

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

CIVIL REVISION APPLICATION 81 OF 2022

Sanjay S/o. Shankar Puppall,
(Represented through his General
Power of Attorney holder – Shankar
S/o. Sharnappa Dhare.

..Applicant

V/s.

The Solapur Municipal Corporation &
Ors.

..Respondents

Mr. Sanjay S. Puppall, the Applicant in person.
Mr. A. S. Rao, Advocate a/w. R.V. Dighe for Respondent 1.
Mr. Prasad P. Kulkarni for Respondents 5 & 6.

CORAM : ROHIT B. DEO, J.

DATE : 15th JUNE 2022

P.C.

1. With consent of parties, the Civil Revision Application is finally heard at the stage of admission.

2. The applicant is the plaintiff who instituted civil suit against the respondents seeking the following reliefs:

A) The suit may kindly decreed in toto.

B) This Hon'ble Court may please to declare that, the plaintiff is having his proprietary right over the Re-constituted Plot bearing C.T.S. No.665 admeasuring 15.5 sq. mtrs., as per madatory provision of Section 20 of Maharashtra Land Revenue Code and re-allotment of said

area of C.T.S. No.665 admeasuring 15.5 sq. mtr to the defendant no.4 State Govt. during the course of implementation of Town Planning Scheme No.III, as public road, is in contra-vention of Section 102 of M.R.T.P. Act read with Rule 13(1)(4) & (9) of the Maharashtra Town Planning Scheme rules 1974 and the said area's allotment to defendant no.4 is not binding on the plaintiff and accordingly, further declared that, the plaintiff is still having his proprietary right over the said C.T.S. No.665 admeasuring 15.5 sq. mtrs., holding the said reconstituted Plot defendant no.4 as null and void and/or ultra vires ab-initio.

C) This Hon'ble court may further please to declare that, the plaintiff is having his proprietary right over the 50 sq. mtrs area reserved as surrounding area of re-consituted plot of C.T.S. No.660 admeasuring 307.90 sq. mtrs in execution of Town Planning Scheme bearing final plot no.III in the month of May, 1973 on account of non-compliance of mandatory provision of section 102 and 129 of M.R.T.P Act read with rule 13 of the Maharashtra Town Planning Scheme Rules, 1974, and the plaintiff is entitled to establish and/or exercise his proprietary right over the said 50 sq. mtrs area reserved as surrounding area of re-constituted plot C.T.S. No.660 admeasuring 307.90 sq. mtrs and accordingly order to defendant no.1 to 4 to restitute said area to the plaintiff under doctrine of restitution principle.

D) This Hon'ble court may please to restrain the defendant from being creating any illegal obstruction to the plaintiff from exercising and/or establishing his proprietary /ownership right over the said reserved restitute surrounding area of reconstituted plot no.660 which is admeasuring 50 sq. mtrs and an area admeasuring 15.5 sq. mtrs of C.T.S. No.665 transferred to defendant no.4 in violation of mandatory provision of section 102 and 129 of M.R.T.P. Act and /or with gross violation of Rule 13 of the Maharashtra Town Planning Scheme Rules 1974 perpetually.

E) This Hon'ble Court may further please to declare Building permission granted /sanctioned by the defendant nos.1 and 2 in favour of the defendant nos.5 and 6, for constructing the Apartment Building stuled as "Vinayak Apartment" on the premises of C.T.S. No.660 bearing Building Plan No.1042 dated 16.10.2000 and Revised Building Plan No.1365 dated 28.11.2001, are null and void and/or ultra-vires ab-initio on account of sanctioning the same by defendant nos.1 and 2 contrary to the statutory provision of Rule 20.32 and Note-1 prescribed there under and Rule 20.22 of the Standard Building Bye-laws and Development Control Rules for B and "C" class Municipal Council Maharashtra and/or also in violation of F.S.I. Rules contained under section 7 of the Maharashtra Ownership Flats Act, 1963, and/or also gross violation of Regulation 5(3) and the same is not binding on the plaintiff as sanction being nullity and/or void, ultra vires ab-initio.

F) This Hon'ble Court may please to order and direct the defendant nos.1 to 4 to hold and/or declare the Southern portion of Apartment Building styled as Vinayak Apartment erected on the basis on the basis of illegal sanctioned plan to the extent of 149.69 sq. mtrs increased floor space area as unauthorised construction made by defendant nos.5 and 6 as per provision of Section 56(1) of M.R.T.P. Act and said unauthorised, construction is not binding on the plaintiff.

