

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 2514 OF 2021

Nilesh Bhailal Pardeshi	...	Petitioner
Versus		
The State of Maharashtra & Ors.	...	Respondents

Mr. Siddharth R. Ronghe, Advocate for the Petitioner.
Mrs. R. M. Shinde, AGP for the Respondents/State.
Mr. Sangeeth Narayanan i/b. Jay & Co., Advocate for the Respondent No.2/MIDC.
Mr. Satyavrat Joshi, Advocate for the Respondent Nos.6 to 8 and 15 to 19.
Mr. Nitesh J. Mohite, Advocate for the Respondent Nos. 10A and 10B.
Mr. Chaitanya Nikte a/w. Ms. Sneha Bhangе a/w. Mr. Sumesh Ruikar, Advocate for Respondent Nos.11,13,14 and 21.

**CORAM: S.V. GANGAPURWALA &
VINAY JOSHI, JJ.**

DATED : MARCH 29, 2022

P.C.

1. The objection filed by the petitioner referable to Section 35 of the Maharashtra Industrial Development Corporation Act, 1961 (hereinafter referred to as, “**the MIDC Act**”) is rejected.

2. The learned Counsel for the petitioner strenuously contends that the objection filed by the petitioner has not been considered in its correct perspective. The joint family exists between the petitioner's grandfather and his

brothers. Grandfather of the petitioner has 1/3rd share in the properties acquired. The suit was filed for partition and separate possession in the year 2004. The said suit is dismissed for non-prosecution. The application for restoration of the suit is pending. The learned Counsel for the petitioner submits that his grandfather is not party to the registered partition deed relied by the respondents.

3. The learned Advocate for the petitioner further submits that the Authority come to the conclusion that the dispute amongst the parties exist. In that view, he ought to have referred the matter to the Authority. While passing the impugned order, the Sub-Divisional Officer has not exercised the jurisdiction vested in it. The objection of the petitioner is rejected only on the ground that the suit of the petitioner is dismissed and no civil suit is pending amongst the parties.

4. The learned Counsel for the respondents submits that partition pursuant to unregistered partition deed had taken place between the petitioner's grandfather and his two brothers and thereafter registered partition deed is entered between the two brothers in the year 1964. The respondents are claiming through them. The mutation

entry is effected as per the partition based on the application submitted by the grandfather of the petitioner Shamlal. The partition has been acted upon since the year 1964. The learned Counsel further submits that after the death of Shamlal, the legal heirs of Shamlal – the father of the petitioner and others have disposed of part of the properties which were given to the share of Shamlal by registered instrument of sale on 27th April 2009. The learned Counsel submits that the mutation entries are effected pursuant to the partition. For all these entries neither Shamlal nor his son raised objection. The petitioner does not have any case nor any dispute so as to refer to the Authority.

5. According to the petitioner, the revenue proceedings are pending.

6. The parties have to make out a prima facie case for referring the matter to the authority as contemplated under Section 35 of the MIDC Act, 1961. The petitioner has claimed share in the properties. Petitioner is one of the grandsons of Shamlal. Shamlal has five sons and one daughter. The petitioner's share would be minuscule. The civil suit filed by the petitioner is dismissed for non-

prosecution. It is submitted that application for restoration is filed and pending. Prima facie, even if the case of the petitioner is accepted, the petitioner would have a minuscule share.

7. Considering the provisions of Section 35 of the MIDC Act, we pass the following order :

ORDER

- (i) The Sub-Divisional Officer may refer the proceedings to the Authority as contemplated under Section 35 of the MIDC Act, 1961.
- (ii) The respondents are entitled to withdraw the amount as per the share awarded in the award.
- (iii) After the matter is referred to the Authority, the respondents shall jointly give a solvent security before the Authority for a sum of Rs.25,00,000/= (Rupees Twenty Five Lakhs).
- (iv) Depending upon the decision, further steps be taken by the parties.
- (v) The writ petition is accordingly disposed of. No costs.

8. It is made clear that we have not decided the rights of the parties in the present case. All contentions of the parties are kept open.

(VINAY JOSHI, J.)

(S.V. GANGAPURWALA, J.)