
(2020) 03 BOM CK 0060

In the Bombay High Court

Case No : Writ Petition No. 1693, 2452 Of 2005, Civil Application No. 815 Of 2016

Nagrik Samanvya Samiti Aurangabad

APPELLANT

Vs

State Of Mah & Ors.

RESPONDENT

Date of Decision : 13-03-2020

Acts Referred:

Maharashtra Regional And Town Planning Act, 1966 — Section 47
Bombay High Court Appellate Side Rules, 1960 — Rule 18
Constitution Of India, 1950 — Article 226, 227

Citation : (2020) 03 BOM CK 0060

Hon'ble Judges : Z.A.Haq, J;S.M.Gavhane, J

Bench : Division Bench

Advocate : Chetan T. Jadhav, S.B. Yawalkar, J.R. Shah, Pradnya S. Talekar, A.A. Mukhedkar

Final Decision : Disposed Of

Judgement

Z.A.Haq, J

1. As per order passed on 11th March 2005, this Writ Petition is registered as Public Interest Litigation. The prayers in the Writ Petition are as follows:-

"A) That the writ petition be treated as Public Interest Litigation (PIL) and certificate to that effect be granted.

B) The writ petition be allowed.

C) Recording and proceeding be called from the office of the Aurangabad Municipal Corporation i.e. Respondent No.3 and the Office of Superintendent of Land Records i.e. Respondent No.8.

D) A writ of certiorari or writ in the nature of certiorari or order or direction be issued to quash and set-aside the impugned order passed by the Hon'ble Minister, Urban Development, Maharashtra State (Respondent No.2) dated

17/08/2004 and the consent certificate issued by the Respondent No.3 Municipal Corporation dated 02/11/2004 bearing No.426/2004-05 in file No.410/17/2004-05 in respect of CTR No.15849/A/228, area Tilaknagar, Aurangabad, District : Aurangabad.

E) By writ of mandamus or writ in the nature of mandamus or order be issued directing the Respondent No.8 to delete the name of the Respondent No.4 to 7 from the P.R. Card and to declare the said open space in Tilaknagar area as shown in map at exh. "A" as open space belonging to Municipal Corporation, Aurangabad.

F) A writ of prohibition or a writ in the nature of prohibition or order or direction be issued prohibiting the Respondent Nos.4 to 7 from carrying out any construction on open space at Tilaknagar Aurangabad as shown in map at exh."A".

G) Pending hearing and final disposal of this writ petition the order dated 17/08/2004 passed by the 2nd Respondent Hon'ble Minister for State, Urban Department, Maharashtra State and on the basis of which the consent certificate granted by the Aurangabad Municipal Corporation dated 02/11/2004 bearing No.426/2004-05 in file No.410/17/2004-05 in respect of CTR No.15849/A/228 at Tilaknagar Aurangabad be stayed.

H) Pending hearing and final disposal of this writ petition the construction commenced on 07/02/2005 by the Respondent No.4 to 7 be stayed.

I) Ad interim relief in terms of prayer clause "F" be granted in favour of the petitioner.

J) Any other suitable relief be granted to the petitioner."

2. By order dated 11th March 2005, this Court directed issuance of notices to the respondents and then by order dated 7th April 2005, "Rule" came to be issued after hearing all the parties.

3. At the threshold, learned Advocate for the respondent Nos.6 and 7 raised objection that the petition cannot be treated as Public Interest Litigation and if it is considered as petition under Article 227 of the Constitution of India, it has to be placed before the learned Single Judge as per Chapter XVII Rule 18 of The Bombay High Court Appellate Side Rules, 1960.

4. The learned Advocate for the petitioner and the learned Advocate appearing for respondent No.3 - Municipal Corporation submitted that right from the beginning, the matter is treated as Public Interest Litigation and this objection was not accepted and "Rule" came to be issued after hearing the respondent Nos.6 and 7.

5. Writ Petition No.2452 of 2005 is filed by the respondent Nos.6 and 7 in Writ Petition No.1693 of 2005, to challenge the order passed by the learned Senior Judge on 1st March 2005, directing registration of the Writ Petition as Public

Interest Litigation.

