

Wadhwa

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 451 OF 2023**

Hemant Ulhas Bagul & Ors ...Petitioners
Versus
Pune Municipal Corporation Pune & Ors ...Respondents

**Mr Anil Anturkar, Senior Advocate, i/b Tanaji Mhatugade, for the
Petitioners.**

**Mr Abhijit Kulkarni, with Sweta Shah, for Respondents Nos. 1 to 3-
PMC.**

Mrs MP Thakur, AGP, for the Respondents Nos. 4 & 5-State.

**CORAM G.S. Patel &
Kamal Khata, JJ.
DATED: 5th December 2023**

PC:-

1. Rule.

2. We have heard Mr. Anturkar at some length and Mr. Kulkarni for the Pune Municipal Corporation (“PMC”), the 1st Respondent. There are Affidavits in Reply and Rejoinder. Rule returnable forthwith.

3. Having considered the material on record, it is now our considered view that this is conceivably one of the most egregious

cases of fraud— apart from being a gross abuse of the process of this Court.

4. What is before us is nothing but the most brazen attempt at land grabbing. We are concerned here with a parcel of land of about 13 Are, by any reckoning a substantial piece of land, at Kothrud, Pune. This is or was survey No. 50/24 and admeasured about 1300 sq mts.

5. The challenge in the Petition is to a notice issued by the PMC under Section 54 of the Maharashtra Regional and Town Planning Act 1966 (“**MRT**P”) saying that the construction or development by the Petitioners on this land is entirely illegal and unauthorised and that the sanction granted to the initial development proposal and the revised sanction are both liable to be cancelled forthwith.

6. The submission by Mr Anturkar is that the entire action by the PMC is without the authority of law. There is no case made out, he submits, that anything that has been put up is a deviation from sanctioned plans. Instead, what is being urged is that the Petitioners are not the owners of the land to begin with and could never have obtained any development permission let alone any revised development permission. He submits that if this be so then the entire case of the PMC is a dispute about title. Like any other litigant, the PMC must therefore institute a suit to establish its title as being superior to that of the Petitioners. It cannot have a recourse to the planning statute. This would amount to nothing but a fraud on statute and a fraud on power because the planning statute would

then be used by the PMC for an ulterior purpose, i.e., to establish its title without having to pass through the filter of a Civil Court and its civil jurisdiction. He also submits that at no point has possession of this land been taken by the PMC in accordance with law. Thus, the PMC has neither possessory title, i.e., possession, or any other form of title. The only basis for the Section 54 MRTP Act notice is a dispute about the legitimacy or legality of the Petitioners title.

7. The Petitioner was not the original owner of the land at Kothrud. This has something of a history which we will need to briefly note but the Petitioner admittedly claims to have derived title from one Dyanoba Matphod or Mathwad or his family members.

8. This land was under a reservation for a school. It was subjected to acquisition proceedings under the Land Acquisition Act, 1863 read with Section 126(4) of the MRTP Act 1966. Two documents in this context are of immediate relevance. The first is a possession receipt of 29th June 1994. This is in two parts. Both are on the same page. Both are specifically under the Land Acquisition Act. In the first of these, one Gopal Krishnaji Ponkshe is said to have delivered possession to one RS Pataki the Special Land Acquisition Officer (“SLAO”) (15) Pune. That receipt is signed by a Planning Assistant on behalf of the SLAO (15) Pune. The second document on that page is the consequential possession receipt by Pataki in favour of one VM Chaphekar, the Sub Engineer of the PMC. Both receipts are of the same date.

9. Mr Anturkar submits first that possession was not taken by the Collector/SLAO as required by the Land Acquisition Act. The submission is only to be stated to be rejected. The document itself indicates otherwise.

10. In any case, he submits, on Affidavit the PMC has incorrectly alleged that possession runs from the date of the Award. He draws our attention to Section 16 of the Land Acquisition Act. He says it must run from the date of the possession receipt or possession document and if the possession document is faulty then there is no possession at all.

11. This submission cannot possibly commend itself to us and certainly not at the instance of this Petitioner. The fact that somebody took possession on behalf of the authorized person does not invalidate the possession document. The person affected by the possession namely, Ponkshe, never questioned it. It has never been challenged anywhere. It has undoubtedly, as Mr Kulkarni says, attained finality.

12. The other document in question is the Award itself, a copy of which we find at page 515. It is dated 1st June 1994. It references two public notices, one in Marathi one in English. It mentions the reservation, the ownership of Ponkshe, the proposal under Section 127 of the MRTP Act, the acquisition proceedings being commenced, and the procedure then being followed including joint measurements by the representatives of the acquiring body namely the PMC and the Additional District Inspector of Land Records.

