

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CIVIL APPELLATE JURISDICTION****WRIT PETITION NO. 3595 OF 2021**

Rizwana Shabbir Attar

... Petitioner

Versus

The State of Maharashtra and others

... Respondents

.....

Mr. Sumant Deshpande for the Petitioner.

Mr. R.S.Pawar, AGP for the State.

Ms. Shakuntala Wadekar for Respondent No.2.

.....

CORAM : S.J. KATHAWALLA AND**MILIND N. JADHAV, JJ.****DATED : AUGUST 3, 2021.****P.C. :-**

1. The Petitioner has filed the above Writ Petition interalia seeking the following reliefs :

“(a) That this Hon’ble Court may be pleased to exercise its power under Article 226 of the Constitution of India and may be pleased to issue Writ in the nature of Mandamus to the Respondent No.2 (Chief Officer, Chakan Municipal Council) directing him to demolish the illegal and unauthorized construction in Gat No.405 at Chakan, Taluka Khed and District Pune by the Respondent No.4 and the Respondent No.5;

(b) That this Hon’ble Court may be pleased to exercise its power under Article 226 of the Constitution of India and may be pleased to issue Writ in the nature of Mandamus to the Respondent No.2 (Chief Officer,

Chakan Municipal Council) directing him to register FIR against the Respondent No.4 to Respondent No.7 under the provisions of the Maharashtra Regional and Town Planning Act, 1966;”

2. Admittedly, the Petitioner herein has in February, 2021, filed Special Civil Suit No. 23 of 2021 (**‘the said Suit’**) before the Civil Judge, Senior Division, Khed, Pune. In the said Suit, the Petitioner has contended that she along with Defendant Nos. 1 to 14 therein are the owners of the ancestral property being Gut No. 405 at Chakan, Khed, Pune and that she has 1/3rd undivided right and share in the Suit Property, being the heir of her deceased father – Nabilal. The Petitioner has further contended in her Suit that Defendant Nos. 1 to 13 therein have entered into three Sale Agreements being Document Nos. 2189 of 2020, 3380 of 2020 and 3379 of 2020 in favour of Defendant Nos. 15 to 40 without the knowledge or consent of the Petitioner, which Agreements are not binding on her.

4. In the said Suit, the Petitioner herein (Plaintiff therein) has prayed for the following reliefs :

a. That it be declared that the Plaintiff being the heir of her deceased father – Nabilal, has 1/3rd undivided share in the Suit Property.

b. That the 1/3rd share or the share as determined by the Civil Judge, Senior Division, Khed, Pune, be ordered to be divided by metes and bounds and possession of the same be handed over to the Petitioner herein.

c. That it be declared that the Sale Deeds executed by Defendant Nos. 1 to 13 in favour of Defendant Nos. 15 to 41 in respect of the Suit Property are not binding on the Petitioner herein (Plaintiff therein) and the Defendant Nos. 15 to 41 therein have no right whatsoever qua the 1/3rd undivided share of the Petitioner herein (Plaintiff therein) in the Suit Property.

d. That pending the hearing and final disposal of the said Suit, the Defendants therein, their servants, agents, etc. be restrained from selling, dealing with or creating any encumbrances in regard to the Suit Property.

e. **That pending the hearing and final disposal of the said Suit, the Defendants be restrained from carrying out any construction on the Suit Property.**

(emphasis supplied)

5. The Petitioner also filed an Interim Application (Exhibit-5) in the said Suit before the Civil Judge, Senior Division, Khed, Pune, seeking to restrain the Defendants from selling, dealing with or creating any encumbrances in regard to the Suit Property **and also from carrying out any construction on the Suit Property.**

