
(2023) 03 BOM CK 0046

In the Bombay High Court

Case No : Writ Petition No. 712 Of 2015, Civil Application (W) No.3101 Of 2018

Kishore

APPELLANT

Vs

State Of Maharashtra And Others

RESPONDENT

Date of Decision : 17-03-2023

Acts Referred:

Constitution Of India, 1950 — Article 226
Maharashtra Regional And Town Planning Act, 1966 — Section 47
City Of Nagpur Corporation Act, 1948 — Section 388

Citation : (2023) 03 BOM CK 0046

Hon'ble Judges : A.S.Chandurkar, J;Vrushali V. Joshi, J

Bench : Division Bench

Advocate : R.L.Khapre, P.A.Deshpande, Amit Madiwale, J.B.Kasat, S.S.Ghate

Final Decision : Dismissed

Judgement

A.S.Chandurkar, J

1. The challenge raised in this writ petition filed under Article 226 of the Constitution of India is to the order dated 30.01.2016 passed by the Hon'ble Minister, Urban Development Department, in proceedings under Section 47 of the Maharashtra Regional and Town Planning Act, 1966 (for short, the Act of 1966) as well as the notice dated 13.01.2015 issued by the Assistant Engineer, Public Works, Nagpur Municipal Corporation, Nagpur. The petitioner has further prayed that the respondents be restrained from dispossessing or interfering with the lawful possession of the petitioner over the property in question.

2. The facts relevant for considering the prayers made in the writ petition are that the petitioner claims to be the owner of half portion of Plot No.9 and Plot No.10 admeasuring about 3618 square feet having Khasra No.441 in the area known as Ramajichi Wadi, Nagpur. The petitioner claims to have purchased the aforesaid land from Shri Ramaji Sawarkar by a registered sale deed dated 11.12.1986. The petitioner's name has been accordingly mutated in the City Survey record and he has been paying property taxes as demanded by the

Corporation. The petitioner had filed R.C.S.No.1443 of 1987 against one Shri Vasant Anwane seeking a declaration that the said defendant had no right to interfere in the possession of the petitioner. The aforesaid suit was decreed on 30.12.1991. Thereafter the petitioner filed R.C.S.No.1782 of 1993 on 06.09.1993 against the Nagpur Improvement Trust (for short, the Trust) challenging the action of the Trust in affixing its signboard on his property. This suit was decreed on 27.01.1999 and it was declared that the Trust had no authority to affix its signboard on the premises in question. A decree of perpetual injunction was also passed. This decree has since attained finality. The petitioner thereafter sought amalgamation of both the plots owned by him and such permission was granted by the Corporation on 26.08.2005 by imposing certain conditions. Thereafter the building plan submitted by the petitioner was sanctioned on 05.10.2005 by issuing a demand note in that regard. The petitioner claims to have paid the requisite amount as demanded. Thereafter on 07.12.2007 commencement certificate/ building permission was granted to the petitioner.

3. It appears that a complaint was made against the sanction of the building plan and grant of commencement certificate by one Vishva Prerak Pragati Mandal. Acting on the said complaint, the Corporation in March 2008 proceeded to cancel the order of amalgamation dated 26.08.2005, building permission granted on 14.02.2006 and commencement certificate granted on 07.12.2007. Being aggrieved by the aforesaid decision, the petitioner preferred an appeal under Section 388 of the City of Nagpur Corporation Act, 1948 read with Section 47 of the Act of 1966 before the State Government. Since the aforesaid appeal was kept pending without any adjudication, this writ petition was filed on 05.02.2015 praying for a direction to be issued to the State Government to decide the aforesaid appeal in accordance with law. During pendency of the writ petition, the said appeal came to be decided by the State Government on 30.01.2016. The proceedings were remanded to the Corporation to take a decision afresh in the light of the sanctioned plan of 1965 after considering the aspect of ownership coupled with the orders passed by the Civil Court. By amending the writ petition this order dated 30.01.2016 has also been challenged. Since the complainant - Vishwa Prerak Pragati Mandal was not impleaded as a respondent in the writ petition, it has filed Civil Application No 3101 of 2018 on 31.01.2018 seeking leave to intervene in the writ petition. By the order dated 22.03.2019 the aforesaid Civil Application was ordered to be considered when the writ petition was heard finally.

