

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 9386 OF 2024
WITH
INTERIM APPLICATION NO. 13444 OF 2024

Shri Basant Kumar Jain

...Petitioner

Vs.

State of Maharashtra & Ors.

...Respondents

Mr. Basant Kumar Jain, Petitioner in person.

Ms. S. D. Vyas, Addl. GP with Mr. M. M. Pabale, AGP for State/
Respondent Nos.1 to 3.

Mr. Suraj Gurav i/b. A. D. Gurav for Respondent Nos.4, 5 & 6.

Mr. Kunal Bhanage i/b. Ms. Jayashri Mane for Respondent No.7.

CORAM: G. S. KULKARNI &
ADVAIT M. SETHNA, JJ.
DATED: 29 JANUARY 2025

P.C.

1. We have heard Mr. Basant Kumar Jain who appears in person. We have also heard Ms. Vyas, learned Addl. G.P. on behalf of respondent nos.1 to 3, Mr. Gurav, learned counsel for respondent nos.4 to 6 who are allottees of the property in question namely CTS No. 17, F. P. No. 246 (part), Pune and Mr. Bhanage, learned counsel who appears for respondent no.7. Respondent nos. 8 and 9 are also in the same interest as respondent no.7 in whose favour rights are created in the said property/land, which was originally an evacuee property.

2. This petition under Article 226 of the Constitution of India is filed praying for the following reliefs:-

“a) That this Hon’ble Court be pleased to issue a writ of certiorari or a writ in the nature of certiorari or any other appropriate writ or direction or order under Article 226 of the Constitution of India to the respondent No.3, calling for the records of the case and after examining the legality and propriety of the same be pleased to quash and set aside the Notice dated 15.04.2024 (Exhibit-EEE) and the letter dated 03.01.2019 (Exhibit-GG) and the letter dated 04.01.2019 (Exhibit-HH) which were affixed by the Respondent Nos. 4 and 6 on 17.04.2024 in the said property.

b) That this Hon’ble Court be pleased to issue a writ of mandamus or writ in the nature of mandamus or any other appropriate writ, direction or order under Article 226 of the Constitution of India directing the Respondent No.3 to finally decide the application dated 15.11.2018 (Exhibit-CC) preferred by the Respondent Nos. 4 to 6 under S. 25(2) of the DP Act, 1954.

c) That this Hon’ble Court be pleased to issue a writ of mandamus or writ in the nature of mandamus or any other appropriate writ, direction or order under Article 226 of the Constitution of India directing the Respondent No.3 to re-issue challans to the Petitioner for payment of the full consideration for the said property bearing CTS No. 17, FP No. 246 (Part) 20 Bundgarden, Pune in terms of the order dated 25.05.2009 passed by the Settlement Commissioner for Compensation Pool Property and Custodian of Evacuee Property, Maharashtra State.

d) That this Hon’ble Court be pleased to issue a writ of mandamus or writ in the nature of mandamus or any other appropriate writ, direction or order under Article 226 of the Constitution of India directing the Respondent No. 1 to 3 to erect a boundary wall in the said property or in the alternative allow the Petitioner to himself erect a boundary wall in the said property.

e) That during pendency of hearing and till final disposal of the present Petition, the Respondents Nos.1 to 3 be restrained from in any manner interfering with the possession receipt dated 30.01.2012 (Exhibit-T) or allotting or creating third party interest in, or encumbering, the said property bearing CTS No. 17, FP No. 246 (Part), 20 Bundgarden, Pune; and also further direct the Managing Officer and Respondent Nos. 1 to 2 to take immediate action for removing the encroachers from the said property including the shops, kiosks and the two tiny temples illegally constructed on the boundary of the said property.

f) Ad-interim relief in terms of prayer clause (e) above.”

