

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 3844 OF 1997

Shrirang Tanga @ Hanumant Bhalerao ...Petitioner
Versus
Municipal Corporation of City of Nashik & ...Respondents
Ors

WITH
INTERIM APPLICATION NO. 11623 OF 2024
IN
WRIT PETITION NO. 3844 OF 1997

Mr Pramod N Joshi (through VC), *with Mr Poojary, for the*
Petitioner.
Ms MP Thakur, AGP, *for the Respondent No.3-State*
Mr Tushar N Sonawane, *for the Applicant in CAW/504/2017.*

CORAM M.S. Sonak &
Kamal Khata, JJ.
DATED: 16th August 2024

PC:-

1. Heard Mr Joshi with Mr Poojary for the Petitioner, Ms Thakur, the learned AGP for the State (Respondent No. 3) who appears for the Nashik Municipal Corporation (NMC). Mr Gangal, who used to appear for the Nashik Municipal Corporation, is today not present.

2. This Petition was instituted by (or in the name of) Shrirang Tanga Hanumant Bhalerao through his Power of Attorney, Shri Vijay Mahadeorao Mirajkar, on 26 September 1997.

3. This Petition was instituted by suppressing the fact that Shrirnag Bhalerao had died on 24 April 1990. A death certificate has now been placed on record to confirm this position. This position is not disputed by any parties. Upon the death of Shrirang Bhalerao, the Power of Attorney favouring Vijay Mirajkar naturally came to an end and stood revoked. Therefore, based on such Power of Attorney, if any, Vijay Mirajkar had no authority to institute this Petition almost seven years after the demise of Shrirang Bhalerao. The very institution of this Petition was a fraud and constituted a gross abuse of the judicial process.

4. As if more was needed, Civil Application No. 159 of 2014 was filed, and some orders were obtained therein on 10 February 2014. This order was made by a Division Bench comprising AS Oka (as his Lordships then was) and MS Sonak, J.

5. On 6 July 2017, this Petition was substantially heard by the Division Bench of AS Oka (as his Lordships then was) and Smt. Vibha Kankanwadi, J. While perusing Civil Application No. 504 of 2017, which was filed by the legal representatives of late Shrirang Bhalerao seeking their intervention in this matter, it was noticed that Shrirang Bhalerao had died on 24 April 1990 and this Petition was filed on 17 July 1997. It was also noticed

that the order dated 10 February 2014 passed in Civil Application No. 159 of 2014 was without clarifying this position.

6. Therefore, on 6 July 2017, the Division Bench comprising AS Oka (as his Lordships then was) and Smt Vibha Kankanwadi, J. made the following order:-

“1. This petition was substantially argued. The submissions of the counsel were concluded yesterday. As the applicant in the Civil Application No. 504 of 2017 was absent, writ petition was kept today.

2. While perusing the Civil Application No. 504 of 2017, it was noticed that the sole writ petitioner Shrirang died on 24th April 1990. The writ petition was filed on 17th July 1997. The present petitioner was brought on record on the basis of the order dated 10th February 2014 passed in the Civil Application No. 159 of 2014. We have perused the Civil Application No. 159 of 2014. The said Civil Application was made by the substituted writ petitioner and eight others (2 to 9 applicants). The said 2 to 9 applicants are claiming to be the legal representatives of the said Shrirang. Careful perusal of the said Civil Application shows that it was nowhere mentioned that the said Shrirang had died in the year 1990. The writ petition was filed in the year 1997 in his name. In the entire application, the date of death of the said Shrirang is not shown. In paragraph 3 of the application, it is mentioned therein that though

the first applicant Vijay Mirajkar was already on record, his name was not brought on record in place of the original petitioner.

3. The said Vijay has purported to file the present petition in his capacity as the Constituted Attorney of Shrirang. Prima facie, it appears to us that a very material fact that the said Shrirang had died in the year 1990 was suppressed from this Court. Therefore, prima facie, we are of the view that the order passed on the said Civil Application on 10th February 2014 is vitiated by suppression of material facts. Paragraph 2 of the order dated 10th February 2014 records that the sole petitioner had died prior to the year 2005.

4. Hence, we direct the Registrar (Judicial-I) to place the Civil Application No. 159 of 2014 before the same Bench which passed the order dated 10th February 2014 for considering the question whether the order needs to be recalled.”

7. Today, when this matter was called out, Mr Joshi, the learned counsel for the Petitioners, stated that the matter had been compromised with the NMC and, therefore, nothing survives in this Petition. He submitted that the Petition may be disposed of.

8. Mr Joshi, however, submitted that since the sole Petitioner had expired, Interim Application No. 11623 of 2024 had been

filed to record the legal representatives. He submitted that this application may be allowed, and then this Petition may be disposed of.

9. As we were about to adopt the course suggested by Mr Joshi, Mr Tushar Sonawane, who appears for the legal representatives of Shrirang Bhalerao and who had filed Civil Application No. 504 of 2017, submitted that such a course of action may not be followed.

