
(1979) 04 BOM CK 0010
In the Bombay High Court
Case No : First Appeal No. 658 of 1969

Indramani Radhakishan Santaram Singhania	APPELLANT
Vs	
Augustin Peter D'souza	RESPONDENT

Date of Decision : 02-04-1979

Acts Referred:

Constitution of India, 1950 — Article 31

Citation : (1980) 82 BOMLR 144

Hon'ble Judges : Sharad Manohar, J;Deshpande V.S., J

Bench : Division Bench

Judgement

Deshpande, J.—[His Lordship after dealing with the factual aspects of the case, which are not material to the present report, continued]:-

2. Mr. Kothari then contends that alter the Town Planning Scheme is finally sanctioned by the State Government, title of the original owner of the land in the plots carved out there from, stands extinguished and rights as settled by the Town Planning Officer alone survive for recognition. Reliance is placed on Section 53(b) of the Bombay Town Planning Act, 1954, and the extract of redistribution and valuation statement of the scheme in Form B. The extract shows defendant No. 1 as the owner of the land S. No. 107/8 and that it was given original plot No. 96A, when the land was converted into the plots. It also shows that in lieu of this plot No. 96A, defendant No. 1 was allotted reconstituted plots Nos. 77, 78, 87 and 89 and Rs. 600 to compensate the loss of her land in this redistribution scheme in terms of the valuation made there under.

3. This extract was not filed in the lower Court nor this point was raised earlier. Mr. Abhyankar objected to the admissibility of the extract at this late stage in the appeal without making out any case for its admission and also to this new point in appeal for the first tune. We, however, find that the extract does not contain any material, which is not otherwise on the record and the point raised does not involve any investigation of any more facts.

4. The Act of 1954 is now repealed by the Act No. 37 of 1966. We are, however, concerned with Section 53 of the repealed Act that was in force when the suit was instituted and the scheme was enforced finally in 1959.

5. Section 53 reads as follows :

On the day on which the final scheme comes into force,

(a) all lands required by the local authority shall, unless it is otherwise determined in such scheme, vest absolutely in the local authority free from all encumbrance;

(b) all rights in the original plots which have been re-constituted shall determine and the re-constituted plots shall become subject to the rights settled by the Town Planning Officer.

6. It is true that rights of the owners in the original plots get extinguished with the enforcement of the scheme. But such extinguishment is conditional on allotment of other reconstituted plots in lieu of the land so lost or compensation. Section 26(2)(d) and (e) contemplates allotment of such plots and transfer of ownership from one plot to the other, while Section 71 thereof contemplates payment of compensation, when no such plot can be allotted to the owner of the plot, who is liable to lose his plot in this process, In fact, but for such compensatory provisions, Section 53 would have been adjusted to be violative of Article 31 of the Constitution- In the case of State of Gujarat Vs. Shantilal Mangaldas and Others, , the Supreme Court upheld its validity on the basis of such compensatory provisions. This is thus "settlement" referred to in Section 53(b). Thus contemplated extinction of the interest of the owners in this land brought in the pool of the scheme cannot be divorced from the rights settled or required to be settled by the Town Planning Officer, in lieu thereof. The extinction cannot be complete and effective till plot or compensation is given in lieu thereof.

7. It is true that defendant No. 1 is allotted the plots in dispute under the scheme. But the extracts of Form B itself indicate this allotment being in lieu of the original plot No, 96A which in turn was carved out of the land S. No. 107/8. The Town Planning Officer has settled the right, interest and title in S. No. 107/8 by transferring the plots in dispute to defendant on the assumption that she was the owner of S. No. 107/8. The Town Planning Officer would have allotted these plots to the plaintiffs also and transferred his ownership in land S. No. 107/8 to the said plots to the plaintiffs in the identical manner had he been aware that plaintiffs, and not the defendant, were the owners of S. No. 107/8. The Town Planning Officer was not made aware of the title of the plaintiffs, when he recorded his decision u/s 32(1) of the Act, presumably because he was misled by the entries in the record of rights made by the revenue authorities in compliance with the order dated March 8, 1955. The dispute as to the title of S. No. 107/8 was never raised before him and he had no occasion to decide or "settle" it within the meaning of Section 53(b) of the Act. Entries to that effect in the scheme made behind the back of the plaintiffs, therefore, cannot preclude them

from claiming title to S. No. 107/8 and to the plots in dispute allotted to defendants in lieu thereof. Settlement or decision as to extinguishment of title in S. No. 107/8 and conferment of title in lieu thereof in plots Nos. 77, 78, 87 and 89 cannot in these circumstances be conclusive of the plaintiffs' rights or be binding on them.