3. The petitioner's primary contention in seeking the aforesaid reliefs is to the effect that the petitioner has legal rights in respect of the said property as described in the prayer clause (supra), which according to him, formed part of the compensation pool defined under Section 14(1) of the Displaced Persons (Compensation and Rehabilitation) Act, 1954 (for short, "**1954 Act**"). It appears to be not in dispute that respondent nos. 4 to 6 are the legal heirs of the displaced person within the meaning of the said term as defined under Section 2(b) of the 1954 Act which reads thus:-

"2. Definitions :- In this Act, unless the context otherwise requires,-

(a)

(b) "displaced person" means any person who, on account of the setting up of the Dominions of India and Pakistan, or on account of civil disturbances or the fear of such disturbances in any area now forming part of West Pakistan, has, after the first day of March, 1947, left or been displaced from, his place of residence in such area and who has been subsequently residing in India, and includes any person who is resident in any place now forming part of India and who for that reason is unable or has been rendered unable to manage, supervise or control any immovable property belonging to him in West Pakistan, and also **includes the successors-in-interest of any such person;**

(c) "evacuee property" means any property which has been declared or is deemed to have been declared as evacuee property under the Administration of Evacuee Property Act, 1950 (XXXI of 1950);"

(emphasis supplied)

4. It is also not in dispute that respondent nos.4 to 6 had inherited/succeeded to the estate and properties of their deceased uncle Shri. Kanaiyalal Bijlani who expired on 29 January 1994, who admittedly was a

displaced person within the meaning of the 1954 Act. It also appears to be not in dispute, that the petitioner independently and/or in his own right was neither an allottee of the evacuee property nor in any manner whatsoever a displaced person who would be entitled to the benefits of the evacuee property under the provisions of the 1954 Act.

5. The petitioner is asserting his rights under a purported agreement dated 02 December 1996 (Exhibit-H, page 94 of the paper-book) under which he claims that he was issued a Power of Attorney. It is his contention that on these documents, he has stepped into the shoes of the 'displaced person' and has rights in respect of the evacuee land. Such "agreement" dated 02 December 1996 is between respondent no.4-Shri Prakash Kartar Bijlani, respondent no.5-Shri Mahesh Kartar Bijlani, respondent no.6-Shri Dhiraj Kartar Bijlani (for short, "**Bijlanis**") on the first part and the petitioner-Shri Basant Kumar Jain on the other. However, what is interesting is that such agreement which was executed almost 29 years back even assuming is an agreement to sale is not a sale deed (conveyance) which in any manner can be said to have transferred the rights in the land in favour of the petitioner. This is clear from the following clause as set out in the said agreement which shows that at the relevant time, the rights in the said land in favour of Bijlanis, also had not crystalized. The clause reads thus:-

"III. The Party of the First part shall sell or assign or perpetually lease, as the case may be, the said property to the party of the Second part, or to any of his nominee, as the case may be, free

from any encumbrances whatsoever, as and when the said property or any other alternative property is finally allotted and physically handed over by the government, strictly as per the wishes and advise of the Party of the Second part; and shall execute and sign all related documents as and when required.”

(emphasis supplied)

6. Under clause (iv) and (v) of the very same agreement, the Bijlanis had agreed to execute a power of attorney in favour of the petitioner and one Shri. Rakesh Kumar Jain, Advocate. The said clauses of the agreement read thus:-

“iv. The Party of the First Part shall also execute an irrevocable power of attorney in favour of the Party of the Second Part to implement and pursue the terms of this agreement.

v. The Party of the First past shall also execute a special power of attorney in favour of Shri. Rakesh Kumar Jain, Advocate, to enable him to file, appeal prosecute any civil suit or criminal case in respect of the said property in the Pune Civil Court, District Court and Pimpri Court as the case may be, as and when the necessity arises.”

7. In pursuance of the aforesaid agreement, an irrevocable power of attorney was executed by the Bijlanis in favour of the petitioner which is also dated 02 December 1996, a copy of which is annexed at page 115 of the paper-book.

8. It appears that although the rights of Bijlanis qua the land itself were uncertain, some payments were made by the petitioner to Bijlanis. The rights of the Bijlanis in respect of the evacuee property in question stood crystalized vide an order dated 25 May 2009 passed by the “Settlement Commissioner for the Compensation Pool Properties-Cum-Custodian of

Evacuee Properties, Maharashtra State, Mumbai”. Copy of the said order is annexed to the reply affidavit filed on behalf of the State Government at Exhibit R-1. The operative part of the said order reads thus:-

“

ORDER

(a) The Appellants are hereby allotted the part of the compensation pool property at 20, Bund Garden, bearing CTS No.17, Final Plot No.246, admeasuring 10490.06 sq. mtrs., Ghorpadi, pune, which excludes the land area admeasuring about 476.48 sq. mtrs., covered by the main structure, which includes the 16 galas mentioned in para 1(a) to 1(m) in the plaint in RCS no. 1236/1984.

