

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.7252 OF 2022

Jade Agri Land Private Limited ... Petitioner.

V/s.

The Vasai Virar Municipal
Corporation

... Respondents.

Mr.Anish Karande a/w Ms.Sonal Darbar, Mr. Amar Mishra i/by SRM Law Associates, for the Petitioner.

Mr.Vishwanath Patil a/w Mr.Ankite Lodha, Mr.Kewal Ahya , for the Respondent Nos.1 and 2.

Mr.A.A. Alaspurkar, AGP for the State-Respondent No.3.

**CORAM : R.D. DHANUKA AND
KAMAL KHATA, JJ.**
DATE : 3 AUGUST 2022.

P.C. :

By this petition filed under Article 226 of the Constitution of India, petitioner seeks a declaration that the action of the Respondents in encroaching upon and undertaking construction work on the property bearing Survey No.62 Hissa No.4 corresponding to old Survey No.354 Hissa No.4 and Survey No.62 Hissa No.5 corresponding to old survey No.345 Hissa No.5 situated at Village Chandansar, Taluka Vasai, District Palghar is illegal and bad in law. The Petitioner also seeks a writ of mandamus for an order or direction against the Respondent Nos.1 and 2 to forthwith stop all construction activity on the said property and further seeks an order or direction against the Respondent Nos.1 and 2 to remove all material, belongings and labour on the said Property and to restore the said property to its original condition and to restrain themselves i.e.

Respondent Nos.1 and 2 from continuing any construction on the said property. It is the case of the Petitioner that Sumati Madhusudan Patil, Smita Ramesh Patil and Hemant Yeshwant Patil had entered into a Deed of Conveyance with M/s. Dewan Investment Pvt. Ltd. whereby they as vendors sold, transferred and conveyed Survey No.62/5 to the M/s. Dewan Investment Pvt. Ltd.

2. On 3rd July 2009, the Respondent No.1 was established and village Chandansar came under its jurisdiction. On 30th March 2018 Office of the District Collector, Palghar allocated a sum of Rs.15 lakhs towards construction of a crematorium of Village Bhatpada. On 7th September 2018 a public Notice was issued by Respondent No.1 inviting bids for development work of a crematorium at village Bhatpada. On 20th February 2019, the Respondent No.1 executed an agreement in favour of Mr. Roshan Jadhav, a contractor, in respect of the development work of a crematorium at Village Bhatpada and accordingly issued work order on 26th February 2019 in favour of the said contractor.

3. On 8th March 2019, the Petitioner entered into registered sale deed in respect of Survey No.62/5 with Privilege Power Infrastructure Pvt. Ltd. (formerly known as M/s Dewan Investment Pvt. Ltd.).

4. It is the case of the Petitioner that on 15th June 2022, the Petitioner made an application to Respondent No.1 under the provisions of Right to Information Act, 2005 *inter alia*, seeking information regarding the copy of the resolution passed by Respondent No.1 under which the Respondent No.1 was authorized to undertake construction work on the said land i.e. Survey No. 62/5. However, no such information was furnished by Respondent No.1. The petitioner thus filed this Petition.

5. Mr. Karande learned counsel for the Petitioner invited our

attention to some of the documents annexed to the petition including the registered sale deed entered into by his clients and the first owner on 8th March 2019. It is submitted by learned counsel for the Petitioner that no procedure prescribed under Section 77 and 78 of the Maharashtra Municipal Corporation Act, 1947 (for short “the said Act”) has been initiated by Respondent No.1 or its predecessors for acquiring the said portion of the land for any public purpose. No procedure is followed under Section 320 and 321 of the said Act for construction of crematorium for disposal of the dead and no register has been maintained by Respondent No.1 to show that any such crematorium was constructed. He further submitted that the requisite procedure under the said Act was not followed for “disposal of the dead”. It is submitted by learned counsel that Respondent Nos.1 and 2 are not at all in possession of the said writ land but have encroached upon the same.

