

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO. 206 OF 2021

ALONGWITH

CONTEMPT PETITION NO. 22 OF 2020

Mr. Ketan Anant Deshmukh
and Others

} Appellants-
(Orig. Plaintiffs)

V/s.
Smt. Suman Vishnu Deshmukh
and Others

} Respondents
no.1 to 5-Orig
Defendants

Mr. Surel Shah a/w. Mr. S.J. Chaurasia a/w. Mr. Y.M.
Nakhawa i/by. Ashoka Law Firm, advocate for the
appellant.

Senior Advocate, Mr. A.G. Damle a/w. Mr. Vagish Mishra
a/w. Mr. Varad Dubey a/w. Ms. Divyashree Shanbag
i/by. Law Counsellors, Advocate for respondents no.1
and 2.

Senior Advocate, Mr. Y.S. Jahgirdar a/w. Mr. Sachin S.
Punde, Advocate for respondent no.3.

Mr. Rohit Sakhdeo i/by. Sakhdeo and Assocaites, Advocate
for respondent no.4 in AO-206-2021 and for
respondent no.5 in CP-22-2020.

CORAM : SANDEEP K. SHINDE, J.

RESD. ORDER ON : 11th APRIL, 2022.

PRON. ORDER ON : 6TH MAY, 2022.

P.C. :

1. This Appeal under Order 43 Rule 1(r) of the Civil Procedure Code challenges the order dated 9th June, 2016 by which learned District Judge-IV, Raigad, Alibaug declined to direct the respondents, to maintain status-quo in respect of the suit property till the decision in the Regular Civil Appeal No.88/2015.

2. Briefly stated facts of the case are like this;

. Appellants-Plaintiffs instituted Regular Civil Suit No. 573/2012 for declaration and allotment of their share in the lands allotted by the City Industrial Corporation, to the defendants no.1 and 2, being Project Affected Persons. Mr. Sakharam S. Deshmukh, was maternal grandfather of the Plaintiffs no.4 to 7 and of defendant no.2; whereas, grandfather of Plaintiffs no.1 to 3. The defendants no.1 and

2 and the plaintiffs are in relation to each other. The defendant no.3 is Co-operative Housing Society; whereas, defendants no.4 and 5 are the Officers of the City and Industrial Development Corporation Ltd ("CIDCO" for short). Sakharam Deshmukh, common ancestor, was owner of the agricultural lands at Village-Gavhan, District-Raigad. After Sakharam's death, lands were devolved jointly on his family members. The part of these lands were acquired by the State of Maharashtra and vested in CIDCO for project of Navi Mumbai. The CIDCO, pursuant to 12.5% Scheme, under the New Bombay Disposal of Lands Regulations, 1975, allotted land admeasuring 8,500 sq.mtrs. (hereinafter referred to as "suit aggregate entitlement") to the defendants no.1 and 2, excluding the plaintiffs. Plaintiff's state that, share of plaintiff's and defendants no.1, no.2 in the, aggregate entitlement, is 2,833 sq.mtrs. each. That, in/ or about August, 2011 when they enquired with CIDCO about status of suit aggregate entitlement, they were shocked to learn that, defendant no.1 had approached CIDCO and caused CIDCO to allot her certain portion of aggregate entitlement in exclusion of the plaintiffs. Plaintiff's state

that the defendant no.1 in collusion with officers of CIDCO, transferred land admeasuring 5,700 sq.mtrs to the defendant no.3-Housing Society. Whereafter, the plaintiffs caused their Advocate to address a letter in August, 2011 to defendants no.1 to 5. The defendants no.1 and 2, through their Advocate replied, stating that, there was, oral partition effected between the descendants of original owner in 1955, pursuant to which defendants no.1 and 2, alone were entitled to land admeasuring 8,500 sq.mtrs. allotted/to be allotted by the CIDCO, in terms of 12.5% Scheme, being Project Affected Person. Thus, appellants-plaintiffs instituted Suit on 3rd March, 2012, claiming one-third share in aggregate entitlement i.e. 2,833 sq.mtrs. The defendant no.3, caused its appearance and sought rejection of the plaint under Order 7 Rule 11(d) of the Civil Procedure Code. The application of defendant no.3 was allowed. As a result, plaint was rejected on 14th February, 2016. That order was challenged in Writ Petition No. 5598/2014; but was withdrawn on 3rd March, 2015. Afterwhich, Regular Civil Appeal No. 88/2015 was filed. Pending Appeal, appellants moved an application, Exhibit-21, seeking directions to the

defendants to maintain the status-quo in respect of the lands allotted by the CIDCO, to avoid the multiplicity of the proceedings. That application was rejected on 9th August, 2016. Feeling aggrieved by that order, this Appeal from Order is preferred. On 4th January 2008, notices were directed to be issued to the respondents and till the returnable date, CIDCO was directed, not to pass, further order concerning 8,500 sq.mtrs land, allotted/to be allotted under its 12.5% Scheme.

