

Ashwini

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 6923 OF 2021

RAJENDRA VITTHAL SHETE,
Age: 60 Years, Occupation: Business
Residing at 436/1 Ujwala Building,
Chavindra, Bhiwandi, Dist Thane.

...PETITIONER

~ VERSUS ~

1. **STATE OF MAHARASHTRA,**
Through Government Pleader,
Civil Appealed Side, High Court
Building, Bombay High Court,
Mumbai.
2. **BHIWANDI NIJAMPURA CITY
MUNICIPAL CORPORATION,
BHIWANDI,**
Through Commissioner, Juni Jakat
Naka, O/p. Tahsildar Office, Bhiwandi.
Dist Thane.
3. **DILIP KHANE,**
Assistant Commissioner, Prabhag 1,
2nd Floor, Old Municipal Corporation,
Juni Jakat Naka, O/p. Tahsildar Office,
Bhiwandi. Dist Thane.
4. **JAYMALA ASHOK PATIL,**
Age: Adult, Occupation: Business.
5. **ANMOL ASHOK PATIL,**
Age: Adult, Occupation: Business.

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6. **UJJAWAL ASHOK PATIL (UJJWLA RAJU PAWAR),**
Age: Adult, Occupation: Business.
7. **SHUSMITA ASHOK PATIL (SHUSMITA KAPIL BHOIR),**
All 4 to 7 Residing at Ashok Patil Nivas
B/h Shiv Mandir Chavindra, Bhiwandi,
Dist. Thane.

... **RESPONDENTS**

APPEARANCES

FOR THE PETITIONER	Mr RR Tripathi.
FOR RESPONDENT NO. 2	Mr Rajesh A Tekale.
FOR RESPONDENTS NOS. 4 TO 7	Mr Ramesh Dube Patil, with Rajesh Tekale & Swaraj Subhash Patil, i/b Jay & Co.
FOR RESPONDENT-STATE	Ms Molina P Thakur, AGP.

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

DATED : 5th March 2024

ORAL JUDGMENT (Per GS Patel J):-

1. Heard.
2. There is an ad-interim order of 29th October 2021 which says that the building in question is not to be demolished until the next date. This Petition has been pending like this for the last three years and this ad interim order had unfortunately continued.

3. The Petitioner claims to be the owner of a shop in house No. 436, Chavindra, Bhiwandi within the municipal limits of the Bhiwandi Nizampur City Municipal Corporation (“**BNCMC**”).

4. During arguments, the Petitioner made various conflicting submissions. We were first told that the Petitioner was a co-owner with Respondents Nos. 4 to 7 of part of the plot on which the structure, whether a chawl or building or whatever name called stand. The first submission was based on a document at Exhibit “A” at page 39. Reading only part of this and that too the recital, the Petitioner claimed that Petitioner had bought a portion of land beneath a gala that was mentioned in that agreement. That agreement is dated 27th January 1998. Page 43 is only a recital of what the vendor owned. What was conveyed to the Petitioner was only the shop and that is mentioned clear from pages 45 and 46. There is no schedule to this agreement.

5. We were then told that the Petitioner had bought part of the land under some *oral* understanding for unstated consideration. Then we were told that there was an agreement for sale of the land but that it remained to be registered. This constant evolution went on.

6. None of this is consistent with what is averred in the Petition itself. Paragraph 4.1 of the Petition tells its own story. It reads thus:

“4.1 The petitioner submits that he is permanent resident of Bhiwandi. The Petitioner during 1996-97 met to the husband of the respondent No. 4 with intention to purchase around 250 square feet of land so that he could make a hut