6. Learned counsel for the Respondents raised an issue of maintainability of this writ petition on various grounds including on the ground that on account of the disputed questions of fact this writ petition is not maintainable. Learned counsel for the Petitioner placed reliance upon the judgment of the Supreme Court in the case of *ABL International Ltd. And Anr. Versus. Export Credit Guarantee Corporation of India Ltd. And Ors.*¹ and in particular paragraphs Nos.15 to 19 and 27 and submitted that where there are disputed questions of fact, as a matter of course, a party cannot be asked to file a civil suit and more particularity against the State or Public Authority. He submits that as a matter of fact, there are no disputed facts in this petition. No crematorium was in existence at any point of time and this Court has ample power to pass an

¹(2004) 3 SCC 553

order against the Respondent Nos.1 and 2 to remove themselves from the writ land.

7. Mr. Patil, learned counsel for the Respondents on the other hand invited our attention to averments made in the affidavit-in-reply and submitted that the documents annexed to the affidavit-in-reply clearly indicate that the said crematorium which is allegedly constructed recently on the portion of the land, already was in use for more than 80 to 90 years. He also invited our attention to the documents annexed at Exhibit "B to I". He submits that in view of the demand made by the villagers of Bhatpada, Chandansar for development and maintenance of the existing crematorium, the Respondent - Corporation and the local MLA had sanctioned an amount from the MLA funds for development of said crematorium. There was an administrative approval granted to said proposal thereby allocating a sum of Rs.15 lakhs for the said work. He also relied upon other exhibits annexed in the affidavit-in-reply.

8. It is submitted that in view of the said sanction of the funds, the Municipal Corporation had invited advertisement for development of crematorium in the newspaper. No objection was raised by the predecessor of the Petitioner. The Municipal Corporation has already issued an order in favour of the contractor, whose bid was found successful. He submits that Municipal Corporation is in possession of the said land since inception, prior to the incorporation of the Respondent No.1 Corporation from the village panchayat which was already in possession of the said land and crematorium thereon.

9. Learned counsel for the Respondents reiterated his contention that there are serious and disputed questions of fact and thus this Court cannot entertain this petition under Article 226 of the

Constitution of India.

10. In rejoinder, learned counsel for the Petitioners reiterated his contention that, there are no disputed questions of fact. The Respondents are not at all in possession of the said land and thus this Court has ample powers to pass an order and direction against the Respondent Nos.1 and 2 for their removal from the plot.

11. With a view to decide the rival contentions of the parties, as to whether Respondent Nos.1 and 2 are in possession of any portion of the land at all or are trespassers, we have perused the averments made by the Petitioner itself in the writ petition. In paragraph 13 of the writ petition it is alleged by the petitioner that the petitioner's representative visited the plot and clicked photographs of the construction and stated that there was further construction that was being undertaken. In paragraph 14 it is stated that the petitioner addressed a letter to Respondent No.2 recording the illegal encroachment and construction on the said property and that if the construction work was not stopped, the Petitioner would be constrained to approach this Court for seeking appropriate relief against the Respondents.

12. In paragraph No.16, it is alleged that Respondent No.1 did not stop the illegal construction work on the said property that was being undertaken. In paragraph 19, it is alleged that despite the Petitioner being a peaceful owner/possessor of the said property, in June, 2022, Respondent Nos.1 and 2 illegally encroached upon the said property and commenced construction work on the said property. In paragraph 21, it is alleged that the action of Respondent No.1 in encroaching upon and undertaking construction of a crematorium on the said property owned by the Petitioner is wholly illegal, unjustified and bad in law. In paragraph 26

of the petition, it is averred that at the time of filing the present petition, the said construction work was in progress on the said property.

13. In paragraph 31, it is averred that illegal construction being undertaken by the Respondents is situated within the jurisdiction of this Court. In prayer clause “C” of the petition, the petitioner had prayed for a writ of mandamus against the Respondents for an order or direction to remove all materials, belongings and labour on the said property and to restore the said property to its original condition.

