

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
CHAMBER SUMMONS NO. 627 OF 2006
IN
SUIT NO. 208 OF 1950**

Bai Rabiabai, wd/o. Ebrahim Mia Mohammed		
Haji Janmohammed Chotani and others	...	Plaintiffs
vs.		
The Official Assignee and others	...	Defendants
and		
Bishop's Education Society	...	Intervenor

Mr. Ashish Kamat, Senior Advocate, a/w. Mr. Mohit Khanna, Mr. Vishesh Malviya and Mr. Chandrajit Das, i/b. Rashmikanant and Partners for intervenor.

Mr. Asif Memon, i/b. Anam Fatima for plaintiffs.

Mr. R. D. Soni a/w. Sujay Gawade and Ms. Mudita Pawar for defendant No.17.

Mrs. Chandan Bhatt, Official Assignee.

Ms. V. N. Worlikar, Section Officer, Office of the Court Receiver.

**CORAM : MANISH PITALE, J.
DATE : 22nd JANUARY, 2024**

P.C. :

. By these chamber summons, the applicant is seeking to intervene in the proceeding and to press for its prayer for discharging the Court Receiver appointed by this Court on Final Plot No.80, TPS Yerawda, Pune. The said plot was part of the suit property. The applicant is an educational society, running schools at Pune. It is the case of the applicant that continued

appointment of the Receiver is interfering with its rights, in respect of the said plot of land.

2. The prayers made in the present chamber summons, are opposed by the parties to the suit and hence, there is a contest in the matter.

3. The facts relevant for considering the present chamber summons, are that the present suit was filed in the year 1950 by the heirs of Late Mia Mohammed Chotani for partition of the suit property, which included the aforesaid plot. On 14.03.1950, this Court appointed Court Receiver on the suit property and accordingly, the name of the Court Receiver was entered in the revenue records pertaining to the suit property. In the said suit, a preliminary decree was passed.

4. In the Town Planning Scheme of the year 1977 pertaining to Pune, the aforesaid plot was reserved for primary school. The Pune Municipal Corporation (PMC), in the year 1987, undertook proceedings under the provisions of Maharashtra Regional and Town Planning Act, 1966 (hereinafter referred to as the MRTP Act) for proceeding on the basis of the Town Planning Scheme, which was finalized and it included the aforesaid plot. According to the applicant, the PMC proceeded to take over possession of the aforesaid plot, in pursuance of the steps taken under the MRTP Act and this fact was informed by the concerned authority on 26.10.1989.

5. In the year 2004, the PMC issued a tender notice, calling for offers from public and institutions interested in the aforesaid plot. Since the reservation was for a primary school, the applicant, being a society running schools in Pune, offered its bid and the applicant's bid of Rs.2.26 crores was accepted by the PMC.

6. In the meanwhile, reports were being placed by the Court Receiver in the aforesaid pending suit and while passing orders in such reports, this Court directed erecting fences around the aforesaid plot as also plot No.79. Since the applicant was made aware about the fact that Court Receiver was appointed on the aforesaid plot, in the year 2006, the applicant was constrained to move the present chamber summons. On 17.05.2006, this Court passed an order in the chamber summons, directing parties to maintain *status quo* in respect of the said plot. The parties to the suit filed affidavits in the chamber summons, opposing the prayers made on behalf of the applicant.

7. In the meanwhile, during the pendency of the chamber summons, Court Receiver's Report No.96 of 2010 came up for consideration before a learned Single Judge of this Court. It was recorded in an order dated 06.04.2011 passed in the said Court Receiver's Report that a document in Form-I i.e. redistribution and valuation statement under the provisions of Maharashtra Town Planning Scheme Rules, 1974, was prepared by the Town Planning Department, which indicated the manner in which the said plot had been dealt with. The said report was closed and it was directed that the Court Receiver or any person party to the present suit, was free to challenge the entries made in such document.

8. It appears that in the context of the aforesaid liberty granted by the learned Single Judge of this Court, plaintiff No.1(c) in the aforesaid suit, filed Writ Petition No.5156 of 2014, seeking quashing of resolution passed by the Standing Committee and the General Body of the PMC dated 21.02.2004 and 20.07.2004 respectively, which were passed in the context of

the highest bid of the applicant, being accepted for the said plot. In the writ petition, a prayer was also made for setting aside the entry of the name of the Municipal Commissioner of PMC, in respect of the aforesaid plot and to enter the name of the petitioner therein. The said writ petition was dismissed by an order dated 11.09.2014 passed by the Division Bench of this Court. Although, the writ petition was dismissed on the ground of delay and laches, certain position on facts, was recorded in the said order, which the applicant claims to be in its favour.