(b) The Appellant shall pay Rs.6,89,02,791/-[D-A] (Rupees Six Crores Eighty Nine Lakhs Two Thousand Seven Hundred Ninety One only) being the difference in value of the two properties as per the valuation made in para 54 above which excludes the land area covered by the main structure admeasuring about 476.48 sq. mtrs., comprising of the 16 galas mentioned in para 1(a) to 1(m) in the plaint in RCS no. 1236/1984, in the manner as follows:

The amount of Rs.6,89,02,791/- [D-A] (Rupees Six Crores Eighty Nine Lakhs Two Thousand Seven Hundred Ninety One Only) shall be paid within six months from the date of this order or within one month from the date of removing the entire encroachments on the land, whichever is later. The said balance amount shall be credited to Reserve Bank of India by drawing a Challan to the Head of Account.

“0029 Land Revenue.
105 Sale Proceeds
Sale of Govt. Property (Evacuee Property)
(Com No. 6102001002)”

The Appellants shall submit the original challan at the office of the Managing Officer.

(c) The Managing Officer shall take immediate action to evict the encroachers from the property as per the applicable law without violating the order of the Hon'ble High Court in the pending appeals.

(d) Immediately upon receipt of the payments of the amounts mentioned in para (b) of this order the Managing Officer shall issue the Certificate of Sale in respect of the above property after modifying the Certificate of Sale dated 31.7.1971 issued to Shri

Bijlani in the manner explained above, excluding the area covered by the main structure admeasuring about 476.48 sq. mtrs., comprising of the 16 galas mentioned in para 1(a) to 1(m) in the plaint in SCS no. 1236/1984.

(e) The Certificate of Sale shall record the current value of the original plot, earlier allotted to Late K. T. Bijlani which is set off against the current value of the said portion of the property at 20, Bund Garden, excluding the land area covered by the main structure admeasuring about 476.48 sq. mtrs., comprising of the 16 galas mentioned in para 1(a) to 1(m) in the plaint in RCS No. 1236/1984 and the balance consideration has been paid by the Appellants.

(f) The Managing Officer shall hand over possession of the said portion of the land, without violating the order of the Hon'ble High Court in the pending appeals.

(g) The appellants shall have the liberty to apply to the Managing officer for allotment of the said excluded portion of the property in the event of the injunction being vacated by the Hon'ble High Court.

(h) Until the property is physically handed over to the appellants the said property shall continue as part of the compensation pool and the authorities shall prosecute the pending appeals until their final disposal.

(i) The parties shall be informed accordingly.”

9. It appears that the petitioner on the basis of the power of attorney along with the agreement dated 02 December 1996 was asserting rights in respect of the evacuee property and continues to do so, as even in the present petition. Our attention is drawn to a notice which was issued by the Bijlanis dated 14 June 2018 under which the power of attorney dated 02 December 1996 issued in favour of the petitioner was terminated by the Bijlanis. This according to Mr. Bhanage, learned counsel for respondent no.7 brings about a clear legal position that the petitioner does not have any rights in respect of the evacuee property, and in any case, none under the

nature of the agreement as executed between the Bijlanis and the petitioner, which was entered at a point of time when the final allotment of the land in question itself had not taken place and/or the rights of the Bijlanis were not crystalized, so as to clothe the Bijlanis to be the legal owners/allottees of the evacuee property. It is submitted that the petitioner, at all material times, could not have asserted any legal rights in respect of the said property, much less under the said power of attorney. It is also Mr. Bhanage's submission that in any event after termination of the power of attorney, there was no question of the petitioner contending that he has any legal rights much less a bald claim of the petitioner, that he is the owner of the property, when admittedly there was neither a sale deed nor a conveyance of the said property executed in favour of the petitioner. It is also Mr. Bhanage's submission that in asserting such legal rights, the petitioner also has attempted to encroach upon the property which was prevented by the Bijlanis as also by the assignees of the Bijlanis i.e. respondent nos.4 to 6 by making complaints of the petitioner's actions of causing encroachment. In this context, we are pointed out orders dated 03 January 2019 and 04 January 2019 passed by the "Tahsildar, Pune City-Cum-Managing Officer" which are sought to be impugned by the petitioner, wherein the Tahsildar has observed that the petitioner has no legal rights and his rights in respect of the said property under the power of attorney had stood extinguished. The observations as made by the Tahsildar in such order read thus:-

