

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

**WRIT PETITION 2273 OF 2022  
WITH  
WRIT PETITION 2274 OF 2022**

Shri Prakash Mahabaleshwar Naik (deceased)

Through his legal heirs

1. Smt.Anupama Prakash Naik & Ors.

...Petitioners

vs.

The State of Maharashtra & Ors.

...Respondents

Mr.R.D. Suryawanshi with Suraj Naik for Petitioners.

Mr.A.P. Vanarse, AGP for State.

Ms.Gauri Godse with Rohit Joshi for Respondent 3 to 5.

**CORAM : ROHIT B. DEO, J.**

**DATED : 24 JUNE 2022**

**P.C. :**

1. The Petitioners are the original plaintiffs in Regular Civil Suit 1369/2001 which is instituted against the State of Maharashtra and the Collector of Thane seeking, *inter alia*, a declaration of ownership on the basis of the doctrine of adverse possession. The subject matter of the suit is described as land admeasuring 4000 sq.mtrs forming part of land assigned Survey No.341 and the farmhouse bearing Municipal House No.2902 situated at Village Uttan, Taluka and District Thane.

2. The relief is sought broadly on the premise that the father of the plaintiff was in physical possession of the suit property since 1938, and

after the demise of the father, the plaintiff is in continuous and peaceful possession. The cause of action pleaded are the notices issued by the State officials in purported exercise of power under the Maharashtra Land Revenue Code, 1966 (MLR Code) in the year 2007 calling upon the plaintiff to remove the encroachment and vacate the suit property.

3. It would not be necessary to consider in detail, the stand of the State Government in the civil suit. Suffice it to note, that the State Government denied that the father of the plaintiff, and after his demise the plaintiff, was in peaceful and continuous possession of the suit property. The State Government contended that the plaintiff is a rank encroacher and is neither entitled to a declaration of ownership nor is he entitled to injunct the State Government officers from discharging their statutory duty.

4. It would be apposite to note certain portion of the deposition of the witnesses examined on behalf of the defendants. In the cross-examination of Mr.Rajendra Shantaram Borkar, then then Tahasildar, Thane, in response to the questions put by the learned Counsel for the plaintiff, it has come on record that out of Survey No.341, land which admeasures 14.87 R, the Judicial Academy is allotted land admeasuring 5 hectares. The cross-examination is recorded on 2012 which aspect is of

some relevance and shall be adverted at a later stage in the order.

5. The learned Civil Judge, Senior Division, Thane dismissed RCS 1369/2001 vide judgment and decree dated 17 January 2013. It may be noted that the original plaintiff, Mr. Prakash Naik, expired during the pendency of the suit and his legal heirs – the Petitioners herein prosecuted the suit.

6. Considering the limited issue involved, it would not be necessary to spell out elaborately the reasons recorded by the learned trial Judge. Briefly, the suit is dismissed after recording a finding that the plaintiff as rank encroacher has no right to question the legitimate exercise of statutory power by the officers of the State Government. The learned trial Judge further held that there is no vested right to regularisation of encroachment and that the plaintiff did not establish that the alleged possession has fructified or crystalised in ownership due to prescription.

7. Being dissatisfied with the judgment and decree in RCS 1369/2001, the plaintiffs filed Civil Appeal 36/2013.

8. During the pendency of the appeal, the plaintiffs preferred

application, Exhibit-28, under Order 1 Rule 10 seeking to implead (i) The Registrar General, High Court of Judicature of Bombay, (ii) The Law and Judiciary Department, Mantralaya, and (iii) The Maharashtra State Judicial Academy, Uttan, as parties to the appeal and further preferred application, Exhibit 41, invoking the provisions of Order 6 Rule 17 of the Code of Civil Procedure, 1908 (Code) seeking leave to amend the suit plaint. The plaintiffs – appellants contended that the original Defendants 1 and 2 have transferred the suit property in the name of the Maharashtra State Judicial Academy by executing and registering a Deed of Conveyance. The plaintiffs sought to incorporate an additional prayer seeking declaration that on the basis of the purported Deed of Conveyance, the proposed defendants are not entitled to dispossess the plaintiffs and that the purported Deed of Conveyance is not binding on the plaintiffs.

9. Interestingly, neither in the application under Order 6 Rule 17 of the Code nor in the application preferred under Order 1 Rule 10 have the plaintiffs disclosed the date and the other relevant details of the purported Deed of Conveyance. I have already noted that it is the original plaintiff who brought on record during the cross-examination of Mr. Rajendra Shantaram Borkar that land admeasuring 5 hectares was allotted by the State Government to the Maharashtra Judicial Academy in

the year 2007. In the backdrop of the case of the plaintiff, it was incumbent upon the plaintiffs to plead that in addition to the land allotted to the State Judicial Academy in the year 2007, there is further allotment or conveyance by the State Government in favour of the State Judicial Academy, in relation to additional land or the land admeasuring 4000 sq.mtrs. which is the subject matter of the regular civil suit.

10. The learned Appellate court was pleased to reject the applications, Exhibits 28 and 41, by common order dated 23 August 2021, which is impugned herein.

11. The learned Appellate Court rightly noted in para 14 of the order impugned that no details are pleaded in the applications, Exhibits 28 and 41, on the basis of which the cause of action can be inferred. The learned Appellate Court found that the land stood allotted to the State Judicial Academy in the year 2007 and the factum of allotment was brought on record by the plaintiffs themselves in the year 2012. The plaintiffs did not take any steps in the civil suit to bring on record the proposed defendants. The learned Appellate Court reasoned that apart from the fact that the cause of action is not pleaded, in any event the relief sought against the proposed defendants is apparently time barred.

12. I broadly agree with the reasons recorded by the learned Appellate court. As I have noted (*supra*), the contents of the applications, Exhibits 28 and 41, do not reveal any cause of action against the proposed defendants. The land was allotted to the State Judicial Academy in the year 2007 during the pendency of the suit and apparently the plaintiffs did not find it necessary to challenge the said allotment, since, according to the plaintiffs, the allotment did not cover or include the area of 4000 sq.mtrs. in their possession. Nothing is brought to my notice even during the course of hearing of the petitions, that there is any further or additional allotment of land in favour of the State Judicial Academy as would impinge upon or prejudice the alleged right of the plaintiffs. In any event, assuming that there is an additional conveyance, and I may reiterate, that presently there is absolutely no material to show such conveyance, any transaction during the pendency of the litigation shall be the subject to the doctrine of *lis pendens*, provided the transaction directly affects the right of the plaintiffs which is subjudice in the pending litigation. On a holistic view of the matter, I see no reason to interfere with writ jurisdiction.

13. The writ petitions are dismissed.

**(ROHIT B. DEO, J.)**