

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

**SECOND APPEAL NO.778 OF 2019
WITH
CIVIL APPLICATION NO.1293 OF 2018
IN
SECOND APPEAL NO.778 OF 2019**

Tararani Vidyapeeth Kolhapur
through Secretary Krantikumar
Rangrao Patil

...Appellant

Versus

The State of Maharashtra and Ors.

...Respondents

...

Mr. Yuvraj Narvankar for the Appellant.

Mr. A.R. Patil, AGP for Respondent No.1-State.

Mr. Tanaji Mhatugade for Respondent Nos. 2 & 4.

Mr. Nagesh Chavan for Respondent No.3.

CORAM: SMT. ANUJA PRABHUDESSAI, J.

DATED: 8th NOVEMBER, 2023.

P. C. :-

1. With consent, heard finally on the following substantial question of law:-

(a) Whether order dated 06/06/2023 passed by the Defendant No.1 is illegal and in contravention of principles of natural justice?

2. I have perused the records and considered the submissions

advanced by Mr. Yuvraj Narvankar, learned counsel for the Appellant, Mr. A.R. Patil, learned AGP for Respondent No.1-State, Mr. Tanaji Mhatugade, learned counsel for Respondent Nos.2 and 4 and Mr. Nagesh Chavan, learned counsel for Respondent No.3.

3. The Appellant herein is the original Plaintiff and the Respondents are the Defendants in the suit and shall be hereinafter referred to as the Plaintiff and Defendants respectively.

4. The Plaintiff-Tararani Vidyapith, Kolhapur, is a public charitable trust, which is affiliated to Prince Shivaji Education Society, which is also a registered trust. In the year 1946 the Government allotted to Shri Prince Shivaji Maratha Education Society a portion of land admeasuring 6 A and 5 gunthas of land from S. No.401/A, having total area of 7A 30 gunthas. The land allotted to Prince Shivaji Education Society has been separately surveyed under Section 401/A/2-A. Dr. V.T. Patil, the founder President, established Tararani Vidyapith to cater to the needs of women's education and the Trust started school for girls. In 1954 the said land came to be transferred in the name of Plaintiff-trust. By Change Report No.217 of 1963 the name of Prince Shivaji Trust was removed and on 23/05/1963 the

name of the Plaintiff-Trust was entered in P.T.R. by Change Report No.249 of 1963. The Plaintiff Trust is in possession of the said land where several schools /colleges have been established to impart education to girls.

5. The Respondent No.2, erstwhile owner lodged a complaint alleging that the original allottee -prince Shivaji Maratha Education Society has unauthorisedly transferred the land to the Plaintiff-Trust. The Collector conducted inquiry and ordered TILR to measure the land and submit a plan. On the basis of the report/plan submitted by the TILR the Collector concluded that the Plaintiff trust is in unauthorised possession of excess land admeasuring 1570.80 sq.meters and by order dated 06/03/2003 in exercise of powers under Section 59 of the Maharashtra Land Revenue Code, 1960, accorded permission to the City Survey Officer to recover possession of the said land. Aggrieved by the said order the Plaintiff filed a suit seeking permanent injunction to restrain the Respondents from taking possession of the said land.

6. The Collector filed his written statement reiterating that the Plaintiff is in unauthorised possession of the Government land and

that the suit is not maintainable. The Trial Court recorded the finding that the Plaintiff is in possession of the suit property. The Trial Court further held that the Plaintiff had failed to prove that order dated 06/06/2003 is null and void and hence refused to grant relief of perpetual injunction. Being aggrieved by the said judgment, the Plaintiff preferred an appeal under Section 96 of the CPC. The first Appellate Court held that the Plaintiff is not in lawful possession of the suit property and hence confirmed the judgment and decree passed by the Trial Court. Being aggrieved by these two orders the Plaintiff has filed this appeal under Section 100 of the CPC.

7. It is not in dispute that the Government had allotted land admeasuring 6 A 5 gunthas to Prince Shivaji Education Society. The said land which has been separately surveyed in survey records under R.S. No.401/A/2-A, was transferred to the Plaintiff in the year 1954. The grievance that the transfer is unauthorised and is in breach of terms and conditions has been raised after almost 50 years from the date of the transfer.

8. Be that as it may, the Collector has sought to recover possession of the excess land on the basis of the report/plan at

Exhibit-170 submitted by witness-Krishna Jondhalekar. This witness has admitted that the land in possession of the Plaintiff is bounded on North and South by municipal road and on West by a stream. He has admitted that the said stream passes through the property of the Plaintiff. He has admitted that there is an auditorium in the said land and the Plaintiff is in possession of the same. The witness-Krishna Jondhalekar has admitted that the property under Survey No.401/1/A is recorded in the survey records in the name of Tararani Vidyapeeth. He admits that the area of the land in possession of the Plaintiff does not exceed the area recorded in 7/12 extract.

9. It is not in dispute that the Plaintiff-Trust was not given a personal hearing. The witness-Krishna Jondhalekar has also admitted that the notice was not given to the Plaintiff to remain present at the time of taking the measurements. The map at Exhibit-170 was not drawn in presence of the Plaintiff. The decision that the Plaintiff is in possession of excess area has been taken without giving him an effective opportunity of meeting the allegations made against it. Both the courts below have failed to consider this vital aspect.

10. It is trite that an authority determining questions affecting

the rights of the parties are duty bound to act judicially, observing the rules of natural justice. In the instant case, the Collector has transgressed the principle underlying *audi alteram partem* rule by ordering recovery of possession of land, which is undisputedly in possession of the Plaintiff since 1954, without affording any opportunity to the Plaintiff to meet the allegations of encroachment. The result is that such decision which is in breach of principle of natural justice cannot be sustained.

11. Hence, the appeal is allowed. The impugned judgment is set aside. Consequently, the suit is decreed. The Defendants, their servants, etc. are restrained from acting on order dated 06/06/2003 (Exhibit-203) and interfering with possession of the plaintiff in respect of land under Survey No.401/A/2A and or land admeasuring 1570 sq. meters delineated in the plan at Exhibit-170.

12. The civil application stands disposed of in view of disposal of the appeal.

(SMT. ANUJA PRABHUDESSAI, J.)