Public notices were issued and it is also clearly stated that there were no objections regarding the correctness of the area notified for acquisition. The individual notices in question were issued to Ponkshe and one Maheshwari Vidya Prasarak Mandal, with which we are not concerned. A specific finding returned here, apart from the reasoning on valuation, is that there were no tenants and therefore no question of compensation to tenants ever arose.

13. We pause for a moment because this will be of consequence to what follows, to ask how Ponkshe acquired title to the land. An Affidavit of the PMC tells us that the land records show that it was one Sahadu Mathwad who sold or transferred or conveyed this land to Ponkshe as far back in 1966. This is of relevance because *after* the acquisition proceedings Ponkshe accepted the compensation and it was only thereafter that one Dyanoba Vitthu Matphod, obviously a descendant of Ponkshe's vendor of the Kothrud land, Sahadu Mathwad, brought a regular Civil Suit No. 22 of 1999 (five years after the acquisition) against Ponkshe — fantastically claiming adverse possession.

14. There are many things that are decidedly odd about this resultant decree, not the least of which was that quite understandably it was an ex parte decree. Ponkshe was served with a writ of summons. He did not appear. But there was no reason why he should have, because any decree did not affect him. He had already lost possession in the acquisition to the PMC at least five years earlier. Matphod, notably, though claiming possession, did not join or sue the PMC despite all these public notices and despite these open land acquisition.

15. The decree itself shows that Ponkshe remained absent. Matphod's case was that he had received a notice from the PMC on 23rd September 1999 to dismantle a structure that he had put up. There is not even a reference in the present Petition to this. The next reference in the decree predates the acquisition and goes back to 1991, i.e., a notice from Ponkshe but again we do not have the benefit of that document.

16. It is solely on this basis that as late as 2002, Matphod claimed to have obtained a decree declaring him to be the owner of this land by adverse possession in a proceeding to which the PMC (which by then had completed the acquisition proceedings and taken an unchallenged possession) was not even joined as a party.

17. And then come the Petitioners, the Baguls. They claim to have acquired title from plaintiff claiming adverse possession, Matphod. But surely this proceeds on the footing that plaintiff in the civil suit Matphod had good title to pass in the first place. It is solely on this basis that the Baguls then applied for and somehow managed — and we will not speculate as to how this was done — to get building permissions and to construct on this land.

18. Now we are confronted with the submission that the PMC can do nothing. Although it has paid the money in 1994 for acquisition of land at Kothrud for a high school, that land is lost. The public purpose is lost. The compensation is lost. Instead, the submission is that the PMC must now spend years and even decades

in litigating against the Baguls to establish the PMC's so-called title to the land.

19. If anything, it is the other way around. It is the Baguls who must establish that they have title and that because of that title their construction is legal and cannot be called into question. That this entire situation was prima facie entirely contrived well after the PMC completed acquisition and long after Ponkshe exited the picture is plain to see.

20. We have discerned not the slightest shred of merit in this Petition. It is not a question of the PMC trying to establish title in a circuitous manner or anything of the kind. The Section 54 notice, plainly and simply addresses itself to one fundamental aspect and that relates to the right of an owner to enjoy the fruits of ownership of the property. If a person is not the owner of the property that person is not entitled to the benefits of development as an owner; and there is no dispute that the Petitioners claimed development rights as owners.

21. A representation made of ownership rights, i.e., that the Petitioners validly derived ownership rights from Matphod who had in himself proper title is clearly an incorrect and a false representation as seen from the record. If therefore the representation was incorrect, then there was no right to enjoy the benefits of the fruits of the property on that representation, and any attempt at exploiting the development potential of that property on

the basis of that representation is inherently illegal and must be stopped.

22. It is for this reason that we dismiss the Petition.

23. Having regard to the manner in which the Petition has unfolded, and how the Petitioners have gone about this, we believe this is a appropriate case for the award of costs against the Petitioners and in favour of the PMC in the amount of Rs. 5 lakhs, which is to be paid within a period of one week from today.

24. Mr Anturkar submits that substantial amounts have been deposited by the Petitioners with the PMC towards development charges. He submits that the Petitioners should be set at liberty to apply for a refund of those charges and those should be directed to be refunded at the earliest possible. We do not think that the Petitioners are in any position to make any such submission in this Court or to obtain any such order of expedition from this Court. We say nothing in that regard.

(Kamal Khata, J)

(G. S. Patel, J)