3. Heard learned Counsel for the parties.

4. Sakharam was common ancestor. He was maternal grandfather of defendant no.2 and plaintiffs no.4 to 7 and great grandfather of plaintiffs no.1 to 3. Plaintiff's mother-Mohanabai, was daughter of Sakharam. Sakharam died intestate on 3rd November, 1947. He was survived by widow, married son and four daughters. Defendant no.2-Sumanbai, is daughter of Sakharam; whereas, Yashwant was son of Sakharam. Pleadings reveal that, Sakharam was owner and in possession of lands, Survey Nos.2/1 (2), 70(1), 119/1, 4/0, 9/0, 3/0, 8/0, 91/1(2), 92/2, 34/13, 2/1/1, 16/0, 410/0, 92/2(1) and 257/1(1) at Village-Gavhan. After

Sakharam's death, Revenue Officers, vide Mutation Entry No.1132 entered Yeshwant's name (son of Sakharam) in revenue records of these lands. This entry was certified/approved by the Revenue Officers on 7th January, 1948. Thereafter, in February, 1955, above-stated lands, were orally partitioned as under;

(i)land survey nos.2/1(1), 70/3, 119/1, 4/0, 9/0 were given to Yeshwant (son of Sakharam).

(ii)lands survey nos.3/0, 8/0 were given to Nirmalabai (Wife of Yashwant);

(iii)lands sruvey no.91/1(2), 91/2, 34/13, 2/1(1), 16/0, 410/1 were given to Annapurnabai (widow of Sakharam).

(iv) lands survey nos.92/2(1), 257/1(1), were given to Sumanbai (daughter of Sakharam)-defendant no.1 herein.

. The factum of partition was recorded vide Mutation Entry No.2093, by the Revenue Officer, and certified on 1st February, 1956, in discharge of official duty. Thereafter, corresponding effect was given in the revenue records. In effect, Sumanbai (defendant no.1) was shown as owner and in possession of land Survey no.257/1(1) and Survey No.92, Hissa No.2(1). Though, Mohanabai (mother-grandmother of

plaintiffs), was excluded from the partition, as alleged, she did not challenge the Mutation Entry No.2093 dated 1st February, 1956, in her lifetime. As a result, Sumanbai-defendant no.1, continued to use and possess, the land Survey no.257/1(1) and Survey No.92, Hissa-2(1), which had fallen to her share in partition, for a period more than 50 years, openly and without obstruction. Be that as it may, these two lands were acquired by the State, under the Land Acquisition Act. The copy of Award, in Unit Case No.720/846 shows, Notification under Section 4 of the Land Acquisition Act, in respect of these two lands, was issued on 3rd February, 1970; Section 6 Notification was published on 28th July, 1972; Notices under Section 9(3)(4) were served on the interested persons. However, none had disputed the acquisition proceedings. As a result, possession of these two lands were taken over from Sumanbai-defendant no.1, on 9th July, 1974. Thus, as a matter of fact, neither plaintiffs, nor their mother-Mohanabai, either objected to partition, which was effected in 1955, nor objected to acquisition proceedings and Award nor claimed share in the

compensation, either under Section 30 of the Land Acquisition Act, or otherwise, in her lifetime.

5. Herein, the plaintiffs are claiming one-third share in 8,500 sq.mtrs land allotted by the CIDCO to defendants no.1 and 2 under the New Bombay Disposal of Land Regulation, 1975, being Project Affected Persons, inlieu of land Survey No.92/2(1) and 257/1(1). These two lands had fallen to the share of Sumanbai-defendant no.1, in partition effected in 1955. Thus, CIDCO allotted plot no.1, admeasuring 5,000 sq.mtrs to Sumanbai, vide agreement to lease dated 29th September, 2003; whereafter vide registered tri-partite agreement dated 19th January, 2004, leasehold rights therein were transferred to Hari Nihar Co-operative Housing Society Limited-the defendant no.3 herein (hereinafter called as "the first plot" for short).

. In April 2008, CIDCO vide registered agreement to lease, allotted second plot admeasuring 3,294 sq.mtrs to Lakshmibai Deshmukh, Lata Deshmukh, Ganpat Deshmukh, Tikaram Deshmukh, Sushila Sitaram Deshmukh and Sumanbai Deshmukh (defendant no.1) at Village-Ulve

(hereinafter called “the second plot” for short). Whereafter, on 21st April 2008, tri-partite agreement was executed by CIDCO, Sumanbai (defendant no.1) and five co-lessees in favour of M/s. Krishna Developers. Thereafter, vide subsequent tri-partite agreement dated 7th April 2015, said second plot was transferred to M/s. Progressive Homes. On 19th January, 2016 CIDCO granted development permission to develop second plot. On 29th December, 2017 CIDCO issued Habitable Floor Completion Certificate, in respect of the building constructed on this Plot. In November, 2019 CIDCO granted Occupancy Certificate. About 86 flats in the said building have been sold out and possession has been handed over to respective purchasers. It appears, these facts were not brought to the notice of the Court and may be for that reason, vide order dated 4th January, 2018 CIDCO was directed not to pass further orders.