4. Shri R.L.Khapre, learned Senior Advocate for the petitioner after referring to various factual aspects submitted that on 25.06.1941 proposed layout plan came to be sanctioned by the Municipal Committee that was then existing. The same was partially modified on 22.06.1942. The property in question being half portion of Plot No.9 and Plot No.10 was initially owned by one Kusum Deshkar and a building permit was thereafter granted to her on 03.06.1983. Since the petitioner had title to the aforesaid property, he had approached the Civil Court on two occasions. In the aforesaid suits filed by the petitioner his title to the aforesaid

land had been recognised and the reliefs had thus been granted to him. That adjudication had attained finality. Referring to the findings recorded in para 10 of the judgment dated 27.01.1999 in R.C.S.No.1782 of 1993 filed against the Trust, it was submitted that the plan prepared in the year 1965 was considered in the said proceedings and the defence raised by the Trust was not accepted. Since the said decree had attained finality, it was not permissible for the Authorities as well as the Corporation to seek to re-open the same. In that regard, reference was made to the decision in *Kishor s/o Ramalu @ Rambhau Telang vs. Municipal Commissioner, Napgur Municipal Corporation and others* [2015 (4) Mh.L.J. 836]. Since the findings recorded by the Civil Court were also binding on the State Government, the plan of 1965 could not have been again directed to be gone into as per the impugned order passed under Section 47 of the Act of 1966. The learned Senior Advocate referred to the memorandum of appeal preferred by the petitioner in the said proceedings to urge that these grounds had been specifically raised. It was then submitted that the plan dated 22.06.1942 had not been altered and the same continued to operate even today. It was binding on the Trust as well as the Corporation. By directing to re-consideration of the matter the State Government sought to re-open the aspects that had attained finality. Moreover, since the Corporation was claiming through the Trust, the earlier adjudication was binding on it. Under the garb of remand, it would not be permissible for the Corporation to go into the validity of the petitioner's title ignoring the findings recorded by the Civil Court. There was no legal justification whatsoever for directing a remand of the proceedings. It was also urged that on principles analogous to *res judicata* the issues that had attained finality could not be re-opened, especially the map of 1965. In that context, reference was made to the decisions in *Sulochana Amma vs. Narayanan Nair* [(1994) 2 SCC 14], *Church of South India Trust Association vs. Telugu Church Council* [(1996) 2 SCC 520], *Ramchandra Dagdu Sonavane (Dead) by LRs and other vs. Vithu Hira Mahar (Dead) by LRs & others* [(2009) 10 SCC 273] and *Rusoday Securities Limited vs. National Stock Exchange of India Limited and others* [(2021) 3 SCC 401]. Similarly, it was not permissible for the Corporation to interfere with the petitioner's possession after the matter was examined by the Civil Court and the suits filed by the petitioner had been decreed. In that regard, our attention was invited to the order dated 15.02.2016 passed in Writ Petition No.547 of 2016 [*Natthu C. Yadav and others vs. State of Maharashtra and others*]. It was thus submitted that the order dated 30.01.2016 was liable to be set aside and the earlier permissions that were granted in accordance with law dated 26.08.2005, 14.02.2006 and 07.12.2007 ought to be restored.

5. Shri J.B.Kasat, learned Advocate appearing for the Corporation as well as Shri Amit Madiwale, learned Assistant Government Pleader appearing for the State Government through its Urban Development Department opposed the aforesaid submissions. It was submitted that what was under challenge was merely an order of remand which was necessitated to have clarity in the matter. The aspects of legality of the building plan and entitlement of the petitioner to

