
(2019) 07 BOM CK 0149
In the Bombay High Court
Case No : Writ Petition No. 7485 Of 2019

Sai Reality And Ors

APPELLANT

Vs

State Of Maharashtra

RESPONDENT

Date of Decision : 15-07-2019

Acts Referred:

Maharashtra Regional And Town Planning Act, 1966 — Section 51, 51(1)
Maharashtra Municipal Corporation Act, 1888 — Section 253, 254, 258
Bombay Provincial Municipal Corporations Act, 1949 — Section 258
Code Of Civil Procedure, 1908 — Section 9

Citation : (2019) 07 BOM CK 0149

Hon'ble Judges : S.C. Dharmadhikari, J;Sandeep K. Shinde, J

Bench : Division Bench

Advocate : P.K. Dhakepalkar, A.P. Kulkarni, N.K. Rajpurohit, Rohit Sakhdeo, Mihir Desai, P.R. Yadav, Rupali Nikam

Final Decision : Partly Allowed

Judgement

Sandeep K. Shinde, J

1. Rule. Respondents waive service. By consent, rule made returnable forthwith.
2. The petitioner is impugning "stop work order" dated 24.01.2019 passed by the Commissioner Pimpri-Chinchwad Municipal Corporation ('Corporation', for short) and order dated 24.01.2019 passed by the District Superintendent of Land Records ('DSLRL', for short) in Appeal No. 4089 of 2018.
3. Petitioner no. 1 is a partnership firm carrying on business as builder and developer through its partners, petitioners no. 2 and 3.

Petitioner no. 1 M/s. Shree Sai Reality owns land CTS/ Survey/final Plot No. 11/3/1 at Kivale, Haveli, Pune admeasuring 72R. Petitioners aver that since this land was falling in agricultural zone, they sought for change of its use and Competent Authority permitted it. They further aver that this land was measured on 14.09.2016 and there upon office of Deputy Superintendent of Land Records,

Haveli, Pune drew the maps bearing MR Nos. 19309/16, 19361/16 and 19337/16. Respondents no. 7, 8 and 9 own land Survey No. 11/2-B, which is adjoining to petitioners' land. On 15.09.2017, boundaries of petitioners' land were fixed with the consent of respondents no. 7 & 9.

4. One portion of the petitioners' land was affected by D.P. Road to the extent of 1,992 sq.mtrs. The Competent Authority under the MLRC Code, upon considering the title documents as well as measurement maps vide order dated 18.06.2016 granted permission to use the balance land admeasuring 3657.54 square meters for residential use. The Municipal Corporation of Pimpri-Chinchwad after verifying the title documents, measurement plans, granted development permission and issued Commencement Certificate on 16.12.2017 to construct the buildings on their land.

5. It is petitioners' case that construction of five buildings is in progress and around 50% or more has already been completed before order of stop work was issued. It is petitioners' case that proposed construction project is subject to Real Estate (Regulation & Development) Act, 2016 ["RERA" for short] and has executed about 33 agreements of sale with flat purchasers.

6. The petitioners averred in para no. 11 of the petition that respondents no. 7, 8 & 9 ("Yadav" for short) disputed measurement plans MR No. 10309/16, 19337/16 and 19361/16 on the basis of which, development permission was granted by the Corporation. It is further averred that, Yadav vide complaint dated 19.05.2018 alleged that the petitioners have encroached over their land Survey No. 11/2-B and obstructed their access thereto. Yadav thus raised boundary dispute, challenged the correctness of measurement plans and alleged obstruction to his rights to enjoy and possess the land Survey No. 11/2-B. A copy of complaint was also forwarded to the office of Superintendent of Land Records. Taking cognizance of the complaint, Superintendent of Land Records brought to the notice of the Corporation the alleged defect in the measurement plans on the basis of which, building permission was granted. The Pimpri Chinchwad Municipal Corporation upon receipt of the communication from the office of the Superintendent of Land Records informed the petitioner about the grievance raised by the respondents-Yadav and called upon the petitioner to submit an explanation, failing which, stop work notice would be issued. Petitioners thereupon submitted the explanation on 18.09.2018 and brought to the notice of the Corporation that boundaries of their land and that of Yadav were fixed and settled on 15.09.2017 and the map was drawn accordingly.