9. The chamber summons were listed before this Court from time to time and at one stage, when they were taken up for hearing, this Court thought it fit to direct the applicant to add PMC as a party. This was in the backdrop of the fact that disputes had arisen between the applicant and the PMC, with regard to the allotment of the said plot. Special Civil Case No.408 of 2015 was filed by the applicant before the Court of Civil Judge Senior Division at Pune, praying for a declaration that the PMC was duty bound to execute lease deed in favour of the applicant and to handover possession of the said plot in pursuance of the tender conditions, wherein the applicant's bid had been accepted. The applicant also sought for a permanent injunction restraining the PMC from carrying out any construction on the said plot and creating third party rights and/or changing the user of the suit plot. The applicant also moved an application for temporary injunction. The aforesaid Court at Pune allowed the application for temporary injunction and restrained the PMC from creating third party interest in the suit plot and also, from carrying out construction till final disposal of the suit.

10. It is in this backdrop that the applicant is pressing for relief in the present chamber summons for discharge of Receiver on the Final Plot No.80.

This would also facilitate the applicant in pursuing the litigation in the competent Court at Pune.

11. Mr. Ashish Kamat, learned senior counsel appearing for the applicant in the present chamber summons submitted that the application is in the nature of *pro interesse suo* proceeding, which, as per settled law, is the only remedy available to a third party, who is affected by appointment of Court Receiver in a litigation pending in the Court. Reliance was placed on the judgment of the Supreme Court in the case of *Naresh Shridhar Mirajkar and others vs. State of Maharashtra and another* (**AIR 1967 SC 1**), as also judgment of this Court in the case of *Narayan Manik Patil and others vs. Jaywant J. Patil and others* (**2008 SCC OnLine Bom 725**) and judgment of Calcutta High Court in the case of *Central Bank of India vs. Srish Chandra Guha and another* (**1971 SCC OnLine Cal 113**).

12. By relying on the said judgments, the learned senior counsel appearing for the applicant submitted that in the facts and circumstances of the present case, the applicant had no other option, but to approach this Court for discharge of the Court Receiver in respect of the aforesaid Final Plot No.80, even though the applicant is not a party in the suit for partition, pending between the parties to the suit. After addressing this Court about the maintainability of the present chamber summons, the learned senior counsel for the applicant referred to the documents on record, particularly the aforesaid judgment and order of the Division Bench of this Court dated 11.09.2014 passed in Writ Petition No.5156 of 2014 (**Abdul Hamid Ebrahim Chotani vs. State of Maharashtra and others**). He also referred to order dated 03.02.2006 passed in the present suit and order dated 06.04.2011 passed in Court Receiver's Report No.96 of 2010 in the present suit. He

submitted that the parties to the suit participated in arbitration proceedings under the provisions of the MRTTP Act, pertaining to the aforesaid plot, on the basis of authority received from the solicitors of the Court Receiver. An appeal was also filed at their behest against the judgment delivered by the arbitrator and thereafter, a final decision was taken in respect of the said plot, culminating in possession of the plot being taken in the year 1989 by the PMC. It was submitted that the entire proceeding under the MRTTP Act, in consonance with the reservation of the plot for primary school under the Town Planning Scheme, culminated in the name of the Municipal Commissioner of PMC being recorded in the records, as regards the said plot. Thereafter, tenders were invited and highest bid of the applicant was accepted. The PMC was to execute lease deed and when there was delay on the part of the PMC, the applicant was constrained to file the aforementioned suit bearing Special Civil Case No.408 of 2015 before the competent Court at Pune, wherein temporary injunction is operating in favour of the applicant.

13. It was submitted that in these circumstances, the parties to the suit may, at best, be entitled to compensation determined in respect of the plot in pursuance of the scheme. But, the plot itself stood vested with the PMC. In order to support the said contention, the learned senior counsel for the applicant relied upon judgment of the Supreme Court in the case of *Vishnu s/o. Namdeo Kumar and others vs. State of Maharashtra and others* [2002 (4) Mh.L.J. 181].

14. It was submitted that the aforementioned judgment of the Division Bench of this Court in the case of **Abdul Hamid Ebrahim Chotani vs. State of Maharashtra and others** (*supra*), was never challenged and that the parties

to the suit cannot take advantage either of the fact that the writ petition was dismissed on the ground of delay and laches or the observation made in paragraph No.10 of the said judgment, wherein it was observed that if any party had any enforceable civil rights, it was open for them to adjudicate the same by filing appropriate proceedings. It was submitted that under Section 149 of the MRTP Act, there is a bar to file any suit or legal proceedings, in respect of any order or directions issued by State Government or any other order passed or notice issued by any Regional Board, Planning Authority or Development Authority, under the MRTP Act. On this basis, it was submitted that the parties to the suit could, perhaps, agitate against any grievance of compensation determined in respect of the Final Plot No.80. But, they could not claim that the proceedings under the MRTP Act were not completed, particularly when they participated in the proceedings and there was no challenge raised in respect of the findings rendered therein. It was submitted that as the Town Planning Scheme attained finality, the possession of the plot was with the PMC and that the applicant was therefore entitled to seek discharge of the Court Receiver in respect of the said Final Plot No.80. Reliance was placed on the judgment of this Court in the case of *Municipal Corporation of Greater Mumbai vs. Jaffar Ali Nawa Ali Chaudhary and others* [2021 (5) Mh.L.J. 375]. On this basis, it was submitted that this Court may allow the chamber summons.