6. The point raised by the respondent Nos.6 and 7 that the grievance made by the petitioner in Writ Petition No.1693 of 2005 cannot be examined in Public Interest Litigation, can be answered only after examining the rival contentions.

7. In Writ Petition No.1693 of 2005, the petitioner has challenged the order passed by the Hon'ble Minister on 17th August 2004, by which the appeal filed by the respondent Nos.6 and 7 under Section 47 of the Maharashtra Regional and Town Planning Act, 1966, came to be allowed, the order passed by the Aurangabad Municipal Corporation on 26th July 2004 came to be set aside and directions were issued to the competent authority to grant permission for construction to respondent Nos.6 and 7. Though the order dated 26th July 2004, which was challenged by respondent Nos.6 and 7 before the State Government, is not on record, it can be gathered from the record, and the parties have not disputed that the Municipal Corporation has refused to grant permission for construction to the respondent Nos.6 and 7, as according to the Municipal Corporation, the land bearing City Survey No.15849/A-228 vests in the Aurangabad Municipal Corporation. According to the respondent Nos.6 and 7, the issue of title over the land is decided by the judgment delivered by the Andhra Pradesh High Court in Civil Suit No.93 of 1958 on 5th March 1959 (copy of which is placed on record at Page No.245 as Exh. P-1) and the judgment delivered by the Bombay High Court in Special Civil Suit No.1459 of 1959 on 26th April 1960, and then as per the memorandum of compromise drawn by the Receiver/Commissioner appointed by the Court. According to the respondent Nos.6 and 7, it is adjudicated in the abovementioned proceedings that several lands, which included the land purchased by the respondent Nos. 6 and 7 by sale-deed dated 29th May 2009, were private property of Salarjung. According to the respondent Nos.6 and 7, the portion of land purchased by the respondent Nos. 6 and 7 was given in the share of Mir Yawar Ali Khan and the respondent Nos.6 and 7 have purchased the land from Mir Yawar Ali Khan. To substantiate this claim, the respondent Nos.6 and 7 rely on the order passed by the Superintendent of Land Records, Aurangabad on 26th February 1999, pursuant to which separate City Survey No.15849/A-228 was granted to the land purchased by the respondent Nos.6 and 7 by the sale-deed dated 29th May 2009. According to the respondent No.7, he is in possession of the land in question since 1999, as per the sale-deed registered by Mir Yawar Ali Khan in his favour on 1st March 1999. The respondent Nos.6 and 7 further rely on the Mutation Entry and P.R. Card showing Mir Yawar Ali Khan as owner of the property in question. The respondent Nos.6 and 7 further rely on the fact that the Municipal Corporation had been accepting the statutory taxes from them in respect of the property in question since 1999.

8. The learned Advocate for the respondent No.3 - Municipal Corporation submitted that the legal heirs of Mir Yawar Ali Khan had sought permission for construction over the land in question and permission was refused on 13th January 2000. It is pointed out that the holder of the General Power of Attorney

of Mir Yawar Ali Khan had again applied for permission to undertake construction on the land in question and that application was also rejected on 12th February 2001. Undisputedly, these two rejections were not challenged.

9. The petitioner claims that the land in question vests in the Municipal Corporation and it has to be maintained as open space. The petitioner claims ownership over a plot adjoining the land in question, and the plot owned by the petitioner is part of a lay-out which was sold by Shri G.K. Patil. According to the petitioner, Shri G.K. Patil acquired title over the land having purchased it in auction conducted by the Civil Court.

10. Public Interest Litigation No.28 of 2014 is filed by the residents/locality, where the land in question is situated. In Public Interest Litigation No.28 of 2014, it is prayed that declaration be granted that open land forming part of Survey No.17 of Mouje Daudpura, in which the land in question in Writ Petition No.1693 of 2005 is also situated, be continued as public utility land for the use and benefit and enjoyment of residents of the locality. Some ancillary prayers are also made in the Public Interest Litigation No.28 of 2014. According to the petitioners in the Public Interest Litigation No.28 of 2014, it is pointed out that Regular Civil Suit No.147 of 2010 is pending before the Civil Court, which is filed by Sow. Kusum Satish Jaikar (Respondent No.6 in Public Interest Litigation No.28 of 2014), praying for decree for perpetual injunction restraining the defendants in that civil suit, which includes Municipal Corporation, Aurangabad and Nagrik Samanvay Samiti, Tilak Nagar, Aurangabad, from causing obstruction and interference in the peaceful possession and enjoyment of the suit property by the plaintiff. Sow. Kusum Satish Jaikar has pleaded that she is owner of the property, which is the subject matter of that civil suit. It is pointed out that the Municipal Corporation, Aurangabad has raised counter-claim and has prayed for decree for cancellation of the sale-deed registered in favour of Sow. Kusum Satish Jaikar by Shri Gangaram on 22nd October 1982.