undertake construction on the land in question, it was directed to be re-considered and the petitioner could justify his legal rights in those proceedings. The learned Advocate for the Corporation produced relevant record for perusal and also referred to the additional affidavit filed on behalf of the Corporation in that regard. It was submitted that when the layout was sanctioned initially in the year 1941, the same lapsed subsequently on 22.07.1949 in the light of the communication issued by the Assistant Engineer of the then Municipal Committee, Nagpur. A fresh application was made by the petitioner's vendor-Ramaji Sawarkar for having the layout sanctioned on 07.05.1962. Thereafter on 25.06.1965 a diversion order came to be passed and subsequently on 28.07.1965 the layout was sanctioned and an agreement was accordingly entered into between the Chairman, Nagpur Improvement Trust and the petitioner's vendor. Plot Nos.9 and 10 were agreed to be kept open. Considering all these aspects, the appellate Authority found it necessary to direct a re-consideration of the entire matter after considering the record. During the course of hearing the Corporation had noticed that the layout sanctioned in 1941 had lapsed and a fresh sanction was granted in the year 1965 where the aforesaid lands were shown as open space. On these counts, it was urged that there was no reason to interfere with the order of remand.

As regards the adjudication by the Civil Court, it was submitted that in the initial suit neither the Corporation nor the Trust was a party. In the subsequent suit filed against the Trust, there was a limited issue with regard to the action of the Trust of affixing its signboard on the property. The question with regard to the layout map of 1941 or 1965 was not in issue and therefore the petitioner could not claim that by virtue of the decree passed in the said suit, the matter could not be re-opened. There was no bar in re-considering the matter with regard to grant of building permit and commencement certificate since those issues were not decided by the Civil Court. It was thus submitted that considering the documentary material on record, no interference with the order of remand was called for.

Shri S.S.Ghate, learned Advocate appearing for the intervener submitted that initially complaint against the activities of the petitioner had been made by the office bearers of the Society. The initial order passed by the Corporation revoking the building permission and commencement certificate was in the light of this complaint. Though the Society was heard in the appeal filed under Section 47 of the Act of 1966, it had not been impleaded as a respondent in the writ petition. The Society was a necessary party since it was affected by the construction activities on the land in question that was shown as open space in the layout map. It was thus submitted that the applicant deserves to be heard in the present proceedings.

6. We have the learned Advocates for the parties and we have gone through the documents on record. At the outset, we may observe that the application for intervention preferred by the Society deserves to be granted for the reason that

based on the complaint made by the Society, the Corporation took cognizance of the matter and revoked the building permissions granted earlier. The Society was respondent no.1 in the appeal preferred by the petitioner before the State Government under Section 47 of the Act of 1966. It was heard prior to passing of the impugned order. The Society thus is a necessary party in the present proceedings and it ought to have been impleaded as respondent. Civil Application No. 3101 of 2018 is thus allowed and the learned Advocate for the Society has also been heard on merits.

While considering the rival submissions it would be necessary to keep in mind the fact that what is under challenge is an order of remand passed in proceedings under Section 47 of the Act of 1966. If it is found in the facts of the case that the appellate Authority was justified in directing the Corporation to re-consider the issue with regard to grant of building permission then the scope for interference would be limited. If, however, it is found that the appellate Authority had no jurisdiction to order remand or that in the light of settled issues there was no reason whatsoever to remand the proceedings, a case for interference would be made out. We have accordingly examined the material on record keeping this aspect in mind.

7. The title of the petitioner with regard to half portion of Plot No.9 and Plot No.10 is not in dispute in the light of the execution of registered sale deed dated 11.12.1986 in his favour. The adjudication of R.C.S.No.1443/1987 would bind only the defendant therein - Shri Vasant Anwane since he was restrained from interfering with the possession of the petitioner over the land in question. The Civil Court has relied upon the petitioner's sale deed dated 11.12.1986, which was at Exhibit 35 therein. The possession of the petitioner over the said property was accepted and a decree for perpetual injunction came to be passed. This decree thus can be relied upon only to indicate the petitioner's better title than the defendant therein. In R.C.S.No.1782 of 1993 that was filed against the Trust, the petitioner challenged the action of the Trust of affixing its signboard on 31.01.1993 and claiming itself to be the owner of the said property. The Civil Court again relied upon the petitioner's sale deed dated 11.12.1986 which was at Exhibit 25. It was the defence of the Trust that the said land was given to it free of cost by Shri Ramaji Sawarkar on 28.07.1965 and thus it was the owner of the said land. The Trust examined two witnesses but the Civil Court did not accept their version since no copy of any such agreement was placed on record. It was thus held that the defence raised by the Trust was untenable. Based on the aforesaid, it was held that the Trust had no authority to affix its signboard on the land in question. The suit was thus decreed and the Trust was directed to remove its signboard. From the judgment of the trial Court that has now attained finality, it becomes clear that the title of the petitioner based on sale deed dated 11.12.1986 stands proved against the Trust. The Trust could not prove its defence that it had become the owner of the said land since it was given to it free of cost by the petitioner's vendor-Shri Ramaji Sawarkar on 28.07.1965. Except this aspect and the title of the petitioner being proved, we do not find