7. It appears that the respondents-Yadav filed an appeal before the Superintendent of Land Records and questioned correctness of maps bearing MR Nos. 10309/16, 19337/6 and 19361/16. Since the appeal was presented beyond the period of limitation, application for condonation of delay was filed. Pending appeal, the Superintendent of Land Records, Pune vide order dated 26.10.2018 stayed the, 'effect' of maps bearing MR Nos. 10309/16, 19337/16 and 19361/16.

8. It is petitioners' grievance that the order dated 26.10.2018 passed by the DSLR was without notice and Corporation on the basis of the said order illegally issued interim stop work order on 26.10.2018.

9. That on 24.01.2019 the Superintendent of Land Records without affording sufficient opportunity to the petitioner, in a great hurry partly allowed the appeal preferred by the respondents-Yadav, and ordered to remeasure the land and fix the boundaries, after notice to all concerned, and on the same date the Corporation without affording sufficient opportunity to the petitioners and without recording the reasons arbitrarily ordered that until petitioners' land is remeasured and boundaries are re-fixed, the petitioners shall not proceed with the construction, as earlier directed on 26.11.2018.

10. Learned counsel for the petitioners submits that the order passed by the Corporation is without jurisdiction in as much disputes relating to the boundaries, measurement and encroachment are subject to orders of Competent Civil Court and planning authority cannot enter into private dispute and decide the inter se rights. It is further submitted that the respondent-Corporation exceeded its jurisdiction and therefore order dated 24.01.2019 is non est. It is submitted that in terms of Building Regulations under Chapter XV of the Maharashtra Municipal Corporation Act, the Designated Officer is empowered to issue stop work notice, if satisfied that any erection of any building or the execution of any such work has been unlawfully commenced or unlawfully carried in premises. He further submits if the Commissioner is satisfied that the permission has been granted in consequence of any material misrepresentation or fraudulent statement made in the notice or information furnished, while seeking development permission, he may cancel such permission. Learned Counsel for the petitioners submits that it is not the case of the Corporation that development/ construction permission has been granted in consequence of material misrepresentation nor it is the case that the petitioners had unlawfully commenced the construction. Learned counsel would submit that the complaint by respondents-Yadav relates to boundary dispute and that too raised after lapse of considerable time since development permission granted by the Corporation. Learned Counsel further submits that the order passed in Appeal No. 4089 of 2018 by Superintendent of Land Records is without affording sufficient opportunity to the petitioners and no reasons were recorded while condoning the delay, occurred in preferring the appeal by them. Counsel therefore would urge that both the orders may be quashed and set aside.

11. In the case in hand, adjoining land owner Yadav complained to the Corporation that the petitioners encroached upon their land and uprooted trees. They would also complain that after securing development permission, the petitioners not only encroached on their land but also obstructed their access thereto. In the complaint, respondent no. 9 therefore requested the Corporation to remove encroachment made by the petitioners. Complaint is at Exhibit 'G' of the paper book.

Question is twofold ; (a) Whether the Corporation being the planning authority is

within its jurisdiction to take cognizance of alleged boundary dispute?

(b) Whether the Corporation was justified in law in restraining the petitioners from continuing with the construction, until disputed boundaries are re-fixed and settled by the revenue authorities?

12. In this case, development permission and Commencement Certificate was issued on 16.12.2017. Well before it, petitioners' land was measured and MR Plans 10309/16, 19337/16 and 19361/16 were drawn by the office of Superintendent of Land Records. Petitioners started executing the plan, raised the construction and also executed agreements with flat purchaser, as evident from Index II, placed on record. It is only in May, 2018 the respondent no. 9, owner of adjoining land complained to the Corporation and raised boundary dispute. No sooner than that revenue authorities in appeal, filed by the respondents-Yadav, granted interim relief and stayed the operation of the MR plans 10309/16, 19337/16 and 19361/16 and further with lightening speed allowed the appeal on 24.01.2019 i.e. within five months and also condoned the delay without recording any reasons therefore, it is interesting to note that on the same day i.e. 24.01.2019 the Corporation directed the petitioner not to proceed with the construction, until the boundaries are settled.

13. So far as issue of boundary dispute is concerned, it is settled law that the dispute regarding the identification of boundary between two adjacent land owners is certainly a dispute of civil nature. This Court in the case of Shantai Group, through its partner Vinod Tukaram Adaskar Vs. State of Maharashtra through its Department of Revenue and Forest and Ors. : 2019 SCC Online Bom 841 has held in para no. 19 thus,

"Once there is a dispute about the boundaries, measurement and the MLRC itself says that the directions and orders of the authorities therein are subject to the order of a competent civil court and would have to abide by a decree and order of a competent civil court, then we do not see why the Municipal Corporation had to step in".