G) This Hon'ble Court may please to order and direct by way of mandatory injunction to the defendant nos.1 to 4 to raze and/or remove the southern portion of said Vinayak Apartment Building to the extent of 149.69 sq. mtrs increased floor space area of said building which the defendant nos.1 and 2 declared as unauthorized, construction as per relief sought in Relief clause (F) at the costs defendants alone and allow the plaintiff to exercise his proprietary /ownership right over the said restituted area of reconstituted Plot C.T.S. No.660 to the extent of 44.4 sq. mtrs plus reserved surrounding area of said reconstituted plot admeasuring 50 sq. mtrs plus the area admeasuring 15.5 sq. mtrs of reconstituted Final Plot No.3, C.T.S. No.665 totaling to 112 sq. mtrs perpetually making

said area free from any barrier or super-structure constructions standing thereon.

H) Alternatively, on failure by the defendant nos.1 to 4 to comply reliefs claimed and granted by this Hon'ble Court more particularly the reliefs clause (A) to (G) of this para, the defendant nos.1 to 4 may be ordered and directed to determine current prevailing the market value of said to be restitutable area admeasuring 65.50 sq. mtrs and be paid to the plaintiff along with 4% p.a. interest thereon as per the provision sections 102, 92, 129 and 129A of M.R.T.P. Act read with Rule 13(9) of The Maharashtra Town Planning Scheme Rules 1974.

3. The Superintendent of the Court of Civil Judge Senior Division, Solapur was of the view that in view of the provisions of Section 149 of the Maharashtra Regional and Town Planning Act, 1966 ("Town Planning Act"), the Civil Court has no jurisdiction to entertain and try the suit and placed such opinion before the learned Judge for appropriate order.

4. The learned Judge heard the plaintiffs and vide order dated 08.10.2021 held that the suit cannot be registered in view of the express bar engrafted in section 149 of the Town Planning Act.

5. The Plaintiff approached the learned District Judge, Solapur assailing the order rendered by the learned Civil Judge Senior Division, Solapur, refusing the registration of the suit. The Superintendent /District Court objected to the maintainability of the appeal on the premise that the order impugned is not appealable. District Judge-I, Solapur upheld the said objection of the

Superintendent and vide order dated 30.10.2021 declined the registration of appeal.

6. The Plaintiff preferred an application under section 151 of the Civil Procedure Code (“Code”) for recalling the order refusing the registration of appeal, which application came to be dismissed by the learned District Judge-I, Solapur vide order dated 20.10.2021.

7. Being dissatisfied and aggrieved, the plaintiff has preferred the instant revision assailing the findings recorded by the learned Civil Judge Senior Division, Solapur that the suit as framed cannot be entertained and tried in view of the provisions of Section 149 of the Town Planning Act.

8. I have heard Mr. Shankar Dharne in person, learned counsel A. S. Rao for Respondent 1 and learned counsel Prasad P. Kulkarni for Respondents 5 and 6, and with their assistance, the material on record is scrutinized to the extent relevant.

9. Mr. Shankar Dharne has twin submissions to canvas. The first submission that the learned Trial Judge committed a serious error in refusing the registration of the suit on the premise that the bar engrafted in Section 149 of Town Planning Act comes into play. Mr. Shankar Dharne would submit that ouster of the jurisdiction of the Civil Court cannot be readily inferred, as is done by the learned Trial Judge. The extension of the submission is that the learned Trial Judge ought to have appreciated but failed to appreciate, that in essence the contention of the plaintiffs is that the action impugned is contrary to

the provisions of the Town Planning Act, and is nullity. Mr. Shankar Dharne argues that section 149 of Town Planning Act and similar worded provisions in cognate enactments have been interpreted strictly and the jurisdiction of the Civil Court to entertain and try the suit, where the pleading is that the action impugned is *de-horse* the statutory provisions or in stark violation of the same, is well recognized. The other submission, which is in the alternate, is that the learned Trial Judge has not considered the averments in the plaint in the context of the submission that the action impugned is ultra vires the provisions of the Town Planning Act, and no findings on the said aspect is recorded.