“(Official Translation of a Photocopy of a LETTER, typewritten in Marathi.)

EXHIBIT – HH

TAHASIL OFFICE, PUNE CITY.
Managing Officer, Accumulated Estate, Pune City.
931, Shukrawar Peth, Pune – 411 002.
e-mail: tahasildarpunecity@gmail.com.
Phone No. 020-24472850.

No. Land/WS/02/2019

Date: 04.01.2019

To,
The Senior Inspector of Police,
Koregaon Police Station,
Pune – 411001.

Subject : Regarding the Land bearing C. S. No.17,
Final Plot No. 246, Band Garden Road,
Pune.

Reference : 1) Application dated 15.11.2018 under Section 25
(2) of the Displaced Persons (Compensation
and Rehabilitation) Act, 1954 submitted to
this Office by Shri Prakash Bijlani.
2) Letter dated 30.12.2018, submitted to your
office by Shri Basant Kumar Jain.

By the Order dated 25.05.2009, the Settlement Commissioner has directed to allot the said property to Shri Prakash Kartar Bijlani, Shri Mahesh Kartar Bijlani and Shri Dhiraj Kartar Bijlani, the heirs of the evacuee by name Shri K. T. Bijlani. The said property is a property of the Central Government and the same is a part of a compensation pool. While executing an Agreement and General Power of Attorney in respect of the said property, as the said property vests in the Compensation pool i.e. to say within the control of the Central Government, the same is under the control of the Managing Officer.

As per the Order dated 25.05.2009 of the Settlement Commissioner, Compensation in respect of the accumulated property and Custodian Officer of the evacuee property, the then Managing Officer had given the provisional possession of the said property to Shri Prakash Kartar Bijlani, Shri Mahesh Kartar Bijlani and Shri Dhiraj Kartar Bijlani, the heirs of the evacuee by name Shri K. T. Bijlani on the date 30.01.2012. As Shri Basant Kumar Jain had been appointed as Constituted Attorney at that time, his

name has been mentioned in Provisional Possession Receipt dated 30.01.2012. Thereafter, as mentioned in the Application under Reference at Sr. No.1 above made to this Office by Shri Prakash Kartar Bijlani, the General Power of Attorney executed in favour of Shri Basant Kumar Jain has been revoked on the date 09.06.2014. Similarly, even by issuing a Public Notice in the newspaper viz. Daily Prabhat, in its issue dated 07.11.2018, Shri Prakash Bijlani has informed to the public at large that nobody should enter into any transaction in respect of said property with Shri Basant Kumar Jain directly and that the General Power of Attorney that had been executed in his favour had already been revoked and annulled. However, Shri Basant Kumar Jain is visiting the aforesaid property and is pretending to be the owner of the said property by violating the Order of Provisional Possession. As the General Power of Attorney in respect of the said land has been revoked and annulled, all the powers of Shri Basant Kumar Jain on behalf of the said evacuee ceased to exist.

On the date 30.01.2012, the then Settlement Commissioner, Compensation in respect of the accumulated property and Custodian Officer of the evacuee property, has reserved provisional possession in the names of the applicants Shri Prakash Kartar Bijlani, Shri Mahesh Kartar Bijlani, Shri Dhiraj Kartar Bijlani. **No transactions or no correspondence with any Government Department in respect of the said properties by Shri Basant Kumar Jain in the capacity of Constituted Attorney shall be considered as valid. All his powers have been revoked.** However, if any steps pertaining to the said land are required to be taken at your level then, the Managing Officer and Tahasildar, Pune City has been appointed as the Managing Officer as per the Notification No. EVP 2016/M.No.102/R-6 dated 23.11.2017 issued by the Revenue and Forest Department of the Government of Maharashtra and as per section 16 of the Displaced Persons (Compensation and Rehabilitation) Act, 1954. This information is submitted for taking further steps.