11. The learned Advocate for respondent Nos.6 and 7 in Writ Petition No.1693 of 2005 submitted that the subject matter of Civil Suit No.147 of 2010 is different property and not the land bearing City Survey No.15849/A-228.

12. Be that as it may, the facts on record show that not only disputed questions of facts, but even the issue of title is required to be adjudicated. The learned Advocate for the respondent Nos.6 and 7 in Writ Petition No.1693 of 2005 submitted that it would not be possible for this Court to examine the issues either in the Public Interest Litigation or under Articles 226 and 227 of the Constitution of India. The submission made by the learned Advocate for respondent Nos.6 and 7 has to be given due weightage, as it is in consonance with the settled position that disputed questions of facts and the issue of title should not be examined in the extra-ordinary jurisdiction. However, the issue before us is, whether the impugned order passed by the Hon'ble Minister, is legal and proper and whether the Hon'ble Minister while considering the appeal under Section 47 of the Maharashtra Regional and Town Planning Act, 1966, could have

examined such issues. In our view, the answer has to be in the negative.

13. While considering the appeal under section 47 of the Act of 1966, the Appellate Authority has to examine whether the order of the Planning Authority granting permission on conditions or refusing permission, under Section 45 of the Act of 1966, is proper or not. Obviously, if the issue of title arises for consideration before the Planning Authority, it would not be possible for the Planning Authority to examine that issue and therefore the Appellate Authority would also not be justified in examining the issue. The issue of title has to be adjudicated after full-fledged trial by the competent Court of law and the issue cannot be decided in summary proceedings as an ancillary issue.

14. If the matter is considered in the above perspective, it has to be held that the impugned order passed by the Hon'ble Minister is not only illegal and unsustainable, but is without jurisdiction. Hence, we set aside the order passed by the Hon'ble Minister and dismiss the appeal which was filed by the respondent Nos.6 and 7 before the State Government.

15. Writ Petition No.1693 of 2005 is allowed accordingly. Rule made absolute in above terms. In the circumstances, the parties to bear their own costs.

16. In view of disposal of Writ Petition No.1693 of 2005, Civil Application No.815 of 2016 for directions, does not survive and it is accordingly disposed.

17. As far as Public Interest Litigation No.28 of 2014 is concerned, as the dispute is subjudiced before the Civil Court, we are not inclined to examine the issue raised in the Public Interest Litigation. Keeping the issue open for consideration at appropriate stage by the appropriate forum, Public Interest Litigation No.28 of 2014 is disposed.

. The learned Advocate for the petitioners in Public Interest Litigation No.28 of 2014 submitted that the petitioners are not impleaded as party in the civil suit. The learned Advocate for the respondent No.6 - Sow. Kusum Satish Jaikar submitted that Nagrik Samanvay Samiti, Tilak Nagar, Aurangabad is defendant in the civil suit and the Samiti represents the residents of the locality, including the petitioners. Be that as it may, it would be open to the petitioners to seek impleadment as defendant in the civil suit.

18. At this stage, learned Advocate for the respondent Nos.6 and 7 in Writ Petition No.1693/2005 submitted that the respondent Nos.6 and 7 would be filing civil suit for appropriate relief, within two months from today and prays that the Civil Court be directed to dispose the civil suit expeditiously and in any case within one year. If civil suit in the matter is filed by the respondent Nos.6 and 7 within two months from today, the Civil Court may make all possible endeavour to decide the civil suit as expeditiously as possible and in any case within two years from the date of filing of the civil suit.

19. In view of our conclusions as recorded above, Writ Petition No.2452 of 2005 is disposed.