10. In response, Mr. Prasad Kulkarni for the contesting Respondents would submit that the learned Trial Judge committed no error in refusing the registration of the suit in as much as on a holistic reading of the plaint, the provisions of Section 149 of the Town Planning Act which confers finality on every order passed or notice issued by the Planning Authority mandates that such order or notice shall not be questioned in any suit or other legal proceedings, is clearly attracted and the jurisdiction of the Civil Court is expressly barred.

11. Mr. Prasad Kulkarni would rely on the decision in **Kalyan Dombivli Municipal Corporation V/s. Prakash Mutha, 2008 (3) Mh. L.J 686**. Mr. Prasad Kulkarni would further invite my attention to the decisions of the Apex Court in **Church of Christ Charitable Trust and Educational Charitable Society V/s. Ponniamman Educational Trust, (2012) 8 Supreme Court**

Case 706 and Dahiben V/s. Arvindbhai Kalyanji Bhanusali (Gajra) Dead and Ors, (2020) 7 Supreme Court Case 366 to buttress the submission that the learned Trial Judge is expected, and indeed obligated to nip the litigation in bud, if on a meaningful reading of the plaint there is no cause of action disclosed or if the jurisdiction of the Civil Court is clearly ousted.

12. Mr. Shankar Dharne, would invite my attention to several decisions to buttress the submission that Section 147 of the Town Planning Act cannot be read or understood as complete bar to the jurisdiction of the Civil Court, and action ultra vires the provisions of the Town Planning Act can be questioned by instituting civil suit.

13. Mr. Shankar Dharne invites my attention to the decision in **Satish Gayacharan Trivedi V/s. Dr. Gopal Ramnarayan Mundhada & Ors., 2015 (6) ALL MR 108**, which considers **Kalyan Dombivli Municipal Corporation** (supra). My attention is particularly invited to the following paragraphs 10 and 11 in the case of **Satish Gayacharan Trivedi :**

“10. As regards the decisions relied upon by the learned Counsel for the respondent Nos.1 to 3, in Kalyan Dombivli Municipal Corporation (supra), it was held that the declaration sought in the civil suit that the draft development plan published in official gazette was illegal and ultra vires the said Act. Along with said prayer, relief of perpetual injunction seeking to restrain the Municipal Corporation from taking any action on the basis of said draft development plan was also sought. It was held that there was sufficient mechanism provided by the said Act for the preparation, publication and sanction of the development plan and the objections that the plaintiff therein had raised could be considered by the authorities

under the said Act. It was held that provisions of Section 149 of the said Act clearly bar jurisdiction of the Civil Court to consider challenge to the draft development plan. In Bales Sardara Paracha (supra), notice issued under section 55(1) of the said act for removing the structure in question was challenged by filing civil suit. It was held that provisions of section 149 of the said Act clearly excluded the jurisdiction of the Civil Court in so far as the challenge to any notice or order issued under said Act was concerned. It also held that in the absence of any jurisdictional error in the exercise of power by the Municipal Corporation while issuing such notice, it could not be said that the notice was a nullity. In Nagpur Municipal Corporation, (2021(4) ALL MR 270) (supra), the jurisdiction of the Civil Court was held to be barred under Section 149 of the said Act for the purposes of challenging the notice issued under section 53 of the said Act. Similarly, in Smt. Sujala Yeshwant Nitsure (supra), the suit claiming declaration that the permission granted by the Municipal Corporation to the plot holders for construction of marriage hall was held to be barred under Section 149 of the said Act.

11. *From aforesaid, it is, therefore, clear that if any notice or order issued under said Act by any authority is sought to be challenged before the Civil Court, then in view of the finality given to such order passed or notice issued, the jurisdiction of the Civil Court would be ousted. However, if any action sought to be taken under said Act is alleged to be null and void and sought to be taken without even issuing any notice or passing any order, then the jurisdiction of the Civil Court is not ousted and the Civil Court can examine the validity of such action which is alleged to be null and void. Similarly, the plaint must contain all statements of material facts that are necessary to invest such jurisdiction with the Civil Court”.*

14. Mr. Shankar Dharne would emphasize that while in **Satish Gayacharan Trivedi**, on facts it is held that the suit was not maintainable, the said decision does articulate that if the action

impugned is null and void, Civil Court can subject the same to judicial scrutiny.