6. Thus, having regard to the facts stated above, it may be noted that, except Sumanbai-defendant no.1, the other lessees, of plot no.2, have not been impleaded as the defendants in the suit. In addition thereto, on the said

second plot, building has been constructed as per sanctioned plan and flats therein have been sold to flat purchasers. As such, subsequent lessees of first and second plot are bonafide purchasers and therefore area of these two plots needs to be excluded from consideration, while deciding and quantifying plaintiff's right in the aggregate area of 8,500 sq.mtrs. In these circumstances, the order dated 4th January, 2018 passed by this Court directing the CIDCO not to pass further orders, qua first and second plot, is hereby recalled.

7. It appears, CIDCO vide registered agreement to lease dated 25th July, 2017 allotted Plot No.270 ("third plot" for short) admeasuring 1,749.71 sq.mtrs to defendants no.1 and 2 under its 12.5% Scheme. On 11th December 2018, vide tripartite agreement was executed between CIDCO, defendants no.1 and 2 and M/s. Navdeep Realty, leasehold rights in the third plot, have been transferred to M/s. Navdeep Realty. Obviously, M/s. Navdeep Realty is not a party respondent in this Appeal.

8. Since, area of first and second plot, has been excluded from consideration while determining plaintiff's rights in the aggregate area of 8,500 sq.mtrs, now question is, "Whether the plaintiffs have prima-facie established their rights to claim share and/or interest in the third plot ?"

9. It could be seen from the facts aforestated that, Sakharam died in 1947. After his death, the lands owned and possessed by him, were partitioned in February, 1955 i.e. before Hindu Succession Act, came into force. The partition was recorded and certified by Revenue Officers, vide Entry No. 2093, in discharge of their official duty. Therefore, the Mutation Entry No. 2093, carries the presumption of correctness. As such there is a, contemporaneous public document, evidencing factum of partition of the properties. Evidence on record, definitely shows that, partition was not objected to either by mother of plaintiffs in her lifetime or by plaintiffs, anytime, before instituting the suit. In the year 2012, i.e. nearly after 55 years, plaintiffs are disputing the partition, effected in 1955 on the ground, that in previous suit, instituted by Sumanbai

& Sushilabai (daughters of Sakharam) against brother-in-law of Yeshwant, it was held, Sumanbai and Sushilabai and plaintiffs herein ("defendants" in previous suit), were equally entitled to property mentioned in the suit. However, suit property therein, was House property and Gaothan Lands. Plaintiff's have not produced, material on record to establish that decree passed in the previous suit, also relates to land Survey No.92/2(1) and 257/1(1), which had fallen to the share of Sumanbai, in partition. Therefore, findings in the previous suit, does not further plaintiffs' case. In any case, during the passage of time, the partition has been acted upon, meaning thereby, these two pieces of lands, which had fallen to the share of defendant no.1 were in her possession till, were acquired by the State. At no point in time, the acquisition proceedings were objected to by the plaintiffs or their predecessor. Moreover, it is not known, why plaintiffs have not claimed interest and share in other lands held by Sakharam. For all these reasons, prima-facie, in my view, the inaction on the part of the plaintiffs and/or their predecessor, over a period of 50 years, amounts to their tacit accent to allege violation of

their rights in the lands held by Sakharam and thus imply abandonment of their rights therein.

9. For all these reasons, in my view, no case is made out for directing the parties to maintain status-quo in respect of Plots-1, 2 and 3 allotted by CIDCO to the defendants no.1 and 2. As a result, Appeal alongwith all applications therein, deserve no consideration. They are dismissed.

10. Whether, tripartite Agreement dated 11th December, 2018 executed in favour of M/s. Navdeep Realty was in will disobedience of order dated 4th January, 2018 is to be examined independently. Thus, Contempt Petition No.22/2020 stand over to 1st July, 2022.

11. At this stage, Mr. Shah, learned Counsel for the applicant, requested to continue the order dated 4th January, 2018, whereby CIDCO was directed, not to pass further orders. Taking into consideration, the facts of the

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AO-206-2021
6th May, 2022

case, and in view of the reasons set out in the order, the
request is rejected.

NEETA
SHAILESH
SAWANT

(SANDEEP K. SHINDE, J.)

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