



IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH : NAGPUR.

WRIT PETITION NO. 5697 OF 2014

Chaturbhuj s/o Nandlal Bhattad

vs.

The Municipal Council, Shegaon, through its Chief Officer, Shegaon & ors.

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Mr. S. N. Bhattad, Advocate for petitioner.

Mr. D. M. Kale, Advocate for respondent no. 1.

Mr. D. P. Thakre, Additional Government Pleader for respondent nos. 2 and 3.

CORAM :- NITIN W. SAMBRE AND ABHAY J. MANTRI, JJ.

DATE :- 12th JULY, 2024

P C.

Heard.

2. Prayer in the petition is for declaration that the action on the part of the respondents in acquiring the land i.e. 4000 Sq. feet out of Nazul Plot No.15, Survey No.300/2 in Shegaon Part-2, located on Balapur Road, situated within the limits of Shegaon City, is illegal. The petitioner has also sought directions to decide the objection of the petitioner dated 26.06.2014 and not to initiate any action against the petitioner without following the due process of law i.e. by taking recourse to the provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (for short, the Act of 2013).

3. The contentions of Mr. Bhattad, learned counsel for the petitioner, are, the aforesaid land of the petitioner is admeasuring about 20 R. It is claimed by him that out of 20 R of land, 5 R land is

affected by the alignment of the DP Road as on south-west side digging for storm water drain has commenced on 25.06.2014. According to him, such alignment since was objected by the petitioner as his land is encroached by the respondents, it was expected of the respondents to take recourse to the provisions of the Act of 2013 and not to trespass on the property of the petitioner.

4. He would claim that the respondent-Municipal Council, a Local Planning Authority, cannot enter into the private property of the petitioner without following the due process of law.

5. As against above, Mr. Kale, learned counsel appearing for the respondent no.1-Municipal Council and Mr. Thakre, learned Additional Government Pleader would urge that a suit preferred by the petitioner being Regular Civil Suit No. 198 of 2014 wherein the plaintiff-petitioner herein has sought declaration that the petitioner is in peaceful possession and enjoyment of the said plot and the respondents and its Officers have no right to interfere with the possession was already disposed of by ordering return of plaint under Order VII Rule 11(d) of the Code of Civil Procedure. It is claimed that the petitioner has not carried out any measurement so as to *prima facie* demonstrate that the DP road was constructed from the land of the petitioner referred above. As such, it is claimed that the petition involves disputed question.

6. While countering the aforesaid submissions, Mr. Bhattad, has claimed that he can demonstrate from the maps which are placed on

record that the alignment of the DP road has affected the petitioner's possession to the extent of 5 R land.

7. We have considered the rival submissions.

8. The fact remains that the petitioner has preferred a suit seeking declaration and injunction. In the said suit an application under Order VII Rule 11 of the Code of Civil Procedure was preferred by the respondent no.1 herein thereby claiming that the suit is barred by law.

9. As a sequel of above, after considering the rival claims, the Civil Court has passed an order adverse to the interest of the petitioner based on the provisions of Section 149 of the Maharashtra Regional and Town Planning Act, 1966 (for short, the MRTP Act) and rejected the plaint in view of the provisions of Order VII Rule 11(d) of the Code of Civil Procedure.

10. While rejecting the plaint, the trial Court has observed that the claim made in the suit is hit by Section 149 of the MRTP Act. The said provision contemplates that every order passed or direction issued by the State Government or order passed or notice issued by any Regional Board, Planning Authority or Development Authority under the provisions of MRTP Act shall be final and shall not be questioned in the suit or other legal proceedings.

11. What was questioned by the petitioner in the suit or the prayer in the suit preferred by the petitioner was in relation to seeking declaration of ownership and peaceful enjoyment of the property and

an order of injunction and further declaration that the defendants i.e. present respondents have no right to dig or construct drain or do any work over the suit property. Prayer for permanent injunction to the aforesaid effect was also made.

12. We are of the prima facie view that considering the prayers made in the plaint, same are not affecting the provisions of Section 149 MRTP Act as the petitioner has not questioned any order or directions of the State Government. The petitioner should have questioned the said order directing rejection of plaint by the Civil Court.

By conduct of the petitioner of not questioning the order of the trial Court passed below Exhibit 27 on 28.08.2014 whereby plaint was returned under the provisions of Order VII Rule 11 of the Code of Civil Procedure, the petitioner has accepted the said order and has chosen not to question the same before the higher Court. The petitioner thereafter on 08.10.2014 preferred this writ petition seeking declaration that the action of the respondents of carrying out construction on 4000 square feet of plot area as illegal and in breach of the statutory rights of the petitioner. A further prayer is made to accept the objection dated 26.06.2014 and not to initiate action against the petitioner without following due process of law.

13. From the factual matrix narrated in the writ petition, it is apparent that the petitioner has claimed that land to the extent of 0.04 Hectare i.e. 4000 square feet situated within limits of Shegaon city was

encroached by the respondents by carrying out digging activity on the date of filing of the writ petition. It is his claim that the said activity pertained to laying down of storm-water drain. It is further claimed by the petitioner that his land is bounded by Survey No.300/1 towards West, Survey No.292 on North and Survey No.290 on South and Survey No.290 & Shegaon – Balapur road on the east, which is affecting the alignment because the respondents have encroached on the same.

14. If we appreciate the aforesaid factual matrix what is claimed by the petitioner is the digging activity on south-west side which is occurred on 26.06.2014, whereas it is claimed that the improvement on the Shegaon – Balapur road has affected the boundary and such road is located on the east side. The aforesaid contradictory factual matrix gives rise to the existence of disputed question of fact.

15. The petitioner so as to substantiate his claim has relied on certain measurement maps placed on record to infer that the respondents have entered the property of the petitioner and have encroached thereby carrying out construction of 4000 square feet of area. All the maps which are placed on record by the petitioner are pertaining to carrying out of measurement prior to 26.06.2014, i.e. before the alleged encroachment.

16. The petitioner has not carried out any measurement or joint measurement so as to demonstrate before this Court that the respondents have encroached to the extent of 5 R land owned by him.

17. As such, we are unable to satisfy ourselves that there is an encroachment made by the respondents while effecting construction of DP road over the plot of land of the petitioner. Apart from above, if the case of the petitioner is accepted as it is, the same is required to be decided based on the available evidence and facts which we have already noticed to be disputed one.

18. On one hand the respondents are claiming that the plot land of the petitioner is not affected by the DP road alignment and on the other, the petitioner is claiming that his land is affected by the construction of DP road. These rival claims give rise to the disputed question of fact and in such an eventuality, in our opinion, the only remedy to which the petitioner is entitled is to get appropriate relief from the Civil Court.

19. In the backdrop of aforesaid observations, we are of the view that no case for exercising jurisdiction under Articles 226 and 227 of the Constitution of India is made out. The writ petition fails and it is dismissed as such. No order as to costs.

(ABHAY J. MANTRI, J.)

(NITIN W. SAMBRE, J.)