

Amol

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 3431 OF 2024

Sangeeta Sanjay Kidye ...Petitioner
Versus
The State of Maharashtra & Ors ...Respondents

Mr Shreepad Murthy, with Sohil Wagh, i/b Abhishek Patil, for the
Petitioner.

Mr Kedar Dighe, Addl GP, with AA Alaspurkar, AGP, for the
Respondent-State.

Mr Rakesh R Bhatkar, for Respondent No 2.

CORAM G.S. Patel &
Kamal Khata, JJ.

DATED: 22nd March 2024

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PC:-

1. Our order of 11th March 2024 reads thus:

“1. Mentioned out of turn. In view of extreme urgency, physical notice has not been possible.

2. Mr Murthy states that notice has been given by email including to the 2nd Respondent, the Ratnagiri Nagar Parishad. The present complaint is in regard to a threatened demolition of the Petitioner’s residential construction on Survey No. 17, Hissa No. 1 (City Survey Nos. 1834, 1834/1 to 1834/4) admeasuring about 37.90 Gunthas.

3. The case of the Petitioner in brief is that one

Rajaram Pawaskar inherited a 1/4th undivided share in this land from the original owner, his father. Rajaram passed away and the property passed on his wife, Usha. She bequeathed a 1/4th share to the Petitioner, a close relative i.e., her brother's daughter. The property in question was under acquisition. Rajaram objected to it. Apparently, the property was included in a proposal for a Town Planning Scheme. That scheme was finalised and the arbitrator presented it to the Government for sanction.

4. The result of the scheme was that Plot No. 85 was renumbered as Plot No. 125 and its original area of 3709 square metres stood reduced to 2773 square metres.

5. The Petitioner issued a Notice under Section 80 of the Code of Civil Procedure, 1908 ("CPC") and filed a Regular Civil Suit NO. 123 of 2023 before the Civil Judge, Senior Division, Ratnagiri. The 11(d) of the CPC. Their Application was allowed and the plaint was rejected.

6. Mr Murthy states that the Ratnagiri Nagar Parishad bulldozed part of the property and destroyed several dozen trees without any notice or prior intimation. The house itself is threatened by immediate demolition today itself and the Ratnagiri Nagar Parishad has told the Petitioner that unless there is a stay, they would proceed with the demolition.

7. We will need to hear the other side. Until the next date, further action or demolition of the Petitioner's residential house, and any part of the property including any standing crops or trees is stayed.

8. List the matter on 18th March 2024.

9. The Petition is to be finally numbered by the next date. The Petitioner will give fresh notice to all the Respondents. In addition to service through Court, private service, including by courier and email is permitted.

10. All Respondents will act on an authenticated copy of this order.

11. Mr Murthy is at liberty to communicate this order by email and WhatsApp to the Respondents.”

2. This is a sufficient synopsis of the factual background. What is to be noted is that the Petitioner has a fractional share in the property in question. Now there is an Affidavit in Reply on behalf of the Ratnagiri Municipal Council. In paragraphs 3 to 5, it says that a Town Planning Scheme was proposed. The provisions of the Maharashtra and Regional Town Planning Act 1966 were followed. Under the applicable rules, notice in the prescribed form for the owners of the final Plot No 60 was issued to various persons including, importantly for our purposes today, Rajaram Mahadev Pawaskar, the person from whom the Petitioner claims to have acquired a fractional share.

3. Paragraph 24 of the same Affidavit then says that final Plot No 125 is allotted to the Petitioner's family.

4. What remains therefore, is for the Petitioner to pursue her remedies in a court of competent civil jurisdiction for an ascertainment or partition in accordance with law of her claimed share in the property. Other members of the family and other co-sharers are joined as parties but are not appearing before us. In our writ jurisdiction we cannot make any such determination of rights in and title to immovable property. Our orders in this Writ Petition will not affect the determination of a proceeding that the Petitioner may

adopt in regard to her fractional claimed share in the final plot that is allotted to the Petitioner's family.

5. Then remains the question of getting the Petitioner to vacate. It is pointed out that she had till 10th March 2024 and no peremptory action has been taken in that regard. Some part of the site has been cleared. We extend time from today until 10th April 2024 for the Petitioner to vacate the premises in question.

6. All contentions are left open for the civil proceedings in regard to the Petitioner's fractional share in the final Plot No 125.

7. The Petition is disposed of in these terms. There will be no order as to costs.

8. The original Affidavit in Reply is to be filed in the Registry.

(Kamal Khata, J)

(G. S. Patel, J)