

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO.219 OF 2022**

Smt.Mandabai Ramdas Datir & Ors .. Appellants
Versus
Baburao Kisan Datir & Anr .. Respondents
...

Mr. Sachin Gite for the appellants.
Mr.Sanjay P. Shinde for respondent no.1.
Mr.Prashant Chavan with Ms.Aishwarya Ghanate for respondent
MIDC.

**CORAM: BHARATI DANGRE, J.
RESERVED : 18th APRIL, 2022
PRONOUNCED : 2nd MAY, 2022**

JUDGMENT:-

1 The Suit property is plot no.33 admesuring 100 sq.m in the industrial area at mauje, Ambad, Nashik. The above property being owned by Kisan Dada Datir, came to be acquired by the Government in the year 1975.

Kisan Dada Datir had two sons, the elder being Baburao, and younger one being Ramdas, who died on 25/10//2011.

2 On the acquisition of the suit land, the MIDC took a policy decision to allot plots to the project affected persons, at the prevalent rate and it issued a circular on 30/6/1993 and laid down the terms and conditions before allotting an alternative plot to the Karta of the family, the wife, son and unmarried daughter. Only one member of the family was entitled for allotment of the industrial plot with condition that, before the allotment, the person should procure a 'No objection' from other legal heirs/members of the family.

 The elder son Babaurao moved an application on 13/12/1996 to MIDC for allotment of a plot, but no action was taken. Again, on 20/5/2008, a similar application was moved but it was turned down on the ground of non-availability of the plot.

 Instead, a plot came to be allotted in favour of Ramdas Kisan Datir, the younger brother of Baburao, on 16/9/2008. Upon such allotment, Baburao raised a grievance that while allotting the plot, "No objection certificate" from him, being a legal heir of Kisan Dada Datir was not obtained and hence, the allotment is in gross violation of the circular of the MIDC, formulating a policy for allotment of alternative plot.

 This constrained Baburao Kisan Datir to institute a Regular Civil Suit (RCS) No.265 of 2015 before the 4th Joint Civil Judge, Sr. Division, Nashik, seeking a declaration, possession and partition with respect to the suit property.

3 In the said suit, the MIDC was impleaded as defendant no.1, whereas the legal heir of Ramdas - Smt. Mandabai Datir (wife) and his two sons and one daughter came to be impleaded as defendant nos.2 to 5.

 Upon the suit being filed, the defendant no.1 MIDC filed its reply (Exh.14), justifying the allotment to the defendant nos.2 to 5, and pleaded that after following due procedure of law, the allotment was made. A common written statement was filed by defendant nos.2 to 5 where they denied existence of any terms and conditions to the effect of obtaining no objection of other family members. It was pleaded, that the suit property was allotted to the husband of Mandabai by following due procedure of law and on his death, the defendants moved an application for obtaining legal heir certificate and they were successful, in getting one, without any objection being raised before the competent court. On the strength of the certificate, the defendants mutated their name against the suit property and the claim, as raised in the plaint, was denied by submitting that they had no right to claim any share in the suit property.

 The defendant nos.2 to 5, though admitted that, the ancestral property was acquired by MIDC and on account of plot no. SS-15 came to be allotted on 9/8/1991 which was admeasuring 16 sq m., but since the plot was insufficient, her husband moved an application for larger area and paid the additional amount and accordingly, Plot no.SS-79 came to be

allotted in his favour in the year 1998. Even this plot was found to be inadequate and was given back to MIDC and finally, plot bearing 33 admesuring 100 sq.m, was allotted on 16/9/2008 which is the subject matter of the suit.

Upon the allotment being effected, a lease agreement was signed, along with the MIDC on 4/3/2001 and even the possession of the suit property was handed over and permission was obtained to raise a structure. On the structure being completed, completion/occupation certificate was also granted in their favour on 3/5/2012 and it was therefore, pleaded that the plaintiff had knowledge of all these facts, but did not raise any issue about the allotment, at the relevant point of time and hence, the suit was liable to be dismissed.