10. Mr Tushar Sonawane explained how fraud was committed on this Court by Mr Vijay Mirajkar instituting the Petition in Shrirang's name, even though Shrirang had expired almost seven years before the institution of the Petition. He again pointed out how orders were obtained in Civil Application No. 159 of 2014 without clarifying the correct position. He pointed out that even Interim Application No. 11623 of 2024 seeks to bring not the legal representatives of Shrirang Bhalerao on record but the legal representatives of Vijay Mirajkar, who had expired on 2 January 2024. Mr Sonawane submitted that this was nothing but the perpetuation of the original fraud practised in this Court.

11. Mr Sonawane submitted that this Petition could be disposed of, keeping Shrirang Bhalerao's legal representatives' rights, contentions, and remedies intact.

12. We have heard Mr Joshi for the Petitioners and Mr Sonawane for the legal representatives of Shrirang Bhalerao,

who preferred Civil Application No. 504 of 2017. Ms Thakur, the learned AGP, has also appeared in the matter.

13. As noted earlier, we are satisfied that fraud was played on this Court by instituting this Petition in the name of a dead person and by relying upon such dead person's Power of Attorney, even though this Power of Attorney stood revoked due to the death of the original Petitioner Shrirang Bhalerao. The very institution of this Petition amounts to a fraud on this Court.

14. The contention that no advantage was obtained is entirely misconceived. Attempts were made to get the advantage. The fact that much advantage could not be obtained is not a mitigating factor. Besides, there is no material to show that no advantage was obtained. There is a reference to some Civil Suits and the consent terms filed therein. There is a reference to certain alleged agreements between Vijay Mirajkar and Shrirang Bhalerao. In the context of these dealings, we suspect that undue advantage was obtained simply by instituting this Petition.

15. Mr Joshi submitted that the matter had been compromised with the NMC and urged that the Petition may, therefore, be disposed of. We do not know what this compromise is and whether this compromise gave any benefits to the legal representatives of Shrirang Bhalerao, who was admittedly the owner of the property, or whether Vijay Mirajkar entirely appropriated such benefits and, after his demise, his legal representatives. Therefore, the innocuous submission that no

advantage was obtained cannot be accepted. In any event, the question is not about acquiring any advantage by playing a fraud. The question is whether the advantage was attempted to be obtained by playing fraud in this court. Such undue advantage was undoubtedly attempted to be obtained.

16. Even when Civil Application No. 159 of 2014 was argued, and we were persuaded to make an order dated 10 February 2014, all facts were not disclosed. Even today, when the request was made to allow Interim Application No.11623 of 2024, we were genuinely under the impression that this application was to bring on record the legal representatives of Shrirang Bhalerao, i.e., the original Petitioner. Instead, as was pointed out by Mr Sonawane, even this application seeks to bring on record the legal representatives of Vijay Mirajkar and not the legal representatives of deceased Shrirang Bhalerao.

17. Mr Joshi referred to the additional affidavit filed by Vijay Mirajkar on 19 July 2019 and submitted that all correct facts were stated. We have perused this affidavit and cannot accept that all correct facts have been stated. In any event, this affidavit was filed on 19 July 2019. This affidavit refers to a Memorandum of Understanding, Civil Suit, and Consent Terms. At this stage, there is no question that this Court should take cognisance of this material in a fraudulently instituted and pursued Petition.

18. In this matter, we are not concerned with the private disputes or settlements between Vijay Mirajkar, his legal

representatives and other parties, including the NMC. However, we are astonished at how the NMC could have compromised matters (if it really has) with Vijay Mirajkar or his legal representatives based upon some Power of Attorney of Shrirang Bhalerao, who had admittedly expired on 24 April 1990.

19. In this case, we noticed that the NMC has also filed an affidavit on 10 January 2014 pointing out how this Petition had abated. Mr Joshi's contention that subsequent events about the consent terms before the Civil Court now validate or regularise the institution of this Writ Petition, with respect, is entirely misconceived and cannot be accepted. Since the very institution of this Petition was a fraud, such fraud cannot be regularised by some self-serving consent terms filed before the Civil Court. In any event, even those consent terms cannot and could not purport to regularise/validate this Petition's fraudulent institution and prosecution.

20. For all the above reasons, we recall our order dated 10 February 2014, which was obtained fraudulently. Accordingly, we dismiss Civil Application No. 159 of 2014. Similarly, we dismiss this Writ Petition as its institution was a fraud on this Court and constitutes gross abuse of the judicial process. The Interim Application no. 11623 of 2024 filed by or on behalf of the legal representatives of Vijay Mirajkar is also dismissed.

21. For all this, Vijay Mirajkar's legal representatives will have to pay Rs.1 lakh in costs to the Maharashtra Advocates Welfare Fund, State Bank of India, Account No. 10996709268, IFCS

Code—SBIN0000300, Fort Branch, Mumbai -1. These costs should be paid within 30 days from today, and a compliance receipt must be filed in this Court soon thereafter.

22. As requested by Mr Sonawane, Civil Application No. 504 of 2017 is also disposed of by giving the applicants, i.e., the legal representatives of Shrirang Bhalerao, liberty to take such proceedings as they may be advised about the lapsing of reservation and all other matters connected therein on their property. All rights and contentions of the legal representatives of deceased Shrirang Bhalerao are left open.

(Kamal Khata, J)

(M.S. Sonak, J)