15. On the other hand, Mr. Radhikesh Uttarwar, learned counsel appearing for defendant Nos.3, 9 to 13 and 16 submitted that the applicant was not justified in seeking discharge of Court Receiver in respect of Final Plot No.80. It was submitted that a proper reading of the aforesaid orders passed by this Court in the suit and Court Receiver's Report as well as the Division Bench order passed in writ petition, would show that the proceedings under

the MRTP Act were still incomplete and that in any case, they were illegal and unsustainable. It was vehemently submitted that the Court Receiver was never put to notice and the unilateral proceedings undertaken under the MRTP Act, could not culminate into acquisition and handing over of possession of the Final Plot No.80. It was submitted that the process being incomplete, there was no question of the Court Receiver being discharged in respect of the said plot.

16. It was further submitted that in view of the bar under Section 149 of the MRTP Act, even if the observation made by the Division Bench of this Court in paragraph No.10 of the judgment and order passed in the case of **Abdul Hamid Ebrahim Chotani vs. State of Maharashtra and others** (*supra*) is to be taken into account, effectively there was no remedy available to the parties to the suit and therefore, the Court Receiver ought not to be discharged.

17. It was submitted that in the facts and circumstances of the present case, it could not be said that the plot had vested in favour of the PMC and therefore, there was no question of the applicant claiming any rights therein, on the basis of the tender process undertaken by the PMC. It was further submitted that the material on record was insufficient to accept the claims made on behalf of the applicant, with regard to the Final Plot No.80.

18. At the stage of arguments and without any affidavit on record, the learned counsel appearing for the said defendants tendered before this Court copy of draft Development Plan 2007-2027 as also copy of revenue record entry pertaining to the suit property. By referring to the draft Development Plan, it was submitted that the reservation in respect of the applicant's

school had been deleted and it was included in the PSP Zone, thereby indicating that the applicant had no *locus standi* to maintain the present chamber summons. By referring to the revenue record entry in respect of the suit property, it was submitted that the name of the Court Receiver was still continuing in respect thereof. On this basis, it was submitted that the chamber summons deserve to be dismissed.

19. This Court has considered the rival submissions. A perusal of the judgment of the Supreme Court, in the case of **Naresh Shridhar Mirajkar and others vs. State of Maharashtra and another** (*supra*), shows that the Constitution Bench of the Supreme Court categorically held that in a situation where a Court appoints a Receiver on a property in a litigation between certain persons, even if the property belongs to another person, that person is as much bound by the order appointing the Court Receiver, as the parties to the litigation. The remedy for such a person is to move the Court by an application *pro interesse suo*. Similarly, this Court, in the case of **Narayan Manik Patil and others vs. Jaywant J. Patil and others** (*supra*) found that where the Court finds that an order appointing the Court Receiver, affects the rights of a third party, it is open to the Court to discharge the Court Receiver. In the case of **Central Bank of India vs. Srish Chandra Guha and another** (*supra*), the Calcutta High Court found that a proceeding in the nature of *pro interesse suo*, is not provided for in the Code of Civil Procedure, 1908. But, such a procedure appears to have been imported from England, in order to do justice to a person, who is affected by appointment of Court Receiver in a proceeding between the persons other than such an affected person.

20. Considering the said position of law, this Court finds that the present chamber summons filed on behalf of the applicant-society, are maintainable. The applicant has been able to demonstrate that it is affected by the continued appointment of the Court Receiver in respect of Final Plot No.80. The applicant was the highest bidder and its bid was accepted by PMC in respect of the very same Final Plot No.80, which was subject matter of the proceedings under the provisions of MRTTP Act, in pursuance of the reservation as per Town Planning Scheme. Hence, the chamber summons are held to be maintainable.

21. The material on record shows that pursuant to the process of inviting tenders, the highest bid of Rs.2.26 crores offered by the applicant, was accepted by the PMC and resolutions to that effect were passed by the Standing Committee on 21.02.2004 and the General Body of the PMC on 20.07.2004. This is evident from Exhibit C and D filed with the additional affidavit of the applicant. The resolution clearly stated that approval was being accorded to accept the highest bid of the applicant for giving physical possession of the aforesaid Final Plot No.80 to the applicant by charging premium amount of Rs.2.26 crores.