Copy received
(Signature Illegible)
05.01.2019
Station House Officer,
Koregaon Park Police Station, Pune.”

(Signature Illegible)
Tahasildar, Pune City
and Managing Officer

(emphasis supplied)

10. On the aforesaid conspectus, we have heard the petitioner-in-person. Repeatedly we have asked the petitioner on what would be his legal right in the land, which is an evacuee property. The petitioner could not show any

document indicating the petitioner's independent legal right in respect of the said evacuee property. As noted above, the petitioner is unable to show any sale deed or a conveyance by which his rights in respect of the said land could be said to have been transferred to him, in a manner recognized by law. The petitioner miserably fails to cross the basic threshold and/or the first essential requirement to demonstrate even a semblance of legal right in respect of the evacuee property and/or the lawful transfer of the property in question, so that this Court in exercise of its extraordinary jurisdiction under Article 226 of the Constitution, can issue any directions to the authorities under the 1954 Act or the Administration of Evacuee Property Act, 1950.

11. We also pointed out to the petitioner that if he intends to otherwise establish any legal rights, the remedy would lie elsewhere, however, the petitioner has insisted that the Court nonetheless adjudicate this petition. We have accordingly heard him at great length keeping aside our heavy cause list, considering that the petitioner appears in-person.

12. Having heard the parties, we also find much substance in the contention as urged by Ms. Vyas, learned Addl. G. P. for the State when she submits that the petitioner has no legal rights whatsoever as also pleaded in the affidavit in reply. She also submitted that the petitioner could have espoused an appropriate legal remedy against the Bijlanis which could have been available to the petitioner under the provisions of the 1954 Act.

Similar is the submission of Mr. Bhanage. However, the petitioner has vehemently opposed such contentions as urged on behalf of the respondents.

13. Our attention is also drawn to an order dated 30 November 2023 passed by a co-ordinate Bench of this Court on Writ Petition No. 8709 of 2023 which was filed by the Bijlanis in which the Court noted that there was a serious dispute between the Bijlanis and the petitioner with reference to the entitlement to the property in question.

14. Having perused the record, we are of the clear opinion that this is not a case wherein we would exercise the extraordinary jurisdiction conferred under Article 226 of the Constitution to adjudicate the *inter se* rights between the Bijlanis and the petitioner. The petitioner has not filed any civil suit on the basis of or in relation to the documents dated 02 December 1996 (*supra*) so as to assert any rights under the said agreement. It appears that having not asserted any legal rights in appropriate proceedings at the appropriate time, the petitioner now has approached this Court, not only in the present petition but also in the other proceedings which were placed before us, in the past, for reasons best known to him. From the documents on record, we find that the petitioner was unable to show any legal rights qua the evacuee property in question, except for what is being asserted under the agreement dated 02 December 1996 and the power of attorney of the even date, which itself has stood terminated about 10 years back. Despite all

this, the petitioner has not taken any steps to assert any rights in civil proceedings and/or in a manner known to law.

15. The compilation of documents along with the judgments in our opinion, in no manner would assist the petitioner in the light of our above discussion. The propositions the petitioner intends to canvass without showing any basic rights in respect of the property certainly cannot be gone into.

16. In the light of the aforesaid discussion, in our clear opinion, the writ petition is a patent abuse of the process of law. It is required to be dismissed with compensatory costs of Rs.1 Lac to be deposited with the “Bar Council of Maharashtra Advocates Welfare Fund” as the petitioner has taken substantial judicial time of this Court in pursuing frivolous proceedings.

17. Writ petition is dismissed in the aforesaid terms.

18. Interim application would not survive. It is accordingly disposed of.

19. At this stage, the petitioner in person prays that some protection be granted to him. In view of our aforesaid observations, such prayer is unstateable. It is rejected.

(ADVAIT M. SETHNA, J.)

(G. S. KULKARNI, J.)