

Amol

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 512 OF 2023

- 1. ASHAPURA RAMDEV BUILDCON LLP,**
Through its partner Mr Dhaval Bhadra
a Limited Liability Partnership Firm
registered under the provisions
of the Indian Partnership Act, 1932,
having its place of business at
10, Mithila Shopping Centre,
Ground Floor, VM Road, Juhu Scheme,
Vile Parle (West), Mumbai 400 049.
- 2. DHAVAL BHADRA,**
Aged: 29, Indian Inhabitant,
Partner of the Petitioner No.1 having
Office Address at 10, Mithila Shopping
Centre, Ground Floor, VM Road,
Juhu Scheme, Vile Parle (West),
Mumbai 400 049.
- 3. RAMDEV BUILDERS & DEVELOPERS,**
Through its partner Mr Ashok Patel
Alias Board a Partnership Firm
registered under the Provisions of the
Indian Partnership Act, 1932, having its
place of business at A-001, Renuja
Palace, Building No. 26,
Near Srusti Bridge, Shanti Park,
Mira Road (East), Thane 401 107.

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4. **ASHOK PATEL ALIAS BORAD,**
Aged: 46, Indian Inhabitant,
Partner of the Petitioner No.3 having
Office Address at A-001, Renuja Palace,
Building No.26, Near Srustri Bridge,
Shanti Park, Mira Road (East),
Thane 401 107.

... PETITIONERS

~ VERSUS ~

1. **STATE OF MAHARASHTRA,**
Through the Housing Department,
Mantralaya, Mumbai 400 032.
2. **HIGH POWER COMMITTEE -
(ACB),**
Administrative Building, Prof Anant
Kaneekar Marg, Bandra (East),
Mumbai 400 051.
3. **THE SLUM REHABILITATION
AUTHORITY,**
Having its address at Administrative
Building, Prof Anant Kaneekar Marg,
Bandra (East), Mumbai 400 051.
4. **THE CHIEF EXECUTIVE
OFFICER, SLUM
REHABILITATION AUTHORITY,**
having his address at Administrative
Buildings, Prof. Anant Kaneekar Marg,
Bandra (East), Mumbai 400 051.
5. **EXECUTIVE ENGINEER-IV,**
Slum Rehabilitation Authority
having its address at Administrative
Building, Prof Anant Kaneekar Marg,
Bandra (East), Mumbai 400 051.

**6. SHIVAJI NAGAR RAHIWASI SRA
CHS (PROP),**

Having its address at FP No. 386 and
387, Village Shimpoli, TPS-III,
Borivali (West), Mumbai 400 092.

...RESPONDENTS

APPEARANCES

FOR THE PETITIONER **Dr Abhinav Chandrachud** , *with*
Vaibhav Charalwar, Santosh
Pathak, Nimish Lotlikar, i/b
Santosh Pathak.

FOR RESPONDENT NO.1- STATE **Mr LT Satelkar, AGP.**

FOR RESPONDENT NO.2-AGRC **Mr Vijay Patil.**

FOR RESPONDENTS NOS. 3, 4 & 5-SRA **Mr Jagdish G Aradwad (Reddy).**

FOR RESPONDENT NO.6 **Mr P Ranjan, i/b Shashank Boarde.**

**CORAM : G.S.Patel &
Neela Gokhale, JJ.**

DATED : 7th June 2023

ORAL JUDGMENT (Per GS Patel J):-

1. Rule. Returnable forthwith.

2. The Petitioners claim to own final plot No. 387 of Town Planning Scheme-III at Shimpoli, Boriwali west. The Petitioners say that they have “undertaken” a redevelopment project not only on

this land FP 387 but also sought to expand it to the adjacent or abutting plots FP No. 386, (government-owned) and FP No. 389 (owned by and vested in MTNL).

3. This tells us that of the three plots there is only one to which the Petitioner claims title as owner. That is FP 387. The challenge is to an order of 21st February 2019. We find a copy of this order at page no. 44. It was passed by the High Power Committee. It seems that this was a suo moto proceeding and what engaged the committee was a question of “approval of layout without a clear title of ownership”. That is all that concerns us today.

4. The Petitioner produced before this committee a registered deed of confirmation saying that it was under this registered deed that the Petitioner had acquired title to FP 387. The High Power Committee, in our view entirely erroneously, proceeded to hold that Petitioner “did not have clear title” *inter alia* because it had not produced a registered conveyance.

5. The entire approach is fundamentally flawed. The deed of confirmation is a registered document. If it has to be questioned or set aside, this is not achieved by some committee forming an opinion. A question of title is the exclusive preserve of a Court of competent civil jurisdiction. Some person would have to challenge the title and a civil Court, if persuaded that the challenge was good, would have to fashion a decree accordingly including an order directing that the registered document be delivered up for cancellation. Otherwise, a registered document would remain as is

that is to say, outstanding, with everything that this implies including *inter alia* under the Registration Act. The High Power Committee certainly does not have the powers of a civil Court to make such declarations of title to property.

6. A more serious problem is the question that the High Power Committee's order leaves unanswered. If the Petitioner is not the owner of FP No. 387 on the basis of the registered confirmation deed, then who is? This is not a question that the High Power Committee addresses at all in its impugned order. There is no presumption that on an opinion expressed like this the title could be said to vest in the Government.

7. Most importantly, we do not see how under the Maharashtra Slum Areas (Improvement, Clearance, and Redevelopment) Act, 1971 ("**Slum Act**") private property can be taken up for redevelopment in this fashion i.e., by defeating property owner rights without following the process of law. Even the Slum Act under Chapter V contemplates a proper acquisition of private land for slum redevelopment purposes. There are other provisions, to be sure, such as the ones that allow the Slum Rehabilitation Authority ("**SRA**") to issue directions for improvement works on notified areas for slum improvement. Even that has not been followed.

