

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO. 675 OF 2017**

WITH

CIVIL APPLICATION NO. 1286 OF 2017

Gopal Dhanaji Patel ...Appellant

Versus

Pandharpur Municipal Council,
Pandharpur, Thru. it's Chief Officer
Dist. Solapur

...Respondent

AND

SECOND APPEAL NO. 260 OF 2021

Sanjay Shankarrao Mali ...Appellant

Versus

Pandharpur Municipal Council,
Pandharpur, Thru. it's Chief Officer
Dist. Solapur

...Respondent

AND

SECOND APPEAL NO. 353 OF 2019

WITH

CIVIL APPLICATION NO. 767 OF 2019

Vitthal Chintamani Ronge ...Appellant

Versus

Pandharpur Nagarparishad,
Pandharpur, Thru. it's Chief Officer
Dist. Solapur

...Respondent

.....

Mr. Pramod Arjunwadkar for the Appellant in SA/675/2017 & CAS/1286/2017.

Mr. Satish S. Raut a/w Mr. Saurab Butala a/w Mr. Abdul Shaikh a/w Mr. Shubham Gangan for the Appellant in SA/260/2021.

Mr. Ajay Joshi for the Appellant in SA/353/2019 & CAS/767/2019.

Mr. Sarang S. Aradhye a/w Ms. Gauri Velankar a/w Mr. Shantanu Gurav for the Respondent.

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CORAM : N.R. BORKAR, J.

DATED : 1 SEPTEMBER 2023

P.C. :-

The issue involved in all these second appeals is covered by the order passed by the Hon'ble Supreme Court dated 14 February 2023 in Petition for Special Leave to Appeal No. 9634 of 2018. Hence, all these appeals are being disposed off by this common order.

2. I have heard the learned counsel for the appellant/s and the learned counsel for the respondent-Municipal Council.

3. The respondent – Municipal Council by Resolution dated 15 September 1984 allotted industrial plot/s (suit plot/s) to the appellant/s on a leasehold basis to start small scale industry. The respondent / Municipal Council subsequently by Resolution dated 9 November 1984 decided to sell the suit plot/s to the appellant/s. As the sanction of the State Government was required for the purpose of sale, the proposal to that effect was submitted. The State Government by Resolution dated 24 February 1989 accorded the said sanction. The Sale Deed of the suit plot/s was thereafter executed in favour of the appellant/s. However, in the meantime, the Government Resolution dated 24 February 1989 was, challenged before this Court in a writ petition being Writ Petition No. 488 of 1990. The said writ petition was allowed by order dated 15 February 2003 and the Government Resolution dated 24 February 1989 was quashed and set aside. Liberty was, however, granted to the State

Government to reconsider the issue of sale of suit plot/s in favour of the appellant/s and others in accordance with the provisions of Maharashtra Municipalities Act. Pursuant to the said liberty, the State Government came up with fresh Resolution dated 27 May 2005. By the said Resolution, the allottees were allowed to retain their possession subject to certain conditions. The respondent - Municipal Council thereafter filed suit/s against the appellant/s and few others including one of the allottees namely Suryakant Shamrao Kale (appellant in SLP (C) No.9634 of 2018) for recovery of possession of suit plot(s) on the ground that they do not satisfy the conditions of the Government Resolution dated 27 May 2005 and as such are not entitle to retain the possession of the suit plot/s. The trial Court dismissed the suit/s. The First Appellate Court, however, granted decree of possession in favour of the respondent – Municipal Council. Hence, these Second Appeals.

3. Similar decree was passed by the First Appellate Court against Suryakant Kale (appellant in SLP (C) No. 9634 of 2018). The said decree was challenged by him before this Court in Second Appeal. This Court dismissed his Second Appeal against which he filed the special leave petition before the Hon'ble Supreme Court being SLP (C) No. 9634 of 2018. The Hon'ble Supreme Court has allowed the said special leave petition by order dated 14 February 2023.

4. The order passed by the Hon'ble Supreme Court dated 14 February 2023 in SLP (C) No. 9634 of 2018 reads thus:

“Leave granted.”

We have heard Mr. Dilip Annasaheb Taur, learned counsel for the appellant and Mr. Vinay Navare, learned counsel for the respondent Municipal Council.

In the year 1984, the respondent-Municipal Council allotted industrial plots of land to various persons under a policy then in force for the development of small scale industries in the area. The appellant herein was one of the beneficiaries of such an allotment on a leasehold basis.

