



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 519 OF 2016
WITH
CIVIL APPLICATION NO.1053 OF 2016

The Commissioner, Sangli Miraj And Kupwad Cities
Municipal Corp., Sangli ... Appellant.

Versus

Shivgonda Anna Patil and Anr. ... Respondents.

Mr. Vivek B. Rane, for the Appellant.

*Mr. Atul G. Damle, Senior Advocate i/by Mr. Vijay Killedar, for the
Respondent No.1.*

Mr. Ashok S. Gawai, AGP for the Respondent-State.

Coram : Sharmila U. Deshmukh, J.

Date : APRIL 2, 2024.

P. C. :

1. Sangli Miraj and Kupwad Cities Municipal Corporation, Sangli is before this Court, being dissatisfied by the judgment dated 14th March, 2016 passed by the Appellate Court in Regular Civil Appeal No.297 of 2013 allowing the appeal and thereby quashing the judgment and decree passed by the trial Court in Regular Civil Suit No.161 of 2009 dated 16th March, 2013. For the sake of convenience, the parties are referred to by their status before the Trial Court.

2. The facts which are necessary to be exposted are that Regular

Civil Suit No.161 of 2009 was filed by the plaintiff in respect of the Survey No.228/3 for recovery of possession of the suit land and for compensation. It was contended that the suit property was being cultivated by the plaintiff and out of the suit property 400 sq.mtrs. was reserved for right of way which was given survey No.228/3A. As per the Development Plan, an area of 13800 sq.mtrs. was reserved for hospital on Survey Nos.228/3, 228/4 and 228/5. It was further contended that under the Urban Land (Ceiling and Regulation) Act, 1976 (for short, "ULC Act") an area of 6100 sq.mtrs. was declared as excess and vacant land. On 30th September, 1986 the possession of the surplus land was taken by Government and possession was handed over to Municipal Corporation, Sangli for hospital purpose however, no hospital was constructed and infact the construction of the hospital was cancelled. It was contended that the plaintiff was cultivating the land and ULC law is not applicable to agricultural land. The land being reserved for hospital was deemed urban land. It was further contended that the reservation of land for the purpose of hospital has been deleted from the development plan of Sangli. By reason of cancellation of reservation, the factual position of land is restored as agricultural land. The proceedings under ULC are illegal. If the land is acquired as per the provisions of the Land Acquisition Act, he would be entitled to compensation at 30% solatium. The

defendants did not pay any compensation and in the absence of the DP Plan, the suit property cannot be acquired and as such sought recovery of possession. It was contended that the decision of Competent Authority is illegal as the property allotted to share of the plaintiffs joint Hindu family is less than the ceiling limit.

3. In the suit proceedings apart from the present Appellant the State government was impleaded as party defendant. The State Government did not file written statement and the suit proceeded without written statement against the State Government. The defendant No.2 – Corporation filed its written statement and resisted the suit contending that the Competent Authority had passed the final verdict and on 30th September, 1986, the possession of the suit property was handed to the defendant No.2 – Corporation. It was further contended that the petition filed by the plaintiff before this Court as well as the Apex Court was dismissed. As such, the findings under the ULC Act have attained finality.

4. The Trial Court framed the necessary issues and negated the same and dismissed the suit. As against this, the original-plaintiff filed Regular Civil Appeal No.297 of 2013. The Appellate Court held that the land held by the plaintiff belonged to his Hindu Undivided Family (HUF) and the land held by each member of HUF was not in excess of

the ceiling limit. The Appellate Court held that after deletion of the reservation for hospital, the land was required to be taken back for the corporation, even though no Appeal or Revision has been filed against the order of the Competent Authority the same does not prevent the plaintiffs from challenging the order as being *void ab initio*. On the basis of the evidence the Appellate Court allowed the appeal and declared the entire proceedings under the ULC Act to be illegal and directed delivery of possession of the property. The Appellate Court further held that the suit land was handed over to the Sangli Municipal Corporation for the purpose of construction of the hospital and the possession was rendered illegal as no hospital was constructed and the suit land was not used for the purpose of which it was compulsorily acquired.

5. Heard Mr. Rane, learned counsel for the Appellant, Mr. Damle, learned Senior Advocate for the Respondent No.1 and Mr. Gawai, learned AGP for the Respondent-State.

6. Mr. Rane, learned counsel for the Appellant would submit that the suit property was reserved for the purpose of hospital in the Draft Development Plan of 1976. He submits that subsequently the reservation was declared to have lapsed by order of this Court dated 6th October, 2023 passed in Writ Petition No.7962 of 2023. He tenders

the copy of the order passed by this Court holding that the reservation of hospital on the land bearing CTS No.228/3B has lapsed by virtue of operation of Section 127 of the Maharashtra Regional and Town Planning Act, 1966. He submits that despite the lapsing of the reservation the fact remains that an area of 6100 sq.mtrs. has been declared as excess and vacant land which order under the provisions of ULC Act have attained the finality. He submits that as against this order, the matter was carried by the plaintiff's right up to the Apex Court and the Apex Court has considered that after determination of excess land, Notification under Section 10 (1) of the Act issued an excess land vested in the State Government under Section 10(3) of the Act. He further points out that the Apex Court has also noted that even though the sister of the Appellant was aware of the proceedings, she has not filed any objection before the land vested in the State Government. He therefore, submits that the substantial question of law which arises is whether the land being declared excess and vacant stood vested in the State Government and as such the direction to handover possession could not have been passed by the Appellate Court as no Appeal or Revision was filed against the order of Competent Authority.

7. *Per contra*, Mr. Damle, learned Senior Advocate would point out

that after lapsing of the reservation of the hospital the present Appellant has no locus to challenge the judgment of the Appellate Court. He would submit that once the reservation has lapsed the property would revert back to the original owner and that being so, no substantial question of law arises in the present case.

8. Considered the submissions and perused the record.

9. The admitted position is that the suit was filed for recovery of possession and compensation. At that point of time the decision of this Court as regards the lapsing of reservation of hospital was not delivered. By the decision of 6th October, 2023, the reservation of hospital on the land bearing CTS No.228/3B has been declared to have lapsed by virtue of operation of Section 127 of the MRTP Act, 1966. As the reservation has lapsed the only issue which is required to be considered is whether under the ULC Act, after the area of 6100 sqr.mtrs. is declared to be excess and vacant the plaintiffs would have any right to seek possession. In the present case, the State Government in whom the property would have vested by virtue of Notification under Section 10(10) of the ULC Act have chosen not to challenge the proceedings. The State Government has thereby accepted the decision of the Appellate Court. As the property stood vested in the State Government and the order of the Appellate Court

directing the possession to be handed over to the plaintiffs has not been challenged by the State Government, the present Appellant which is the Municipal Corporation would have no locus to challenge the impugned order of the Appellate Court. The right of the Corporation would have arisen in event the lands stood reserved for the purpose of construction of hospital in which case the possession of the Corporation would have been required to be protected. Once the reservation of hospital has been deleted and the State Government has chosen not to challenge the judgment of the Appellate Court, the Municipal Corporation who does not have any right in the property after the lapsing of the reservation, no locus to challenge the judgment by way of present Second Appeal. The land under the ULC stood vested in the State Government and not in the Corporation. As such, no substantial question of law could be framed at the instance of the Corporation who has no locus by virtue of lapsing of the reservation. The Second Appeal stands dismissed.

10. In view of the disposal of second appeal, civil/interim application(s) taken out in this appeal, if any, does not survive and the same is disposed of.

[Sharmila U. Deshmukh, J.]