8. Mr. Kothari also could not draw our attention to any provision in the Act, investing the Town Planning Officer with powers to adjudicate such disputes as to title. Section 31 enables the Government to appoint a Town Planning Officer after draft scheme is approved. Section 32(1) enumerates the disputes of the Town Planning Officer in the matter of processing and finalising the said scheme. Section 32(1) consists in all 14 clauses. These clauses specify his power of adjudication of several questions connected with the finalisation of the scheme. None of the clauses provides for adjudication of disputes as to title of land covered by the original or reconstituted plots. When the Town Planning Officer is not invested with any powers to adjudicate the title in the land, the finality contemplated to his decision as to the points as u/s 33 of the Act and the "settlement" of rights covered u/s 53(b) of the Act can never cover any dispute as to the title in any plot.

9. Mr. Kothari then contends that our decision as to plaintiffs being the owner of S. No. 107/8 and consequentially of the plots in dispute, involves substitution of the plaintiffs' name in place of defendant No. 1 in Form B and the scheme which amounts to variation or modification of the scheme. The Legislature has provided, so contends Mr. Kothari, for such variation and modification in Section 56 of the Act. According to Mr. Kothari, any such variation or modification can be done only by the authority by the procedure indicated therein and impliedly the jurisdiction of any other authority including that of the civil Court must be deemed to have been ousted for any such purpose. This contention is equally devoid of substance. It is difficult to hold that summary power to amend, vary and modify the scheme u/s 56 of the Act, includes power to decide such dispute of title, as in this case involving as it does the question of limitation possession. The plaintiffs claim to have learnt of the scheme in 1965 when the plaint was amended. By this time even suit alleging dispossession of 1950 had become time-barred under the Limitation Act of 1908. It is enough to note that the ouster of jurisdiction of civil Court cannot be readily inferred. No question of its even implied ouster can arise unless the Act is shown to contain any provision for adjudication of disputes as to title before the enforcement of the scheme. We have seen how the Town Planning Officer, the principal authority concerned with the finalisation of the scheme, is not invested with such adjudication powers. In the absence of any provision for such authority and the machinery for adjudication of such disputes, civil Court's jurisdiction in this behalf cannot be said to have been ousted. Assuming, therefore, that substitution of the name of the true owner in Form B involves any variation or modification of the scheme, Section 56 cannot prevent the Court from, entertaining such dispute as to title and adjudicating the same.

10. Mr. Kothari then drew our attention to Section 51(3) of the Act. "On the enforcement of the scheme by the State Government, the scheme becomes effective, as if it were the part of the Act under this sub-section. According to Mr. Kothari, variation of the scheme amounts to amendment of the same and then the plaintiffs cannot be substituted as owners of the plots in place of the defendants without amending the law. The Court, according to Mr. Kothari, cannot usurp any such legislative function. The contention is too far-fetched and devoid of any merit. Section 56 itself contemplates variation or modification of the scheme, whenever some error or irregularities are detected in spite of Section 51(3). If the local authority is competent to vary and modify the scheme u/s 56 after inquiry without violating the provisions of Section 51(3), the civil Court cannot be deemed to have violated the said provision, if it finds substitution of some other rightful person's name in the said scheme necessary to accord with its decree.

11. Reference to Section 19 of the Act will also be of some benefit in this context. Chapter IV (Sections 21 to 30) indicates how draft scheme is to be prepared by the local authority. Section 25 enumerates what the contents of the draft scheme should be. Clause (a) thereof requires that the name of the owner and other particulars of each land should be indicated in the draft plan. The Act or Rules framed thereunder, to which our attention was drawn by the learned advocates, do not indicate as to from what sources and in what manner, the required information u/s 25(a) is to be collected. Section 19, however, authorises the local authority to hold enquiry into the claim) to any plot, when claimant happens to be different from the one shown in the record of rights. Such enquiry, however, can be held only if the application is made before the Town Planning Officer finalises the draft scheme after decision of the points u/s 32(1) of the Act. Section 19(2) makes such decision subject to the decision thereon by civil Court and Sub-section (3) contemplates variation or modification of the scheme in terms of such decree. Corresponding Section 71 of the Act of 1966 contemplates automatic modification of even final scheme, if the decree of the civil Court is passed in such dispute, after the scheme is finally enforced. Thus variation of the scheme, in accordance with the decree of the Court, on the dispute of title is not excluded by Section 51(3) of the Act as suggested by Mr. Kothari.