8. The question of the registration of a deed of confirmation is actually settled law of several decades' standing. We note the decision of a learned Single Judge of this Court (Bharti Dangre J) in

*Nimesh J Patel Vs MCGM and Anr.*¹ Paragraphs 13 to 16 of the decision read thus:

“13. Learned counsel Mr. Naushad Engineer would urge that the finding rendered by the learned City Civil Court at Bombay has failed to take into consideration, the settled position of law and the impugned order is liable to be quashed and set aside, since it has been recorded that the petitioner had failed to prove her title as the deed of conveyance is not registered and the deed of confirmation though registered, did not cure the defect of non registration of the deed of conveyance. He placed reliance on the decision of the Hon’ble Supreme Court in the case of *Official Trustee of West Bengal v. Stephen Court Ltd.* reported in (2006) 13 SCC 401, which, in turn, has confirmed the decision in the case of *Mitchell v. Mathura Dass* reported in (1884-85) 12 IA 150. A decision of this court in the case of *Mahendra Valjirathod v. National Radio and Electronics Company* reported in 2019 SCC OnLine Bom 788 is also pressed into service in support of his submission about the misconstruction of the deed of conveyance. In his submission he is also joined by learned counsel Mr. Bhosale and Mr. Soni.

14. The decision in the case of *Mitchell* (supra) by the Privy Council deals with the effect of the registered instrument confirming a prior one with the same purport, which is not registered. The decision came to be delivered in the backdrop of an instrument purporting to assign a right in an immoveable property of more than the value of Rs. 100/- being unregistered and was projected as ineffectual to effect the title of the purchaser. Some years after, the parties executed a deed of conveyance making the same assignment, confirming the former instrument and setting it forth in a schedule,

1 2021 SCC OnLine Bom.6588

the later instrument being registered. In a suit in which the ownership of the property was contested, the Privy Council held that the fact of the prior deed not having effected, being unregistered was no reason why the deed afterwards registered should not be admitted as document of title. Recording that in construing so, there had been nothing contravening the object of the Registration Act, the decision of the High Court came to be reversed.

15. The Apex Court while dealing with the effect of nonregistration of the document, which is subsequently cured by registering the very same document at a later point of time, in *Official Trustee of West Bengal* (supra) gainfully relied upon the decision of the Privy Council in *Mitchell* (supra) and in the facts placed before it, by referring to the recitals in the supplementary agreement, which was duly registered, though by curing the defect in the earlier deed of assignment, which was not registered, recorded as under:

“19. Broadly speaking the supplementary deed provided for the issuance of debentures by the appellant in favour of Arathoon Stephen. Until and unless the appellant had paid off the debentures the scheme of trust was to continue but:

“Upon proof being given to the reasonable satisfaction of the trustees that all the debentures entitled to the benefit of the trusts herein contained ... have been paid off or satisfied and upon payment of all costs, charges and expenses incurred by the trustees in relation to those presents the trustees shall

at the request and cost of the Company ... release the charged premises from this security.”

20. The effect of such an unregistered deed vis-à-vis a supplementary deed by way of debenture trust deed came up for consideration before the Privy Council in *Mitchell v. Mathura Dass* wherein it was opined: (IA P. 156)

“The Registration Act was not passed to avoid the mischief of allowing a man to be in possession of real property without having a registered deed, but as a check against the production of forged documents, and in order that subsequent purchasers, or persons to whom subsequent conveyances of property were made, should not be affected by previous conveyances unless those previous conveyances were registered.”

21. In that case William Mitchell was indebted to Mathura Dass. The latter sought to attach a property on the basis that it belonged to the former. William’s father Alexander, claimed that the property belonged to him. In the proceeding, two documents came to be filed, namely, one purporting to be a deed of conveyance of the property to himself and the other a confirmation bond executed by the same

parties as the conveyance in the subsequent deed.

22. The Judicial Committee held that the second deed being registered was a valid conveyance of the property to Alexander.”

16. The decision in *Mitchell* (supra) was followed by a decision of the Division Bench of this court in *Jamna Bai v. Dharsey Takersey* reported in (1902) 4 BLR 893. **Conclusively, the supplementary agreement, which was registered relating to the conveyance of the same interest between the same parties was held to cure the defect of non-registration of an earlier document in respect of the conveyance of the interest in question. Recording that the supplementary agreement, a registered trust deed, conveys the same leasehold rights executed between “A” and the respondent-company, it was held that due registration of the latter conveyance cured the defect on nonregistration of the earlier conveyance.”**

(Emphasis added)

9. We are entirely in agreement with the findings of the learned Single Judge. We affirm that decision entirely. Since this is the position in law, the finding returned by the Committee to the contrary is clearly contrary to law and cannot be sustained. The registered Deed of Confirmation is sufficient title. An opinion of a Committee cannot displace a registered document.

10. The Petitioner has filed an application for a consolidated or amalgamated development across all three plots. A copy of that application is at page 60. It is dated 23rd June 2017. It is now ripe for

disposal. The Executive Engineer of the SRA will decide that application uninfluenced by the High Power Committee's observations at the earliest, and, in any event, within six weeks from today.

11. Accordingly, the Petition succeeds. Rule is made absolute in terms of prayer clause (a) and the directions above.

12. In the facts and circumstances of the case, there will be no order as to costs.

(Neela Gokhale, J)

(G. S. Patel, J)