15. In the context of the rival submissions, it would be apposite to consider the averments in the plaint, which alone could have been looked into by the learned Trial Judge to arrive at the *prima facie* view as regards the maintainability of the suit. Significantly, the learned Trial Judge has rendered the order impugned on the basis of an objection raised by the Court Superintendent. While the learned Trial Judge was certainly not precluded from considering the opinion of the Superintendent that the suit is not maintainable, the plaint averments at that stage were required to be taken at face value.

16. In essence the grievance of the plaintiffs are that they are deprived of proprietary rights due to certain acts and omissions of the Planning Authority, which are ultra vires the statutory provisions. The plaintiffs have made copious reference to several acts and omissions of the Planning Authority, which according to the plaintiffs are fraudulent and at any rate in violation of the Building Bye-laws and Development Control Rules and the provisions of the Town Planning Act. It is on such premise that the reliefs noted supra are claimed. The plaintiffs have further alleged violation of the provisions of the Maharashtra Ownership Flats Act, 1963 and the rules framed under the Town Planning Act.

17. The order impugned unfortunately has not given due consideration to the averment in the plaint that the bar engrafted in Section 149 of the Town Planning Act is not attracted since the acts

and omissions of the Planning Authority are ultra vires the statutory provisions and are at any rate in violation thereof. Paragraphs 1 to 7 of the order impugned purport to note the reliefs claimed in the suit and in paragraphs 8 to 11, the learned Trial Judge proceeds to consider and distinguish certain decisions cited by the plaintiffs. The reasons are found in the concluding paragraph 12 which reads thus:

On perusal of all the prayers and contents in the plaint and more particularly cause of action, it appears that, the plaintiff is challenging the orders passed by competent authority as per the M.R.T.P. Act. Section 149 of the M.R.T.P Act says, whatever orders passed by or directions issued by the State Government or planning authority or development authority under this Act shall not be questioned in any suit or other legal proceeding. Considering the prayers in this suit wherein, the plaintiff is challenging the orders passed by the concerned appropriate authorities, there is express bar as per section 149 of the M.R.T.P. Act. Therefore, this Court has no jurisdiction to entertain the present suit. Hence, the suit cannot be registered.

18. In my considered view, the learned Trial Judge has clearly erred in not considering the relevant averments in the suit plaint, and not recording a *prima facie* findings on the submission of the plaintiffs that the jurisdiction of the Civil Court is not ousted since the acts and omissions of the Planning Authority are ultra vires the provisions of the Town Planning Act and are fraudulent. While the learned Trial Judge was not wrong in considering the objection of the Superintendent of the Court, and indeed was obligated to consider the objection, the learned Trial Judge obviously laboured under an erroneous impression and indeed a misconception of law, that no challenge to act or omission of the Planning Authority can be subjected to the Civil Court's scrutiny. The learned Trial Judge did not

consider the well settled position of law that the provisions of section 149 of the Town Planning Act and similar provisions in pari materia or cognate provisions, do not necessarily and completely oust the jurisdiction of the Civil Court and that act or omission which is null and void or ultra vires statutory provision can nonetheless be tested by the Civil Court.

19. I would emphasize and clarify that I am not suggesting that the plaint averments make out a case in favour of the plaintiffs on the jurisdictional aspects. However, since there is no application of mind by the learned Trial Judge to the plaint averments, on a holistic reading, and the submission of the plaintiffs that the acts and omissions complained of are ultra vires the statutory provisions and null and void, is not considered, I deem it appropriate to quash and set aside the orders dated 08.10.2021 in Regular Civil Suit Institution 3010 of 2021, dated 13.10.2021 in Civil Appeal Institution 2887 of 2021, dated 20.10.2021 in Review Petition 2905 of 2021 rendered by the learned Trial Judge and remit the matter to the learned Trial Judge for fresh consideration after hearing all the stakeholders.

20. The Civil Revision Application is partly allowed in the following terms :

ORDER

- i. Orders impugned are quashed.
- ii. The matter is remitted to the learned trial Judge to consider the issue of jurisdiction afresh after hearing every stakeholder, in the light of the observations made in the judgment.

- iii. The parties shall appear before the learned trial Court on 27th June, 2022 and produce copy of this order.
- iv. The parties shall not expect any formal notice in the matter.
- v. Learned trial Judge is requested to decide the objections raised by the Registrar of the Court as expeditiously as possible and in any event within two weeks from the next date of hearing.

(ROHIT B. DEO, J.)