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wp4752.19

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.4752 OF 2019

Pravinchand Harakchand Lodha
Age-59 years, Occu- Business,
R/o. Shivaji Road, Shrirampur,
Tq. Shrirampur, Dist. Ahmednagar

...PETITIONER

VERSUS

1. The State of Maharashtra,
through its Secretary
Revenue and Forest Department,
Mantralaya, Mumbai
2. The Additional Commissioner
Nashik Division, Nashik
3. The Additional Collector,
Ahmednagar
4. The Circle Officer,
Shrirampur, Dist. Ahmednagar
5. The Chief Executive Officer &
Planning Authority, Shrirampur Nagar
Parishad, Shrirampur, Dist. Ahmednagar
6. Balasaheb Ashok Khillari
Age-38 years, Occu-Agri
7. Ravindra Ashok Khillari
Age-35 years, Occu-Agri
Respondent Nos. 6 & 7
R/o. Khillari Vasti, Ward No.6
Shrirampur, Tq. Shrirampur,

...RESPONDENTS

Dist. Ahmednagar

Mr. Ajeet B. Kale, Advocate for the petitioner
Mr. V. R. Dhorde, Advocate for respondent No.5
Mr. K. B. Jadhavar, AGP for respondent/State
Mr. N. B. Khandare, Advocate h/f Mr. D. J. Choudhari, Advocate
for the respondent Nos. 6 & 7

CORAM : KISHORE C. SANT, J.

RESERVED ON : 29/11/2023

PRONOUNCED ON : 01/12/2023

JUDGMENT :

1. Rule. Rule made returnable forthwith. With the consent of the parties the matter is taken up for final hearing.

2. The petitioner claiming to be owner and possessor of suit land Gut No.92 has filed this petition challenging the impugned judgment and order dated 14-12-2018 passed by the Learned Minister (Revenue), Mantralaya, Mumbai in the case RTS No.3398/771/Case No.424/J-6 and the authorities under the Minister. By way of impugned judgment and order a revision application of the petitioner came to be rejected and the order passed by the learned Additional Commissioner, Nashik Division,

Nashik is confirmed. Said order is made subject to out come of civil proceeding pending between the parties.

3. Facts in short are as under:-

a] Entry standing in the name of petitioner bearing ME No.14535 was objected by present respondent Nos. 6 and 7 by filing objections before respondent No.4 i.e. Circle Officer. In view of the objection the Circle Officer, after hearing the parties, cancelled the mutation entry carried in favour of the petitioner on the ground that writ petition No.8091/2012 was filed and pending before this court. Said order was challenged by filing the appeal before the Sub-Divisional Officer, Shrirampur bearing RTS Appeal No.28/2023. The learned Sub-Divisional Officer allowed the appeal by order dated 12-05-2014 setting aside the order passed by the learned Circle Officer. Being aggrieved thereby respondent Nos. 6 and 7 filed the Second RTS Appeal No.23/2015 before the learned Additional Collector, Ahmednagar-respondent No.2. The learned Additional Collector

allowed the appeal by the judgment and order dated 18-04-2016. The petitioner, therefore, approached the learned Additional Commissioner, Nashik by filing RTS Revision No. 185/2016. However, same came to be rejected by judgment and order dated 06-10-2017. The petitioner thus, approached the Hon'ble Minister by filing RTS Revision No.3318/771/Pra.Kra.424/J-6 and the said revision also came to be rejected. The petitioner, is therefore, before this court.

b] The petitioner claims his right over the suit property stating that the petitioner was original owner of land Gut No.108. Said land came to be reserved under the Town Planning Scheme No. II for Shrirampur city. Said scheme was finalized on 01-01-2000. Out of Gut No. 108, area adm. 74-R was included in the scheme and was given a final plot No. 11. This plot No. 11 was reserved for garden. Since the land of the petitioner was reserved for garden he was allotted alternative plot bearing final Plot No. 17. On the land of the petitioner that was reserved the name of Shrirampur, Nagar Parishad came to be mutated on

filing of revision by the learned Chief Officer of Shrirampur Nagar Parishad.