for residing as well as start up a livelihood by standing in front of his land to sell Vada-Pav. The Petitioner submits that the husband of the Respondent No. 4 agreed to sale his land around 250 square feet in his own land vide survey No. 63 Hissa No. 1, 2 & 3 Chavindra, Bhiwandi. The Petitioner paid the consideration amount and taking the land in his possession making a hut started living and standing his vada pav vehicle in front of it. The Petitioner submits that the husband of the Respondent No. 4 alongwith the Respondent No. 4 convinced the Petitioner during January 1996 informing him that were going to develop their land and standing the building and if the Petitioner also gives his portion of the land then they shall give Petitioner an RCC Gala shop and will also give the right of the land. The Petitioner submits that accordingly when the house No. 436 constructed at the joint land, the Petitioner get registered vide Sale Deed No. is 317/1998 of The RCC Gala/shop No. 1 admeasuring area 245 square feet alongwith beneath land. **The copy of the registered Sale Deed No. 317/1998 dated 27/01/1998 of the shop No. 436/1 of Petitioner is annexed and marked as Exhibit A.”**

7. Then there are allegations against 4th Respondent of the same kind that we saw in Writ Petition No. 8277 of 2021 of using political influence and so on.

8. The entire thrust of the Petition is also in regard to the structural condition of the building the same issue that we have now comprehensively decided in Writ Petition No. 8277 of 2021. The rest of this Petition proceeds entirely on the basis of structural stability and rival reports.

9. Finally we find these prayers at pages 35 to 36.

“(a) The Honble court may be please to passed the order and are direction quashing and setting aside the order dated 27/07/2021 along with order dated 24/06/2021 passed by TAC i.e. on behalf of Respondent No. 2/3.

(b) The Honble Court may be pleased to set aside the duo Notices dated 24.09.2020 and Noticed dated 26.09.2020 as these were issued without any power with Respondent No 2/3 and held it be as misuse of power and position.

(c) The Honble court may be pleased to direct the Respondent No. 1, 2 and 3 to appoint a committee of Structural Engineer or and Engineer of any other Municipal Corporation to submit its report regarding the stability of the building 436 of the Petitioner, if think necessary.

(d) The Honble court may be pleased to Stay in terms of the a to c all the coercive action taking/to be taken by the Respondent No. 1 to 3 against the house/ building 436 till pending hearing of this matter for final decision of this court.

(e) The Honble Court may be pleased to pass and order and or direction to direct the Respondent No. 1 and or 2 to take action against the erring officers and Respondent No. 3 who misuse his power and position and having this tactics to harass the common people flat/shop holders in the buildings.”

10. This reference to Technical Advisory Committee’s (“TAC”) order of 27th July 2021 is the same that we have examined in Writ Petition No. 8277 of 2021.

11. But here the case of the Petitioner is even more precarious in one sense because of the inconsistency in what it said in the Petition and what was argued at the Bar. At another level, if the Petitioner is indeed an owner of any part of the structure, then the rights of the Petitioner are adequately protected in law.

12. It is important to note this because our jurisprudence recognizes dual ownership of property, separately for land and separately for the structure.

13. FSI benefits attach to the land that is under development. That which is consumed in building is always taken into account while granting permissions. If indeed the Petitioner has an undisputed ownership right, then that right is in no way compromise by a redevelopment. But the question of ownership might itself be a matter of dispute.

14. The Affidavit in Reply on behalf of Respondents Nos. 4 to 7 is from page 229. It sets out a devolution of the property and the question of structural assessment. As to the agreement in question, while the agreement does not appear to be disputed, the contentions based on that agreement are denied in paragraph 9.1 of the Affidavit in Reply. We are further told that there are Civil Suits pending in regard to the TAC committee report but an application for status quo was rejected.

15. It is therefore clear that this Petitioner has attempted to move different Courts for identical reliefs. The filing of Civil Suits is not

mentioned in the Petition itself although a copy of an order in the civil suit is annexed to the Affidavit in Reply at page 201. That ad interim rejection is of 13th August 2021. The present Petition was filed on 12th October 2021. There is no explanation why the filing of the Civil Suit and the passing of that ad interim order was suppressed from the Petition. This in itself is sufficient ground to dismiss the Petition, because apart from anything else, had this being disclosed in October 2021, then there is every likelihood that an ad interim order would not have been passed.

16. The Petition is rejected. No costs.

(Kamal Khata, J)

(G. S. Patel, J)