12. Mr. Kothari, then contends that, by investing the local authority to adjudicate on the dispute as to title, u/s 19 of the Act, the Legislature has indicated its intention to divest the civil Court of its jurisdiction to so adjudicate the disputes. According to Mr. Kothari, Sections 32, 33, 51, 53 and 56 together with Section 19 constitute a self-contained Code covering all conceivable disputes affecting the town planning scheme. There is not much substance in this contention. We have already seen how powers of the Town Planning Officer enumerated u/s 32 do not include the power of such adjudication. He presumably acts on the material furnished in the draft scheme. Section 25 and the Rules thereunder do not indicate how the information as to ownership is collected. Our attention is not drawn to any provision under which any notice is required to be served on the

interested person before the information is collected and draft scheme. Section 19, examined in this back ground, appears to Be. an enabling provision under which the local authority is empowered to de the dispute if raised. Sub-section (2) of Section 19 then reads as follows :

(2) Such decision shall not be subject to appeal but it shall not operate as a bar to a regular suit.

Preventing such decision from barring the suit in the civil Court in this Sub-section (2) itself indicates legislative intent not to oust civil Court's ordinary jurisdiction in the matter of dispute of titles. Sub-section (2) does not require that any suit in the civil Court should be filed only after raising objections before the local authority and its decision thereon. It does not even prescribe any period within which a suit should be filed. Any suit, without even raising dispute before the local authority is not excluded under this sub-section. Section 19 or Rules under the Act in fact do not make it obligatory to raise the dispute before the local authority. In the absence of any provision of actual or constructive notice to the interested person in any land, before entering in the draft scheme, the name of the owner thereof u/s 25(a), no such obligation can also be inferred. Secondly, Section 19 does not enable the aggrieved party to approach local authority, if the error is committed or discovered after the plan is finalised by the Town Planning Officer u/s 32(1) and before the State Government accords its sanction u/s 51 on the submission of the scheme by the Town Planning Officer to it for such sanction. This period also can be long enough to give rise to fresh causes for such disputes. Thus the scheme cannot be said to be a self-contained Code in this behalf.

13. It is true that wide publicity is contemplated to be given to the declaration of intention to make a scheme u/s 22 and also to the notification, when the draft scheme is made available for inspection u/s 23 and sanction accorded to it u/s 51 of the Act. The notifications are published in the Official Gazette to enable the aggrieved persons to initiate proceedings for alterations therein, if they are so interested. In the first instance, no individual notice is contemplated thereunder. Secondly, scheme is aimed at development and introducing all amenities and is not concerned with disputes as to title of the land covered by the scheme. The owners not interested in opposing such development and willing to be content with available substitutes for the land may not oppose the plan. Section 32 contemplates individual notices when scheme is likely to affect title. But the notices are obviously given to the persons recorded as owners u/s 25(a) at which stage no individual notice is contemplated. Exceptional eventualities necessitating dispensing with individual notices even to titleholder stand on different footing. It is enough to notice that there is no trace in this legislation of its being of such an exceptional nature. This is another indication of there being no legislative intent to oust the jurisdiction of the civil Court in regard to dispute as to title.

14. The facts of the present case are illustrative of how persons are exposed to

the risk of losing their property even without any fault on their part if the suit is held to have been barred. The combined extract of record of rights for the period from 1932 to 1956 shows plaintiffs to be occupants. Mr. Kothari showed us the paper indicating that draft scheme was prepared in 1922. It is not knowing how defendant No. 1's name came to be entered as owner of S. No. 107/8 in the draft scheme, when the plaintiffs were recorded owner of the land till 1956. The order for mutation of defendant No. 1's name was passed only on January 8, 1955. Plaintiffs moved the Collector in 1957 for correction without any success. The suit is instituted in February, 1960. Plaintiffs do not appear to be at fault if some officer showed defendant No. 1 to be the owner in the scheme papers without any notice or information to the plaintiffs. No facts are pleaded in the amended written-statement by the defendants indicating any serious lapse on the part of the plaintiffs in this case, when the plaint was amended on March 22, 1965 and possession of the reconstituted plots was claimed. It is enough to notice that the Act and Rules do not provide for, machinery to adjudicate such disputes, nor for any authority, after draft plan is finalised u/s 32(1) of the Act.

