



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.2779 OF 2017

Suresh Dinkar Patil

..... Petitioner

Vs.

Chief Executive Officer, Pune Zilla

Parishad, Pune & Anr.

..... Respondents

Mr. Kuldeep Nikam a/w. Mr. Om Latpate for the Petitioner.

Mr. Vivek Rane i/b Mr. Ashwinikumar Kapadnis for Respondents.

CORAM : SHARMILA U. DESHMUKH, J.

DATE : 22nd JUNE 2023.

P. C.

1. The execution application in Regular Darkhast No.134/2010 came to be dismissed by the executing Court *vide* order dated 17/11/2015. The execution application was filed seeking execution of Consent Decree dated 16th April 1982.

2. The solitary ground on which execution Application has been dismissed is that the period of 12 years prescribed under section 136 of the Limitation Act for execution of the decree commenced on 19/12/1996. The executing Court while arriving at the said finding has relied upon paragraph No.6 of the subsequent

suit being RCS No.1626/2003 instituted by the petitioner against respondents seeking relief of injunction as it was apprehending that Pune Zilla Parishad would dispossess the petitioners contrary to the Consent Decree dated 16/4/1982.

3. Upon bare perusal of the averment made in paragraph No.6 of RCS No.1626/2003, it is evident that it is pleaded that on 19/12/1996 there was a public notice which was issued in the local newspaper as regards "Bhoomi Pujan" of land on which the petitioner's structure is situated. It is further averred that upon becoming aware of the public notice the petitioner had approached Respondent-Zilla Parishad calling upon to comply with the Consent Decree of 1982 which mandated the Zilla Parishad not to evict the petitioner till the construction is proposed and upon construction being completed to handover possession of the newly constructed premises. It is further averred that there was no response to the request of the petitioner. Subsequently the petitioner learnt that on 19/12/1996 plans were submitted by Zilla Parishad to Pune Municipal Corporation and plans were sanctioned on 22/3/1999 which showed that there was no shop

proposed on the ground floor.

4. The executing Court has held that the petitioner had obtained knowledge on 19/12/1996 when he went to the office of the Municipal Corporation where he came to know that on 19/12/1996 the Defendant Nos.1 and 2 filed maps for sanction regarding suit property and PMC sanctioned those plans in which no shop is shown. The executing Court has clearly misread the averment in paragraph No.6. By the Consent Decree the parties agreed that the petitioner will not be evicted till construction is proposed and after construction the possession of newly constructed premises will be handed over. The petitioner has averred that on 19/12/1996, there was a newspaper article about "Bhoomi Pujan" The cause of action arose upon default on part of respondent to comply with the Consent Decree which occurred on 22/3/1999 when the sanctioned plans did not show any shop on ground floor. The execution proceedings being filed in the year 2010 was within the period of limitation prescribed by Article 136 of Limitation Act. The executing Court erred in computing the period of 12 years from 19/12/1996 instead of 22/3/1999.

5. In view of the above, the impugned order dated 17/11/2015 is unsustainable and is hereby quashed and set aside and the Execution Application being Regular Darkhast No.134/2010 is restored to file.

SHARMILA U. DESHMUKH, J.