

(1958) 03 BOM CK 0036
In the Bombay High Court
Case No : Second Appeal No. 444 of 1954

G.L. Mishra

APPELLANT

Vs

The State of Bombay

RESPONDENT

Date of Decision : 24-03-1958

Acts Referred:

Central Provinces and Berar Municipalities Act, 1922 — Section 38(1)
Central Provinces Land Revenue Act, 1881 — Section 219

Citation : (1958) 60 BOMLR 1158

Hon'ble Judges : Mudholkar, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Mudholkar, J.—This is a plaintiff's second appeal from the dismissal of his suit for two declarations and for damages. The relevant facts are as follows : Leases of certain plots of land in Dhantoli covering in all an area of about two acres were granted by the State to one Krishnarao Phatak in the year 1910. Those leases were renewed on April 13, 1940, in favour of the heirs of Krishnarao Phatak who died before the expiry of the period of the lease. One of the plots comprised in these leases was transferred by the heirs of the original lessee to the plaintiff on January 17, 1942. After purchasing the plot, he constructed a house thereon. There is a compound wall to this house. According to the State, while constructing the eastern side of the compound wall the appellant has encroached upon the Government land to the extent of 310? sq. ft. Proceedings were, therefore, commenced against him for the removal of the encroachment and an order requiring him to remove the encroachment was passed.

2. The appellant's contention is that the land in question was granted on lease to the original lessee by the State, that by reason of his purchase on January 17, 1942. he had become an owner thereof and that, therefore, a declaration to that effect should be granted. He has also contended that the order requiring him to remove the alleged encroachment should be declared to be a nullity inasmuch as

he has not encroached upon Government land. The contention on behalf of the State is that the land in question, though covered by the original lease, was surrendered by the heirs of the original lessee to the Government before the sale was effected in favour of the appellant and that, therefore, the appellant got no title to this land. Both the Courts below Upheld the contentions of the State and held that the appellant was not entitled to the reliefs claimed by him.

3. Shri P.A. Halve, who appears for the appellant, contends that on the basis of the original lease granted by the State to Krishnarao and on the basis of the transfer in his favour by the heirs of Krishnarao he was entitled to have 19,938 sq. ft. of land and that if the land in question is taken into account the area now in his possession does not exceed 19,938 sq. ft. It may be mentioned that the plot which was sold by the heirs of Krishnarao to the appellant was stated to be plot No. 21/2. It is no doubt true that the indenture in favour of the original lessee shows that the area of the plot therein described as plot No. 21/2 is 19,938 sq. ft. But it would appear that there was some error in mentioning the area of the plot. This error was discovered when the plots were actually demarcated on the land by the Nazul Officer on January 13, 1941. Exhibit D-6A is the report of the Nazul Officer. In that report he has stated that the correct area of plot No. 21/2 was 18,040 sq. ft. All these measurements were taken in the presence of one of the heirs of Krishnarao and the actual position was explained to this person and he accepted that new measurements as correct. This is stated by the Nazul Officer in his report in para. 4 as follows:

Plot numbers and areas of the four indentures mentioned above may kindly be ordered to be corrected as mentioned in para 2. Lessees have no objection to this. Corrections are also according to facts on the spot.

It may be mentioned that out of the entire area which was comprised in the lease in favour of the original lessee land measuring 1,289 sq. ft. was required for widening of the roads and this land was actually surrendered by the heirs of the original lessee at the time of the renewal of their leases. This fact is also mentioned in the report. It may be mentioned that prior to the sale in the appellant's favour, the heirs of the original lessee had sold plot No. 21/2 to one Smt. Savitribai Mangrulkar. No doubt, in the sale-deed in favour of the appellant the same plot is mentioned; but it is clear from the evidence of one of the heirs, Section K. Phatak, who was examined by the appellant as one of his witnesses, that the plot which was actually sold to the appellant was plot No. 21/3, though apparently it was wrongly described in the sale deed as plot No. 21/2. The area of this plot, according to exh. D-6A, is 19,530 sq. ft. It may be mentioned that this plot corresponds to the original plot No. 21/2 having an area of 19,938 sq. ft. At the time of the renewal of the lease 408 sq. ft. out of this land was surrendered to the Government and, therefore, the only land which the heirs of the original lessee could transfer to the appellant was 19,530 sq. ft. and no more. In these circumstances, I agree with the Courts below that the appellant was not entitled to any land in excess of this. The land covered by the eastern