Subsequently, the respondent-Municipal Council passed a resolution on 24.02.1989, to transfer title to those plots of land in favour of the allottees. The sanction of the State Government was obtained on 05.01.1990 and the sale deed itself was executed.

However, the policy of the Municipal Council and the State were challenged before the High Court in a Writ Petition being W.P.No.488/1990. The High Court, by a judgment dated 15.02.2003 set aside both the resolutions of the Municipal Council as well as the allotments made in favour of the individuals.

In other words, the allotment made in favour of all the lessees/transferees got cancelled by the said order of the High Court.

However, the Urban Development Department of the State Government thereafter came up proceedings dated 27.05.2005. By these guidelines, Government decided to allow some of with certain allottees to retain their possession, subject to their satisfying certain conditions.

The respondent-Municipal Council thereafter filed a Special Civil Suit bearing No.95/2007 on the file of Joint Civil Judge, Senior Division, Pandharpur for recovery of possession and mesne profits. The Trial Court dismissed the suit.

However, the First Appellate Court reversed the judgment of the Trial Court and granted a decree of recovery of possession. The judgment and decree of the First Appellate were also confirmed by the High Court

in a second appeal, forcing the appellant to come up with the above civil appeal.

Before we proceed to consider the only issue that has to be dealt with by this Court, it has to be remembered that admittedly the appellant was allotted the plot way back on 09.11.1984 and a conveyance was also made to him on 1990. Therefore, he is in possession of the plot for the past about 38 years.

The relevant portion of the guidelines issued by the State Government in year 2005 by GR No. MUP-2201/2505/PK.167/2002/NV-19, dated 27.05.2005, reads as follows:

“..Hence in exercise of powers conferred by Rule 26 of the Maharashtra Municipal Council (Transfer of Immovable properties) Rules, 1983 framed under Maharashtra Municipal Councils, Nagar Panchayats & Industrial Township Act, 1965, by granting exception for Rule No.7 and 8, as a special case and for this purpose issue following orders-

1) The plot holders who are doing business as per rules and are from Lower Income Group Backward Class who are carrying out their traditional occupation, shall be given plots with ownership rights.

2) The Petitioners who are educated unemployed youths and desirous to start Units shall be allotted remaining open plots by charging rates decided by Three-member committee.

3) The plot-holders who are not running units as per rules, the possession of such plots shall be recovered by concerned Municipal Council and further shall be re-allotted by inviting applications by charging rates decided by Three- member committee..”

The main ground on which the respondent-

Municipal Council filed the suit for recovery of possession, as seen from paragraph 4 of the plaint was that the appellant was not from the low income group and that he was neither from the backward classes nor carrying on any traditional occupation. In other words, the main ground on which the respondent sought recovery of possession was that all the conditions as stipulated in clause (1) should be cumulatively satisfied by a person to fall within the ambit of the guideline dated 27.05.2005.

But a reading of the clause (1) of the guidelines extracted above would show that the same is capable of being interpreted in both ways.

While it is possible to say that all conditions should be satisfied cumulatively, it is also possible to say that they can be read disjunctively, in view of the absence of the word “and” and also in view of the punctuation mark “,” (coma).

Therefore, we are of the view that the appellant having been in possession of the property for the past 38 years and having established through evidence that he is running an automobile shop and steel fabrication unit in the properties from the year 1989, is entitled to the benefit of the Government guidelines. The High Court and the First Appellate Court committed an error in granting a decree in favour of the respondent-Municipal Council.

Therefore, the appeal is allowed and impugned judgment and decree of the First Appellate Court and the High Court are set aside and the judgment and decree of the Trial Court are restored. There will be no order as to costs.”

(emphasis supplied)

5. In the light of the above order of the Hon’ble Supreme Court , I have perused the judgment of the trial Court and the First Appellate

Court. The trial Court has recorded the specific finding that the appellant/s are using the suit plot/s for industrial purpose since last 25 years. The First Appellate Court has not recorded any contrary finding to that effect. As the issue involved in these appeals is covered by the above order of the Hon'ble Supreme Court, the appeal/s will have to be allowed and accordingly, they are allowed. The impugned judgment/s and decree/s are set aside. In the facts and circumstances, the finding recorded by the trial Court of automatic cancellation of Sale Deed/s in view of quashing of Government Resolution dated 24 February 1989 by this Court, is set aside aside.

6. Pending Civil Applications stand disposed of.

(N. R. BORKAR, J.)