c] It is the case of the petitioner that though final plot No. 17 was allotted to him, actual possession was not handed over to him as per the provision of section 72(3) of the Maharashtra Regional Town Planning Act (Hereinafter referred to as 'the MRTP Act'). The order was passed by the learned Arbitrator. In view of the same, possession of Plot No. 17 was given to the petitioner on 26-07-2002 under the order passed by the learned Arbitrator and the said order came to be challenged by respondent Nos. 6 and 7 before the learned District Court. However, same came to be rejected by order dated 17-09-1992. It is thereafter respondent Nos. 6 and 7 filed RCS No. 3/2015 in the court of Civil Judge, Senior Division, Shrirampur. In the said suit respondent No.5-the Chief Executive Officer and Planning Authority, Nagar Parishad is also a party. In the said proceeding Respondent No.5 admitted that plot No. 17 is allotted to the petitioner and plot No. 16 is allotted to respondent Nos. 6 and 7.

4. Learned advocate Mr. Kale for the petitioner submits that Plot No.180 of respondent Nos. 6 and 7 was re-adjusted under Section 86 of the MRTP Act and plot was given to him. However, no actual possession was handed over to him. As regards respondent Nos. 6 and 7 they have already taken possession of the land allotted to them. The Municipal Council has put them in possession. The petitioner and respondents had filed writ petition against the scheme. However, same was allowed and SLP was filed by the Municipal Council against that came to be dismissed and after finalization plots were handed over. He pointed out that the Municipal Council before the Minister has clearly submitted that Gut No. 108 was given plot No. 11 and in the scheme final plot No.7 is given to the said land. Said land is in possession of Municipal Council. He submits that the appeal was preferred by respondent Nos.6 and 7 that was also dismissed. The adjustment of the plot thus attained finality. From the form No.1 of Town Planning Scheme No. II (Final) to show that grand-mother of petitioner namely

Chandabai Lodha was shown as owner of land Gut No.108 which was given final plot No.11, adm. 7400 sq. mts. From the said form he shown that there is remark that appeal before the tribunal is dismissed against the award of the arbitrator after it is signed by the arbitrator to show that adjustment became final. He pointed out a receipt of possession of land Gut No.108 executed by respondent No.5. A notice was issued to the respondents for possession directing to hand over the possession on or before 10-04-2001. It is further seen that an appeal was filed under Section 74 of the MRTP Act before the learned District Judge and the same came to be dismissed on 04-02-1993. He submits that the arbitration award under scheme became final as the same was not further challenged by the respondents. He further pointed out that respondents thereafter issued notice under Section 126 of MRTP Act. He thus submits that all the parties are in possession of the respective plots as per the final scheme.

5. From the suit filed by respondent Nos. 6 and 7 it is

seen that area of the suit land is shown to be 4693 sq. mts. Out of Gut No.92/3, situated at Shirasgaon which is now given final plot No.17. He submitted that entire property after finalization of the scheme vested in the planning authority and the same is observed in the judgment by the learned Judge in RCS No.3/2015. However, later on civil suit came to be dismissed as civil court does not have jurisdiction in view of bar under section 149 of the MRTP Act.

6. On all these background the petitioner submitted that he has lost possession over the original land. Plot which is allotted to him in place of his original land is also not given in actual possession and thus he is still deprived of his property. Since he is given the suit land, his name should be recorded in revenue record. He placed reliance on the following judgments of the Hon'ble Apex Court

1. (2020) 9 SCC 356 in the case of Hari Krishna Mandir Trust Vs State of Maharashtra and others.
2. 2011 (1) Bom C. R. 293 in the case of Satish Soma Bhole Vs State of Maharashtra and others.

