

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CIVIL APPELLATE JURISDICTION****CIVIL REVISION APPLICATION NO. 370 OF 2018**

Shobha Shivaji Dongale and Ors. .. Applicants

Versus

Deepak Vilas Kamble and Ors. .. Respondents

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- Mr. T.S.Ingale a/w. Mr. Sahil Ghule and Mr. Sachin Gawade i/by Mr. Mahesh Rawool for Applicants
- Mr. Harvinder Kaur Rogi i/by Mr. Abhijeet Adgule for Respondent Nos. 3 and 4

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CORAM : MILIND N. JADHAV, J.

DATE : JANUARY 13, 2023.

P.C.:

1. Heard Mr. Ingale, learned Advocate for Applicants and Mr. Rogi, learned Advocate for Respondent Nos. 3 and 4.

2. Record indicates that Respondent Nos. 1 and 2 have been duly served pursuant to orders passed by this Court not once but on several occasions. Pursuant to orders passed by this Court none appears for Respondent Nos. 1 and 2 even today.

3. Perused the orders dated 06.07.2018, 03.01.2019 and 06.02.2019 passed by this Court.

4. The present Civil Revision Application cannot be protracted any further. The Civil Revision Application has been filed to challenge the order dated 12.04.2017 passed below Exhibit-21 in R.C.S. No. 1139 of 2016. Applicants who are Defendant Nos. 1 and 2

filed an Application under Order VII Rule 11(d) of the Code of Civil Procedure, 1908 for rejection of plaint filed by the Plaintiffs (Respondent Nos. 1 and 2 herein). Suit was filed by Plaintiffs for challenging the development permission issued by the Corporation to the Applicants and regularisation effected by the Competent Authority under “the Maharashtra Gunthewari Developments (Regularisation, Upgradation and Control) Act, 2001” (for short “**Gunthewari Regularisation Act**”).

5. Applicants filed Application below Exhibit-21 for rejection of plaint on the ground of limitation and jurisdiction. It was contended by Applicants that dispute between parties relating to ownership of suit property had arisen since 1999, whereas suit was filed belatedly in the year 2016. That Plaintiffs had also agitated the same dispute between the parties prior to before 2003-04 and all such material information was suppressed by the Plaintiffs in the Suit filed in the Trial Court in 2016.

6. That apart, it was contended by Applicants that under the provisions of Section 149 of the Maharashtra Regional and Town Planning Act, 1966 (for short “**MRTP Act**”), the challenge in the Suit to the development permission was expressly barred. The learned Trial Court after hearing submissions of both parties, returned the finding that Suit has been filed in the year 2016 when Plaintiffs came to know after procuring certified copies of certain relevant documents

from the Corporation regarding construction which was carried out by the Applicants' on the property. Further the learned Trial Court has returned the finding that development permission issued by the Corporation to the Applicants is alleged to have been given on the basis of forged and concocted information submitted by Applicants to the Corporation.

7. In so far as the issue of bar of Section 149 of the MRTP Act is concerned, the learned Trial Court has returned a finding stating that the Respondent-Corporation has not acted in conformity with the fundamental jurisdictional procedure and in that view of the matter it cannot be said that the present suit was barred by the provisions of Section 149. Save and except this statement there is no reasoning given by the learned Trial Court in giving the finding on the issue of express bar under the provisions of Section 149 of the MRTP Act.

8. On minute perusal of the record, it reveals that parties were in fact in dispute with respect to the subject property since the year 2003-04. This aspect has not been considered at all by the learned Trial Court while returning the finding on the first issue, save and except to state that the cause of action has arisen only in September-2016. Averments in the plaint filed by the Plaintiffs show that they have stated that they visited the property after a hiatus in September-2016 and noticed that Defendants i.e. the Applicants had started construction on the said property.

9. Prayers in the present Civil Revision Application seeking challenge to the development permission issued by the Corporation. If Plaintiffs are aggrieved on either of the above two grounds an equally efficacious remedy is available to them in law under the provisions of MRTP Act and / or the provisions of the Gunthewari Regularisation Act. The impugned order is therefore not sustainable. The Application filed by Applicants below Exhibit-21 deserves to be allowed.

10. Hence, impugned order dated 12.04.2017 passed by the learned Trial Court stands quashed and set aside.

11. With the above directions, Civil Revision Application disposed.

[MILIND N. JADHAV, J.]

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