22. Prior to the aforesaid exercise, appropriate proceedings were undertaken under the provisions of the MRTTP Act, including arbitration proceedings. The parties to the suit, including the defendants, for whom the learned counsel appeared and contested the chamber summons, were unable to dispute the assertions recorded on behalf of the PMC that the plaintiff No.1(c) i.e. the petitioner in the said writ petition, had participated in the arbitration proceedings under the MRTTP Act, which culminated in a judgment and even an appeal was filed in the context thereof, which was

disposed of in the year 1980. The judgment and order of the Division Bench of this Court, in the case of **Abdul Hamid Ebrahim Chotani vs. State of Maharashtra and others** (*supra*) passed in Writ Petition No.5156 of 2014, also records the assertion on the part of the PMC that possession of Final Plot No.80 was taken by the Assistant Engineer of the Town Planning Scheme, Pune on 26.10.1989 and that the plot vested with the PMC.

23. A perusal of the affidavit filed on behalf of the aforesaid plaintiff No.1(c) in the present chamber summons, shows that a stand is sought to be taken that the proceedings were bad in law and not binding upon the plaintiffs or the Court Receiver. It was specifically stated that the PMC was seeking to make profit out of the Final Plot No.80.

24. Therefore, it is too late in the day for the aforementioned defendants to claim that the proceedings under the MRTP Act were bad in law or that the vesting never took place. The said defendants can also not claim that they were rendered remediless because of the bar under Section 149 of the MRTP Act, for the reason that for all these years and even during the period when the acquisition was being undertaken, they did not take any steps to raise a challenge. In fact, they participated in the arbitration proceeding, thereby indicating that the aforesaid stand is unsustainable. There is substance in the contention raised on behalf of the applicant, by placing reliance on the judgment of the Supreme Court in the case of *Savitri Devi vs. State of Haryana and others* [(1996) 7 SCC 729] and **Vishnu s/o. Namdeo Kumar and others vs. State of Maharashtra and others** (*supra*) that the land vests and the pre-existing right, title and interest of the erstwhile owner ceases to exist and it is divested. In the present case, Final Plot No.80 stood vested under the Scheme and therefore, it cannot lie in the mouth of the said

defendants to resist the prayer made in the chamber summons on behalf of the applicant.

25. This Court, on an earlier occasion, thought it fit to direct the PMC to be added as a party to the suit. Accordingly, the PMC was added as a party to the suit and it was served on 28.08.2023. Yet, the PMC has chosen not to appear before this Court.

26. There is no dispute about the fact that the applicant was constrained to file Special Civil Case No.408 of 2015, against the PMC for execution of the lease deed in favour of the applicant, in pursuance of acceptance of the highest bid and resolutions passed in favour of the applicant by the Standing Committee and General Body of the PMC.

27. The continued appointment of the Court Receiver on Final Plot No.80 certainly interferes with the rights of the applicant. The dispute between the applicant and the PMC would be put to rest in the said suit filed by the applicant before the competent Court at Pune. As noted hereinabove, an order of temporary injunction is already operating in favour of the applicant in the said pending suit. In such a situation, the applicant has clearly made out a case in its favour.

28. The effect of the orders dated 03.02.2006 and 06.04.2011 in the present suit and Court Receiver's Report read with judgment and order dated 11.09.2014 passed by the Division Bench of this Court in Writ Petition No.5156 of 2014, is that the parties to the suit and the defendants herein, who have contested the present chamber summons, cannot oppose and resist the prayer made in the chamber summons for discharge of Receiver on Final Plot No.80.

29. The attempt on the part of the learned counsel appearing for the aforesaid defendants to rely upon documents tendered before this Court without any affidavit and an attempt to spring a surprise on the applicant, can be of no avail because entries in revenue records and other such steps taken by authorities, are not binding on this Court. In any case, the said documents cannot come to the aid of the parties to the suit, for the reason that the Final Plot No.80 has already vested and at best, the parties to the suit would have interest in the compensation payable in respect of Final Plot No.80. The continued appointment of Court Receiver on Final Plot No.80 is clearly not justified and hence, the chamber summons deserve to be allowed.

30. Accordingly, the chamber summons are allowed and the Court Receiver is discharged without passing up of accounts, as regards Final Plot No.80, TPS Yerawda, Pune.

31. At this stage, the learned counsel appearing for the plaintiff seeks stay of the present order, which is opposed by the learned senior counsel appearing for the applicant/intervenor.

32. Since this Court has given detailed reasons for discharging the Receiver as regards Final Plot No.80, the prayer for stay is rejected.

(MANISH PITALE, J.)