7. Mr. Khandare, Advocate for respondent Nos. 6 and 7 submitted that all the authorities except learned Sub-Divisional Officer have concurrently held against the petitioner. Looking to the scope of the writ petition under Article 227 this court need not interfere in the findings of the fact. His submission is that his mutation entry No. 14535 was sent for certification to the Circle Officer. However, same was refused. His submission are as below.

That in 1975 development plan was published. After completing all the formalities final DP was published on 23-05-1990. Gut No. 108 belongs to the petitioner and Gut No. 92 belongs to respondents. Both the properties were shown reserved under the scheme. Gut No.92 was divided into plot Nos. 24-A, 15-A, 16 and final plot No.17. Thus, plot No.17 is part and parcel of original land Gut No.92. Gut No. 108 was given final plot No.7. Final plot No.17 was reserved for stadium and playground. A writ petition was filed by the petitioner i.e. 3399/2017 and writ petition No.1387/2009 filed by the

respondent Nos. 6 and 7. The petition No.1837/2009 was allowed by this court holding the respondent as owner of land Gut No. 92-3. This court in petition of the respondents clearly held that reservation made vide notification dated 23-05-2019 of land gut No. 92-3 stood lapsed. Whereas in writ petition No.3399/2017 filed by the petitioner this court allowed the petition as well in view of the judgment and order passed in writ petition No. 1837/2009. Thus reservation on land Gut No.108 also came to be lapsed and thus, there is no question of petitioner getting alternative land.

8. He further submits that notice issued by respondent No.5-Chief Officer was not served on respondent Nos.6 and 7. From the possession receipt dated 27-06-2002 it is seen that the petitioner took possession of land Gut No.108, including final Plot No.17 of Town Planning Scheme No.II under Section 88(c) of the MRTP Act. The petitioner thus received possession of his original land. Said possession receipt bears signature of the petitioner. It is the case of the petitioner himself that the

possession of plot No. 17 was only taken on paper and no actual possession was handed over. The petitioner himself had taken a stand in his petition that allotment of plot No.17 was only on paper. Further it was specific ground that no possession of final plot No.17 was given to him. This petition was filed on 07-12-2006. Whereas in the present petition the petitioner claims to be in possession of plot No.17 since 2000. In the present petition now a ground is taken that petitioner was given possession on 27-06-2002 which is contrary to stand taken in his earlier petition. Learned advocate Mr. Khandare thus submits that after original lands are dereserved under the orders of this court, there is no question of petitioner being in possession of plot No.17 which was to be given in lieu of original land belonging to him.

9. Further submission of Mr. Khandare, learned advocate that the petitioner submitted an application for mutation entry No.14535 and the same was forwarded to the Circle Officer which was rightly rejected. The learned Additional

Collector and the learned Additional Commissioner have rightly held in favour of respondents.

10. By giving factual background the learned advocate further made submission on the legal issues. He submits that sections 37 & 125 of the MRTP Act are in the nature of compulsory acquisition. In this case no such procedure is followed. The Mode of taking possession of land is given in Section 126. Section 127 provides consequences of non payment of compensation. i.e. lapsing of reservations. In this case the petitioner as well as respondent Nos. 6 and 7 invoked the provision of section 127 of the MRTP Act. Once the petitions were allowed there was no question of petitioner getting possession of plot No.17. All the procedure under Town Planning Act is thus now lapsed. The petitioner without any locus has thus filed an application for mutation in his name which is totally illegal. He relied upon the judgments reported in 1997 BCI 118 in the case of Mr. Rusy Kapadia Vs State of Maharashtra, (2020) 9 SCC 356 in the case of Hari Krishna

Mandir Trust Vs State of Maharashtra.

11. The government has filed affidavit-in-reply supporting the impugned order. It is submitted by the learned AGP that the Hon'ble Minister has elaborately dealt with all the points involved in the matter. There are four authorities which have decided against the petitioner. Considering the scope of Article 227 this court need not interfere with the findings of the facts and judgments.