14. Per contra, it is the case of the Respondent Nos.1 and 2 in the affidavit-in-reply that the said portion of land was in possession of the predecessor of the Respondent No.1 and since establishment of Respondent No.1, the said land is in possession of Respondent No.1. It is the case of Respondent No.1 that since last 80 to 90 years, villagers have been using the said crematorium already established from time to time for funeral ceremonies. Respondent Nos.1 and 2 have also relied upon large number of documents including the registers to indicate that the crematorium has already been in place for years and maintenance of the said crematorium has also been carried out.

15. The Respondents have also brought to the notice of this Court that in view of the demand made by the villagers of the said village for development and maintenance of the said crematorium. The Local MLA and Corporation separately forwarded a proposal to the Collector for sanction of amounts from the MLA funds who has sanctioned certain amount for maintenance of said crematorium. In view of the sanction of the amount, Respondent Nos.1 and 2 thereafter issued an advertisement for carrying out maintenance of the said crematorium. The advertisement was issued on 7th September 2018 for inviting bids. The predecessors of

the Petitioner did not raise any objection to the public notice issued by the Respondent No.1. The Petitioner has purchased property without a registered sale deed on 8th March 2019. The pleadings of the Petitioner itself clearly indicates that the Respondent Nos.1 and 2 are in physical possession of the said property and were carrying out maintenance work in the crematorium. The Respondent Nos.1 and 2 are also claiming certain rights in the said property being in possession since its inception through the predecessor of Respondent No.1 from at least more than seven decades.

16. At this stage, we do not propose to go into the larger issues raised by the petitioner that the Respondents have encroached upon the land of the Petitioner without following procedure under Sections 77 and 78 of the said Act or under Sections 320 and 321 of the said Act which makes provisions for “disposal of the dead”. The pleadings as well the documents produced on record *prima facie* indicates that Respondent Nos.1 and 2 are already in possession. We do not propose to make any comments as to whether Respondent Nos.1 and 2 have established any right, title or interest in view of the said portion of the writ land as owner or otherwise in this writ petition.

17. In our view, Respondent Nos.1 and 2 are in possession as of today as seen from the pleadings filed by the Petitioner itself. This Court cannot enter into the arena of adjudication of title in respect of the writ land.

18. Insofar as the Supreme Court in the case of ABL International Ltd. And Another (supra) pressed in service by the learned counsel for the Petitioner is concerned, Supreme Court in the said judgment has held that merely because some disputed question of fact

arise for consideration, the same cannot be a ground to refuse to entertain a writ petition in all cases as a matter of rule. In the said judgment Supreme Court also held that when the petition raises questions of fact of a complex nature, which may for their determination require oral evidence to be taken, and on that account the High Court is of the view that the dispute may not appropriately be tried in a writ petition, the High Court may decline to try a petition. Rejection of a petition in limine will normally be justified, where the High Court is of the view that the petition is frivolous or because of the nature of the claim made, the dispute sought to be agitated, or that the petition against the party whom relief is claimed, is not maintainable or that the dispute raised thereby is such that it would be inappropriate to try it in the writ jurisdiction, or for analogous reasons. This principle of the Supreme Court would clearly apply to the facts of this case. There are serious disputes raised in this writ petition as to whether crematorium was already in existence prior to date of the Petitioner executing the sale deed in its favour and prior to execution of the sale deed between the Petitioner and predecessor in title or not. In view of these averments in the petition and affidavit-in-reply, this Court cannot consider the relief as sought by the Petitioner and more particular relief directing the Respondent Nos.1 and 2 to remove their belongings, labours and themselves from the writ land.

19. These aforesaid disputed questions of facts are seriously contested by both the parties and we do not propose to entertain this writ petition on that ground. Writ petition is accordingly dismissed. There shall be no orders as to costs.

20. At this stage learned counsel for the Petitioner seeks continuation of the statement made by Mr. Patil learned counsel for

Respondent Nos.1 and 2. Learned counsel for Respondent Nos.1 and 2 is not willing to continue the statement made before this Court. This Court cannot compel the learned counsel for the Respondent Nos.1 and 2 to continue the statement made before this Court. Request for continuation of the statement is accordingly rejected.

[KAMAL KHATA, J]

[R.D. DHANUKA, J]