compound wall could not be conveyed under the sale deed and, therefore, the appellant must, by constructing the compound wall, be deemed to have encroached upon the Government land.

4. Shri P.A. Halve then argues, be that as it may, the land having vested in the municipal committee u/s 38(1) of the C.P. and Berar Municipalities Act, as it forms part of a public street, the Government has no right to remove the encroachment. Now, what Section 38(1) says is that all property of the nature specified in the section shall vest in and be under the control of the committee. One of the properties specified in the section is "public streets". Shri Halve, therefore, contends that the land in question being part of a public street must be deemed to be the property of the municipal committee, and as such an encroachment thereon could be removed only by the municipal committee and by no one else. It seems to me however that the words "shall vest" used in Section 38(1) only mean "shall be in the possession of" and not "shall be the property of" the municipal committee. In this connection I may first refer to the meaning of the word "vest" given in Wharton's Law Lexicon:

Vest. (1) Either to place in possession; to make possessor of; or, to give an absolute interest in property when a named period or event occurs.

(2)(of a right or interest) Its coming into the possession of any one; ensuring to the benefit of any one.

It is not contended and indeed cannot be contended that u/s 38(1) absolute interest in public streets is to pass to a municipal committee on the occurrence of a named event or the elapse of a stated period. Clearly, therefore, the primary meaning of the word "vest", that is "to be placed in possession" must be given thereto. Secondly, I may point out that in Sub-section (2) of Section 38 it is provided that the State Government may, by notification, direct that any property which has vested in the committee, shall cease to be so vested, and thereafter the State Government may pass such orders as it thinks fit regarding the disposal and management of such property. Now, had it been the intention of the Legislature to create title with respect to public streets and other properties described in Sub-section(1) of Section 38, in the municipal committee, the Government would not have been given a power to put an end to that title by merely making a notification of the kind contemplated by Sub-section (2) of Section 38. Thirdly, I would point out that where the Legislature has intended that title to property should pass to the municipal committee a different mode altogether of taking away that land from the municipal committee has been provided by it, Sub-section (3) of Section 38 is in the following terms:

Where any Immovable property is transferred, otherwise than by sale, by the Provincial Government to a committee, for public purposes, it shall be deemed to be a condition of such transfer, unless specially provided to the contrary, that, should the property be at any time resumed by (the Crown), the compensation payable therefore shall, notwithstanding anything to the contrary in the Land

Acquisition Act, 1894?, in no case exceed the amount, if any, paid to (the Crown) for the transfer, together with the cost or the present value, whichever shall be less, of any buildings erected or other works executed on the land by the committee.

Under this provision where property has been transferred by the Government to the municipal committee, while it is open to the Government to resume that property it has to pay compensation in respect of that property provided, of course, the municipal committee had paid any money to the Government before acquiring that property. It also provides for the payment to the municipal committee of the value of the structure, if any, constructed by the committee on that land, It may further be pointed out that there is no provision for exemption from payment of compensation for the land which the municipal committee has obtained by a sale. Such being the position, I hold that in so far as public streets are concerned, the property remains with the State Government despite the operation of Section 38(1) and that the only right which passes to the municipal committee under that section is the right to possession. That being the position, the State Government has a right to remove the encroachment u/s 219 of the C.P. Land Revenue Act.

5. Upon this view, I uphold the decree of the lower appellate Court and dismiss the appeal with costs.