15. Mr. Kothari then contends that assuming that the civil Court is competent to ignore or disregard the entries made in the scheme and the rights settled by the Town Planning Officer, no relief of possession of plots can be granted till the scheme is altered and modified. Any claim for possession without prayer for variation and modification of the scheme cannot be maintainable. Firstly, this objection to the frame of the suit and prayers in the plaint at this late stage appear to be too belated to admit of any consideration. Secondly, the plaintiff has amended his plaint at the stage of the trial on coming to know of the adverse entries in the scheme indicating that they, and not the defendants, were entitled to allotment of the reconstituted plots. They do not seek to upset the decision of the Town Planning Officer, either in regard to reconstitution of the plots or their valuation and the exchange implicit therein. They are satisfied if the plots Nos. 77, 78, 87 and 89 allotted to the defendants in lieu of S. No. 107/8 are allotted to them and possession of the plots in lieu of their land is given to them. Removal of error indicated in the scheme and prayer for necessary modification is implicit in the relief claimed by the amended plaint.

16. Secondly, Section 71 of the 1966 Act corresponding to Section 19 of the repealed Act contemplates automatic modification of the scheme in the event of the decree involving decision on title. Assuming that decree referred to in Section 19 of the repealed Act and Section 71 of the repealing Act does not cover the decree in a suit filed without making application u/s 19 to the local authority, we are unable to see any reason why the decree passed even in this suit should not have the same effect. There is thus no merit in this contention.

17. Mr. Kothari then contends that the plaintiffs cannot claim title to the plots allotted to the defendants under the scheme merely because he is found to be the owner of S. No. 107/8, which came to be reconstituted under the scheme, when the plots hi dispute are not carved of the land S. No. 107/8 and are

otherwise unconnected therewith. Plaintiffs at best may claim possession of the plot which is actually carved out of this survey number. This contention is apparently attractive. Mr. Abhyankar has many answers to the same. We have already indicated how this suit is in no way different from the suit contemplated u/s 19 of the Act of 1954 and Section 71 of the Act of 1966. The scheme prepared under the repealed Act is to be deemed to have been made under the repealing Act u/s 165 thereof. The decree passed in such a suit has the effect of automatically amending or modifying the scheme in accordance therewith u/s 71(3) of the Act. Not defendant No. 1, but the plaintiffs would be deemed to be allottees of the plots in terms of such variations and modifications Of the decree. The plaintiffs would thus be entitled to possession by sheer force of this modification. The principle underlying this section will be applicable even if it is found that this suit is outside the scheme of Section 19, once it is held that the jurisdiction of the civil Court is not barred.

18. Secondly, once it is found that the allotment of plots in disputes was to the defendant in lieu of her supposed loss of S. No. 107/8 and the original plot No. 9A carved out therefrom,, it shall have to be held that the disputed plots were given by way of compensation for S. No. 107/8. The claim of the plaintiffs to the disputed plots given by way of compensation for S. No. 107/8 is corollary to plaintiffs" being found owner of S. No. 107/8. As indicated earlier, acquisition of the title by the defendants u/s 53(b) to the plots in dispute is inseparably and integrally connected with her deprivation of and loss of title in S. No. 107/8, allotment of the plots in dispute under the scheme obviously being intended to make up the loss of S. No. 107/8. Allotment must be deemed to have been intended for benefiting the true owner of S. No. 107/8, and defendant No. 1 must be deemed to have been holding it in constructive trust for them and as such liable to deliver the same to them. In moulding the proper reliefs claimed and liable to be awarded, the Court is bound to take notice of these developments.

19. This is on par with instances where plaintiffs are found entitled to compensation payable for land claimed by them, on finding that the land to which the claim was set up was either acquired by the State or stood vested in the State under certain land reforms or other legislations. It is not clear from, the records whether the allotment of the plots to the defendants took place before and or after the suit. Assuming that it has taken place during the pendency of suit, the Court has to take note of the same, while moulding the reliefs to be granted. The Court may not be able to grant the amount of compensation of Rs. 600 received by the defendant, as it is not claimed in the plaint. But granting relief of possession of the plots allotted to defendant No. 1 on the assumption of she being the owner of 107/8 appears to be just and proper in the circumstances of this case.

20. The plaintiffs have claimed future mesne profits at the rate of Rs. 200. It is difficult for us to fix the quantum thereof. The trial Court will work out the mesne

profits by taking evidence about the same in accordance with law.

21. We accordingly set aside the judgment and decree of the trial Court and decree the plaintiffs' suit for plots Nos. 77, 78, 8? and 89 indicated in the amended plaint and the prayer.

22. The plaintiffs will get their costs throughout.

23. The trial Court will hold inquiry in the mesne profits under Order XX, Rule 12 of the Code of Civil Procedure.

24. In view of the application of Miss Khapra for the respondents, the execution of the decree is stayed for four weeks from to-day.