4 In support of the claim, the plaintiff examined himself (Exhibit-34) and closed his evidence. He placed on record several documents including the 7/12 extract of the suit property as well as the copy of the circular issued by the MIDC and the copies of application preferred by the plaintiffs to the MIDC on distinct occasions. The defendant no.3 Dhananjay Datir examined himself in support of their defendants to the Suit and relied upon the certified copy of the allotment letter issued in favour of his father, Ramdas as well as the transfer order of the plot, completion-cum-occupation certificate, building plan, copy of lease agreement etc.

5 The trial Court formulated the following issues for consideration.

- (1) Whether the plaintiff proves that the allotment of Plot No.33 of Ambad M.I.D.C is illegal?
- (2) Whether the plaintiff proves that he has one of share in the suit plot
- (3) Whether the plaintiff is entitled for declaration as prayed for?
- (4) Whether plaintiff is entitled for separate possession?
- (5) Whether plaintiff is entitled to share in the profit earned by defendants from the suit property?

6 As per the testimony of the plaintiff, the agricultural property owned by Kisan Dada Datir was acquired by MIDC and in turn, the MIDC resolved to provide alternative plot to the Project Affected Persons by Circular dated 30/6/1994, which contemplated consent of other family member before allotment of the plot. In the evidence, he specifically deposed that after acquiring the ancestral property, the plot was allotted in favour of his brother, without following the procedure of the Circular. In the cross-examination of defendant no.3, it is not disputed that the plot was in the name of Kisan Datir and it was also not disputed that the Plot No.SS-15 and Plot No.SS-79, was allotted in favour of Ramdas, but it was denied that the allotment was on account of the Scheme implemented for Project Affected Persons.

7 In the wake of the evidence, the trial Court rendered the following findings :-

“From the oral and documentary evidence it is clear that the bone of contention between the parties is the allotment of plot in lieu of acquisition of their ancestral land. It is an admitted fact that the land of plaintiff's father came to be acquired by the M.I.D.C. Even in Exh.42 at Sr.No.5 it is clearly mentioned that the 7/12 extract bears the name of Kisan Dada Datir. The dispute revolves around Exh.56. For this the circular of M.I.D.C. Exh.56 needs to be looked into. Before allotting plot to the member of family in lieu of acquisition of their property no objection of the legal heirs needs to be obtained. The defendant No. 1 did not adduce evidence in support of compliance of their own circular Exh. 56. Even they did not deny the terms and conditions laid down in the circular Exh.56”

8 Recording that the witness of the defendant had admitted that he is not aware as to how his father had acquired the suit property and there is no documentary evidence to show that the legal heir of Kisan Dada Datir had consented at any point of time before the allotment was made in favour of Ramdas, the Court derived an inference that the allotment of plot was not in consonance with terms and conditions laid down in the circular brought on record vide Exhibit-56.

The Civil Judge, Sr. Division, Nashik, therefore rendered a finding that the allotment itself is illegal and

necessarily any construction, thereupon, is also illegal. The prayer of the plaintiff for partition and separate possession came to be rejected on the basis, that since the allotment in their favour itself is illegal, there is no question of any partition. The Suit, therefore, came to be decreed, by declaring the allotment of plot 33 in the industrial area at mauje, Ambad, Nashik, in favour of defendant nos.2 to 5 as illegal.

9 The defendant no.1 MIDC was directed to reconsider the allotment in light of the its circular dated 30/6/1993.

On an Appeal being filed and certain facts not being disputed, the Appellate Court dismissed the Appeal by upholding the finding rendered by the trial Judge.

The Appellate Court recorded that there is no evidence placed on record by the defendant to show that the allotment of the suit property was in consonance with Exhibit-56. The affairs of the MIDC are also deprecated in the following words by the Appellate Court :-

“So far as role of the MIDC is concerned, it is highly objectionable as the officials of the MIDC appears to have kept their own circular, guidelines on the shelf for the best reasons known to them while allotting the suit property to Late Ramdas. When Government body/Corporation is functioning, its public duty and dealing with the public property it is expected that such institution shall performed its duty with care and caution particularly within the four corners of the rules and regulations pertaining to the said allotment of the public property. The officials of such

corporation shall be guided by the rules and regulations framed by the Government by time to time to run day to day affairs of the corporation and if any such complaint is made pertaining to the said function of such a corporation then the heavy burden is upon the officials concern to put the facts on record in black and white. However, unfortunately the scenario in present case is palpably otherwise”

The Appellate Court recorded that the role of MIDC lack absence of transparency, accuracy and fairness and the learned counsel for the MIDC has failed to defend his client except reproducing the defence line as pleaded in written statement. The Appeal thus came to be dismissed.

