

HARSHADA H. SAWANT
(P.A.)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.9678 OF 2024

Arjun Sitaram Divekar

.. Petitioner

Versus

The Collector, Pune and Ors.

.. Respondents

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• Mr. Sudhir V. Sadavarte, Advocate for Petitioner.

CORAM : MILIND N. JADHAV, J.

DATE : AUGUST 02, 2024

P.C.:

1. Mentioned. Not on Board. Taken on Board.
2. Heard Mr. Sadavarte, learned Advocate for Petitioner.
3. Perused the praecipe dated 02.08.2024 and the Writ Petition.
4. In the present case, the Petitioner is the Decree Holder and as per judgment and decree passed against Respondent by learned Trial Court, it is directed that the Respondents shall not disturb the possession of the Petitioner over the suit land till Petitioner is legally dispossessed from the suit land.
5. It is pointed out by the Petitioner that Respondents are all statutory officers of State of Maharashtra. It is contended by Mr. Sadavarte that despite the judgment and decree passed in favour of the Petitioner in Regular Civil Suit No.65 of 1985 without following the

due process of law as delineated in that decree due to the Respondents actions third parties have arbitrarily and highhandedly attempted to dispossess the Petitioner from the suit land.

6. Being aggrieved, the Petitioner – Decree Holder filed an Application below Exhibit-42 in Regular Darkhast No.42 of 2021 before the Executing Court. That application is appended at Exhibit-E, page No.81 of the Writ Petition. In paragraph Nos.3 and 4 of the Application, the Decree Holder has stated as to how the allotted land belonging to Petitioner is now been reallocated by statutory officer of Government to other persons / third parties. The question that would arise is whether the decree which has been passed in favour of Petitioner is followed by the Defendants therein i.e. statutory officers of the Government whether they have taken appropriate steps to legally dispossess the Petitioner from the suit land.

7. It is the contention of Petitioner that subsequent allottees of the suit land are now coming over the suit land and are attempting to disturb the possession of Petitioner without following the due process of law. Mr. Sadavarte would contend that the decision passed by the learned Trial Court in the judgment and decree is not to disturb the possession of the Petitioner over the suit land until the Petitioner is legally dispossessed. He would submit that either the statutory officers of Government or any other allottee has to take any steps regarding

having their entitlement and possession to the suit land established and the appropriate course of action would be to take recourse to law to legally dispossess the Petitioner from the suit land.

8. He would submit that actions of the third parties in coming over the suit land without following the due process of law to dispossess the Petitioner is not in accordance with the judgment and decree which has been passed in favour of the Petitioner. One of the reason as to why the Application has been rejected is that the Petitioner has not submitted any details of orders connected with the allotment of the suit land subsequently in favour of third parties by Sub-Divisional Officer. However, perusal of the Application and more specifically as delineated hereinabove, in paragraph Nos.3 and 4 if seen *prima facie*, adequate details appear to have been given therein. If the learned Executing Court desires more details with respect to the specific allotment, all that it was required to do was call upon the Plaintiff i.e. Decree Holder – Petitioner before me to submit the same. Without taking cognizance of the details of the allotment made in favour of third parties it was inappropriate on the part of the Executing Court to dismiss the Application.

9. Hence, the impugned order is not sustainable. It is therefore quashed and set aside by remanding the matter back to the learned Executing Court to determine the Application filed below Exhibit-42

afresh strictly in accordance with law. I direct the learned Executing Court to consider the allotments of which substantive details are given in paragraph Nos.3 and 4 of the Application and call upon the Respondents to ascertain and confirm the same. If the learned Executing Court finds that there is no ambiguity in respect of adhering and following the decree that has been passed in favour of Petitioner which has been alluded to in paragraph No.4 of the impugned order, the learned Executing Court shall call for all such necessary details and after hearing the concerned parties pass appropriate order strictly in accordance with law.

10. With the above directions, the impugned order dated 03.11.2023 stands quashed and set aside and matter is remanded back to the learned Executing Court for determining Exhibit-42 afresh as directed hereinabove by hearing all the parties. By all the parties I mean to direct to ascertain the correct details of the land allotted in favour of third parties and after ascertaining the said position determine the issue afresh in accordance with law and after hearing all parties.

11. Considering that the judgment and decree was passed in favour of Petitioner – Plaintiff and confirmed in Appeal as delineated in paragraph Nos.3 and 4 of the application and exigency mentioned by Mr. Sadavarte as grounds in the Petition, I direct the learned

Executing Court to determine Exhibit-42 as expeditiously as possible and in any event within a period of eight weeks from today. Both parties are directed to co-operate with the learned Trial Court. Needless to state that all contentions of all the parties are expressly kept open without this Court delineating any opinion on merits of the case.

12. With the above directions, Writ Petition is disposed.

H. H. SAWANT

[MILIND N. JADHAV, J.]

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SAWANT

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Date: 2024.08.02
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