12. Mr. V. R. Dhrode, learned advocate appearing for Municipal Council submits that the petitioner was put in possession of final plot. No challenge to the scheme needs to be entertained now.

13. In rebuttal the learned Advocate Mr. Kale, for the petitioner submits that in the petition issue is only in respect of mutation entries. This court need not go to the provision of MRTP though respondents have argued on the same. The Town

Planning scheme is formulated under Chapter-V of the Act and has attained finality. Now going into that issue would be reopening of the scheme. Arbitrator's order became final as the appeal against the order of the Arbitrator came to be dismissed. From reading section 59 and 22 of the MRTP Act it is clear that reservation is qua the property and not qua the person. As regards section 127 he submits that notice can be given by any person 'interested' and such person need not necessarily be a person claiming to be owner of the property. Whereas the ownership is declared by the Arbitrator there was no question of going to the issue of ownership of the land. Scheme became final after sanctioned by the government and no any authority has any power to interfere with the same. About writ petition No.3399/2007 he submitted that the court had not dealt with all the prayers in petition. Prayers except prayer in view of Section 127 of the MRTP Act in the said petition still survive.

14. After his submission Mr. Khandare, points out that the affidavit of the Municipal Council before the Hon'ble

Minister is pointed out by the advocate for the council. However, affidavit before this court is not shown. The Municipal Council cannot rely upon the affidavit before the Hon'ble Minister as now before this court in the affidavit their stand is otherwise and submits that the petition ultimately deserves to be dismissed.

15. After considering the submission and looking to the documents it is clear that even as per the petitioner's case in the earlier writ petition No.3399/2007 filed by him the possession of land in question is not actually given to the petitioner and only paper possession was taken of the land. In the ground also it is stated that possession of final plot No. 17 was given only on the paper and the land was reserved for the purpose of play ground/stadium. Further grounds in the said petition in para No. 43 it is reiterated that only paper possession is given of plot No. 17. Now the petitioner is trying to submit that though he had filed petition for release of his original land he had filed that petition only as person interested. His further submission that by

filing the said petition he did not claim ownership of that plot. However, fact remains that he had filed the petition for release of that land under Section 127 of the MRTP Act. This itself shows that he had prayed for release of their plot Gut No. 108. It is clearly appearing that he is claiming right over the original land as well as newly allotted land which as per his own story was never actually given in his possession. Certainly this court finds that he cannot pray for taking entry in his name in the revenue record when he is not in possession of plot No. 17.

16. This court finds substance in the submission of Mr. Khandare, learned advocate for the respondent that while taking mutation entry the court and the authorities have to consider all the facts and the proceedings taken under the MRTP Act while coming to the conclusion.

17. The petitioner's submission that issue is only as regards mutation entry and therefore the court need not go to any other aspect is without any substance. For taking mutation entry in the record person necessarily has to show his right over

the property. The authorities in this case have rightly considered all the aspects. One of the prayers in writ petition No.3399/2007 i.e. prayer 'C' though is in respect of final plot No. 17, however, same was not considered as per the submission of the petitioner. Order passed in the said petition is dated 27-07-2012 disposing off the said petition in view of the judgment passed by this court in writ petition No.1837/2009 is accepted by the petitioner. It is recorded in the said order that the petitioner was pressing the petition only in relation of the notice under Section 127 of the MRTP Act and other contentions were not looked into and were kept open for consideration. However, since thereafter the petitioner has not filed any substantive procedure and proceedings.

18. In view of above, no case is made out to call for interference in the writ petition. The authorities have rightly considered all the aspects. Hence, the petition deserves to be dismissed and same is hereby dismissed. Rule stands discharged.

19. In view of dismissal of the petition the pending civil application does not survive and disposed off.

[KISHORE C. SANT, J.]