent no.2, whereby the preliminary objection raised by the petitioner and others, vide their application dated 02/03/2021, has been directed to be decided along with the main proceedings. Mr. Bora, learned counsel for the petitioner submits, that this is not permissible in light of the Section 6A of the Bombay Government Premises (Eviction) Act, 1955 (hereinafter 'Act of 1955'), which makes the provisions of Code of Civil Procedure, applicable to proceedings before the competent authority under

the Act of 1955. He further submits that in view of the mandate of Order XIV Rule 2 of CPC, it was necessary for respondent no.2 to have decided application raising preliminary objection at the beginning itself.

2. Mr. Khandare, learned counsel for respondent no.1 submits, that the CPC is not applicable to the proceedings before the competent authority under the Act of 1956 and there was nothing wrong in the respondent no.1, postponing consideration of the application raising preliminary objection to the decision of the main proceedings. By inviting my attention to the preliminary objection raised by the petitioner and others by their application dated 02/03/2021, he submits that pleas regarding section 11 of CPC as well as estoppel have been raised, which cannot be decided as a preliminary issue, as the entire proceedings, in the totality will have to be looked into.

3. Brief narration of the facts is necessary :

The petitioner and others are occupants of various shop blocks and open plot, owned by the Municipal Council, Pathri / respondent no.1. Proceedings for their eviction under Section 100-A of the Maharashtra Municipal Councils, Nagarpanchayat and Industrial Townships Act, 1965 (hereinafter for short 'Act of

1965') read with the provisions of the Bombay Government Premises Eviction Act, 1955 (hereinafter for short 'Act 1955'), were initiated by respondent no.1. It was however held in Writ Petition No. 6918 of 2010 decided on 14/02/2011, wherein the proceedings for eviction were challenged that the respondent no.2 / RDC, did not acquire the powers of the competent authority, as notification so empowering him, was of the year, 2010, whereas the proceedings were initiated in the years, 2007. On this ground the petition was allowed. However, liberty was granted to take appropriate proceedings as permissible in law.

4. Thereafter fresh proceedings were filed in March, 2011 under Section 100-A of the Act of 1965 read with the Act of 1955, during the pendency of which, the respondent no.1 passed a resolution, resolving to take action against the petitioners under the provisions of MRTP Act, 1966, as a result of which on 11/04/2016, the proceedings before respondent no.2, were withdrawn by the order dated 11/04/2016 subject to certain directions as contained therein, to avail the remedy under the MRTP Act under the said resolution.

5. Proceedings thereafter were initiated against the petitioner

under the MRTTP Act, 1966, however, on challenge to the maintainability of these proceedings it was held in Writ Petition no. 12895 of 2019 vide order dated 16/10/2019 and Writ Petition No. 13577/2019 dated 13/03/2020, that in absence of a town planning scheme being in existence, proceedings under the MRTTP Act, 1966 was not maintainable.

6. The respondent no.1 thereafter filed the present proceedings by again invoking Section 110-A of the Act,1965 read with the Act of 1955. It is in these proceedings that the above mentioned preliminary objection has been taken on 02/03/2021 by the present petitioner and others, the consideration of which, has been postponed to the consideration of the main proceedings.

7. Both the counsel categorically submit, that the issue about the merits of the contents of the application be kept open and the arguments are presently restricted to whether the preliminary objection should be decided at the present stage or consideration of the same should be postponed to the decision on the proceedings.

8. By the noting in the order sheet dated 16/03/2021, the

consideration of the objection has been postponed to the final decision of the proceedings. The contention of Mr. Bora, learned counsel for the petitioner that by virtue of Section 6-A of the Act of 1955, the entire CPC is applicable to proceedings under the Act, 1955, is clearly misconceived, as what Section 6-A of the Act of 1955, contemplates, is not the applicability of entire CPC, but the applicability to a limited extent, in the matters as specified in clause (a) to (c), in the matter of conduct of proceedings before the competent authority and not otherwise. The objections raised by the petitioners, from a perusal of the application at Exh-I would indicate that these relate to a plea of *res judicata* and applicability of the principle of estoppel, which even if the CPC was held to be applicable, could not have been decided on a preliminary objection and therefore the direction of deciding the preliminary objection alongwith the main proceedings cannot be faulted with.

9. In the light of above, I do not see any merit in the petition. The same is therefore, dismissed without costs.

(AVINASH G. GHAROTE, J.)

vsm/-