that this decision of the Civil Court can be relied upon by the petitioner to urge that the matter pertaining to sanction of the layout on 28.07.1965 cannot be re-opened. The only issue decided was with regard to the petitioner's title and the defence of the Trust that it had title to the said land since it was given to it free of cost was not proved. It is thus clear that the Trust cannot claim any ownership to the land that has been purchased by the petitioner on 11.12.1986.

8. The record indicates that the amalgamation of half portion of Plot No.9 and Plot No.10 was permitted on 26.08.2005, the building plan was sanctioned on 14.02.2006 and the revised building plan/commencement certificate was granted on 07.12.2007. On the complaint made by the Society it was noticed by the Corporation that the aforesaid land was to be shown as open in the layout. Reference was made to the layout plan dated 28.07.1965 wherein the aforesaid land was shown as open and reserved for playground. This led to cancellation of the aforesaid permissions. In appeal the Hon'ble Minister considered the material placed before him by the petitioner, the Municipal Commissioner and the Director of Town Planning. He then opined that the matter with regard to grant of building permit required re-consideration by the Corporation since Plot No.9 and Plot No.10 were shown to be open areas in the sanctioned layout plan of 28.07.1965. Cognizance of the fact that the petitioner had succeeded in the Civil Court was also taken and in the light of the sanctioned layout plan of 1965, the Municipal Commissioner/Corporation was directed to take a fresh decision.

9. We find that there is no reason to interfere with the order of remand in the light of the documents placed on record. The appellate Authority has merely directed re-consideration of the matter in the light of ownership of the said land coupled with the adjudication by the Civil Court. This direction cannot mean that the issue of ownership of the petitioner is to be re-opened since registered sale deed dated 11.12.1986 stands in his name. The aspect that is required to be gone into by the Corporation is whether the petitioner is entitled for grant of building permission on his land in the light of the fact that according to the Corporation in the sanctioned layout plan dated 28.07.1965 both the plots have been shown as open plots for garden purposes. The exercise to be undertaken by the Corporation on remand would thus be limited to this aspect and there would be no question of the petitioner's title being subjected to scrutiny by the Municipal Corporation especially since it would have no jurisdiction to do so. It therefore cannot be said that a direction for remand was not justified in these facts. Having prima facie found that in the sanctioned layout plan dated 28.07.1965 the aforesaid land was indicated as open, the appellate Authority in exercise of jurisdiction under Section 47 of the Act of 1966 was justified in directing the Corporation to have a fresh look at all the documents. It cannot be lost sight of the fact that the Corporation is the Planning Authority competent to grant building permission and hence the appellate Authority would be justified in considering whether the applicable Rules and Regulations in that regard are complied with. We also do not find any reason to hold that on principles analogous to *res judicata* the matter cannot be re-examined. As stated above,

the title of the petitioner stands proved on the basis of his sale deed dated 11.12.1986. The only issue to be considered is whether the building permission is liable to be granted for undertaking activity on half portion of Plot No.9 and Plot No.10. In this backdrop, the decisions relied upon by the learned Senior Advocate for the petitioner do not assist his case. We therefore do not find any scope to interfere with the order of remand in exercise of writ jurisdiction.

10. For aforesaid reasons, the writ petition stands dismissed. It is however clarified that the Corporation on remand shall only consider the question whether the petitioner is entitled to grant of building permission on half portion of Plot No.9 and Plot No.10 owned by him. The question of his title cannot be gone into by the Corporation since it has no jurisdiction to do so. It is further clarified that this Court has not expressed any opinion on the rival claims of the parties and the Corporation is free to consider the same in accordance with law after giving due opportunity to the parties. The entire exercise be completed within a period of three months from today.

Rule is thus discharged leaving the parties to bear their own costs.