10 I have heard learned counsel Mr.Gite for the appellant and learned counsel Mr. Shinde for respondent no.1.

The MIDC is represented by Advocate Prashant Chavan, and I have perused the relevant Circular which contemplate a condition of obtaining ‘no objection’ from the remaining heirs.

The compilation of documents reveal that Exhibit-42 is a letter written by the Regional Officer of the MIDC to Smt.Mandabai Datir, while processing the application for mutating their names. The said letter specify that the application suffers from certain deficiencies and which include a consent letter from the legal heirs.

Perusal of the documents reveal that MIDC attempted to resolve the dispute between the two brothers and on 26/4/2012, issued notice to Smt.Mandabai Datir, defendant no.2 as well as the plaintiff and had directed them to remain present in the office so as to take an appropriate decision. On 3/12/2013, the Regional Officer, MIDC addressed a letter to Smt.Mandabai on an application filed by her for recording the names of the heirs on the suit plot-33. Noting that Baburao Kisan had raised an objection to the same, liberty was granted to the parties to approach the Civil Court or any competent Court so as to resolve the discord about the heirship.

11 When the Suit is filed by the plaintiff, this communication dated 3/12/2013, was pleaded to be the cause of action, since the parties were relegated to the Civil Court for resolving the dispute about the heirship since it was the claim of the plaintiff that the allotment of the plot in favour of his brother was in lieu of the ancestral Plot of the family being acquired. The Suit came to be filed on 21/4/2015, seeking a declaration that the allotment of plot in favour of his brother and subsequently his heirs, is illegal and is entitled for $\frac{1}{2}$ share in the suit plot and for its possession Since this was pleaded as a cause of action, the Suit was filed within the period of limitation of three years, and therefore, the submission of Mr.Gite that the Suit was barred by limitation do not deserve any consideration. Pertinent to note that this was not raised as a defence, and therefore, the trial court

did not frame any point of limitation, and necessarily, the Appellate Court also did not consider the point of limitation, which was never raised. Accepting that, point of limitation can be raised, as the point of law at any time of the proceedings, since it is argued that the above letter of the MIDC on 3/12/2013 relegating the parties to the Civil Court was the starting point of limitations. I do not deem it expedient to formulate the said point as the substantial question of law.

12 The circular of the MIDC dated 30/6/1993 necessarily contemplated no objection from the other legal heirs, and since the MIDC had failed to abide by its own circular, the Courts below had rightly held that the allotment is illegal. No doubt, the trial Court has directed that it is open for the MIDC to re-consider the allotment in light of the circular, it is open for the MIDC to make an allotment in favour of the heirs, subject to No Objection being accorded by the other heirs.

Though I have specifically suggested the learned counsel appearing for the appellant Mr.Gite, to arrive at an understanding with the plaintiff, since ultimately, the plot is allotted in the family and since the appellants are already running an industrial unit on the said area and he can compensate the plaintiff by paying some consideration, Mr.Gite stated that the appellants are not ready for any such settlement.

Left with no alternative, since the allotment itself is found to be illegal by the two Courts below and a concurrent finding is rendered to that effect, and when the learned counsel Mr. Chavan for MIDC urge that the condition in the circular was mandatory, no substantial question of law arises in the present Second Appeal, the concurrent finding rendered against the present Appellant being based on facts and the evidence placed before the trial Court and which has been rightly appreciated by it, as well as the Appellate Court.

Appeal is dismissed.

(SMT. BHARATI DANGRE, J.)

At this stage, a request is made on behalf of the learned counsel for the appellant to stay the effect of this pronouncement for a period of four weeks.

I deem it expedient to grant the said request.

The appellant shall continue to be in possession of the industrial premises for a period of four weeks from today.

(SMT. BHARATI DANGRE, J.)