6. The Interim Application (Exhibit-5) filed in the said Suit was heard at length by the Civil Judge, Senior Division, Khed, Pune. The Defendants therein denied and disputed that the Petitioner herein (Plaintiff therein) is the daughter of Nabilal Abdul Karim Siklikar. They further submitted that even if for the sake of argument it is accepted that Nabilal was the father of the Petitioner, since Nabilal

passed away during the lifetime of his father Abdul Siklikar, in view of the provisions of Muslim Law, Nabilal himself had not acquired any undivided share in the ancestral / Suit Property (Gat No.405). The Defendants submitted that therefore, the question of the Petitioner having acquired any share in the ancestral / Suit Property as the heir of her father never arose. In support of their above contention, Defendant Nos. 1 to 13 also produced the death certificate of Nabilal (Exhibit-74/2). However, the Petitioner / Plaintiff contended that Nabilal had not passed away on the date shown in the death certificate but had absconded from Sassoon Hospital where he was admitted for treatment sometime in the year 1982. Defendant Nos. 1 to 13 also submitted before the Learned Civil Judge, Senior Division, Khed, Pune, that they being the legitimate heirs of the original owner of the Suit Property, their names have been mutated in the property record and it is thereafter that they legitimately sold the Suit Property to the Defendant Nos.14 to 41.

7. The Learned Civil Judge by her Order dated 1st July, 2021 has disposed off the said Interim Application (Exhibit-5) filed by the Petitioner. In the said Order, the Learned Judge has held that the Petitioner has not set out any facts / particulars pertaining to the demise / death of Nabilal Siklikar. Therefore, the issue as to whether Nabilal died or absconded and whether the Plaintiff is the daughter of Nabilal or not, will be determined at the time of final hearing of the Suit. The Learned Judge has further held that until the issue whether the claim of the Plaintiff therein (Petitioner

herein) is tenable (proved) or not, it is not advisable for the Court to give its final decision with regard to the Interim Application (Exhibit-5). The Learned Civil Judge has further proceeded to hold that since the Petitioner has produced Exhibit-3/6 i.e. Mutation Entry bearing No. 968 wherein Nabilal is shown as the heir of Abdul Karim Siklikar, until the decision is taken in the Suit qua the entitlement of the Plaintiff therein (Petitioner herein), a temporary injunction restraining the Defendants from creating any encumbrance in respect of the Suit Property is granted. However, the Learned Civil Judge has not granted the prayer sought by the Petitioner to restrain the Defendants from carrying out any construction on the Suit Property.

8. Despite the Petitioner having failed to get any interim relief in her Suit, restraining the Defendants from carrying out any construction on the Suit Property, the Petitioner has not impugned the Order of the Learned Judge dated 1st July, 2021. Instead, within 19 days thereafter the Petitioner has filed the present Writ Petition seeking directions against the Officers of the Chakan Municipal Council to demolish certain constructions put up by the Respondent Nos. 4 to 7 (who are four of the forty Defendants in the Civil Suit) on the Suit Property, on the ground that they have not obtained prior permission from the Council.

9. Since the Learned Civil Judge has in her Order dated 1st July, 2021, categorically held that the Petitioner has not produced the relevant documents pertaining to the demise / death of Nabilal Siklikar and therefore the entitlement of

the Petitioner with regard to the Suit Property cannot be decided at the interim stage, but will have to be decided at the time of final hearing of the Suit and has declined to restrain the Defendants from carrying out any construction, the question of granting any reliefs in favour of the Petitioner and against the Defendants with regard to the construction on the very same Property (Gat No.405), on the ground that the same is without obtaining permission of the Chakan Municipal Council does not arise, especially when the Civil Suit is pending. However, we grant liberty to the Petitioner to move the Civil Judge, Senior Division, Khed, Pune, seeking appropriate reliefs on the ground of changed circumstances. If such an Application is filed by the Petitioner before the Civil Judge, Senior Division, Khed, Pune, the same shall be decided by the Civil Judge, Senior Division, Khed, Pune, on its own merits. All contentions of the parties are kept open.

10. The above Writ Petition is accordingly disposed off.

(MILIND N. JADHAV, J.)

(S.J. KATHAWALLA, J.)

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