14. In the case of Amina B. Shaikh Vs. Chief Officer Bicholim Municipal Council & Ors in Writ Petition No. 473 of 2014, High Court of Bombay at Goa decided on 11.02.2015 the issue was whether the Municipal Council, while deciding an application for building permission can entertain the claim of a third party with regard to access and refuse building permission, by adjudicating upon the issue of access. In this case, reliance was placed on Judgment in the case of Municipal Board Vs. Mahdzak reported in 1945 Law Suit (All) 102 wherein it is held, "the legislature never intended that the municipal planning board should assume judicial functions and take upon a jurisdiction to go into question of private rights and refuse sanction"

Thus this Court concluded that, the corporations, will have to act within the four corners of the Municipal Corporation Act and it is not their domain to insist on permissions required under some other enactment and which is the task of the

authority under that Act. We therefore hold that the planning authority cannot enter into private dispute and decide inter se rights.

15. The Division Bench of this Court in the case of Subhadrabai Dattatray Gaykar Vs. Assistant Director of Town Planning, Kalyan Municipal Corporation & Ors. : 2004(2) Mh.L.J. 1087 was dealing with the issue, where the notice was issued under Section 51(1) of the Maharashtra Regional and Town Planning Act, 1966 for cancellation of permission and Section 258 of the Bombay Municipal Corporation Act. The facts in the cited case were altogether different than the case in hand, however, in para no. 7, the Division Bench has held, the Commissioner has power to cancel the permission on the ground of material misrepresentation by the applicant, who commences the work and thus held that,

"7. Mr, Rao, learned counsel for respondents Nos. 1 & 2, referred us to section 258 of the Bombay Provincial Municipal Corporations Act, 1949 ("BPMC Act" for short) which gives the power to the Commissioner to cancel the permission on the ground of material misrepresentation by an applicant who is commencing the work regarding development of a building. Now what is material is that the impugned notice is not one given under section 258 of the BPMC Act. It is a notice given under section 51 of the MRTP Act. Section 51 deals with the question as to whether the concerned development is in accordance with the Development Plan and, if it is not so, the Planning Authority has the power to revoke the permission. It is not the case of Respondents in any way that this development is in an area which is not meant for residential development or anything of the kind. It is a gaathan area. The building is nearly complete. Some 28 families are staying there. If at all Municipal Corporation wanted to rely upon Section 258 of the BPMC Act, then it was a different situation. That is not the case herein. It is a notice issued under section 51 of the MRTP Act and it is clear that it is issued not for the purpose for which such notice is contemplated nor is it one under section 258 of the BPMC Act. It is obviously for extraneous purpose".

16. If any authoritative pronouncement is required to be referred, that can be done by inviting the attention of the parties to a Judgment of the Hon'ble Supreme Court of India in the case of Achuthan Nair vs. Narayanan Nair & Anr. reported in AIR 1987 Supreme Court 2137. The Hon'ble Court held as under :-

"2. The only question argued before us by the learned Counsel for the appellant was that a suit for demarcating the boundary of a property was not maintainable when the property himself was uncertain about the precise boundary. He placed reliance upon a judgment of the High Court of Bombay in Kavasji Jamsetji v. Hormasji Nassaravanjishet (ILR 29 Bombay 73) and a judgment of a learned single judge of the Kerala High Court in Rayappan v. Yagappan Nadar (1958) Kerala Law Times 955). In these two cases, the learned Judges purported to follow the statement of Lord Keeper Henley in Wake v. Conyers (1759) (I) W. and T.L.C. (7th) Edn. 170) decided in 1759 where he had said, "the Court has, in my opinion (and if parties are not satisfied, they have resort elsewhere), no power to fix the boundaries of legal estates, unless some equity is super induced by the

Act of the parties, as some particular circumstance of fraud, or confusion, where one party has ploughed too near the other, or the like; nor has this Court a power to issue such commissions of course, as here prayed." We do not think that we will be justified in importing into our jurisprudence the technicalities of English law and the distinction made by the English courts between legal estates and equitable estates. In India, the question whether a suit is cognizable by a civil court is to be decided with reference to Section 9 of the Civil Procedure Code. If the suit is of a civil nature, the court will have jurisdiction to try the suit unless it is either expressly or impliedly barred. A dispute regarding identification of boundary between two adjacent land owners is certainly a dispute of a civil nature and it is not barred either expressly or impliedly. In the judgment under appeal, Poti, J. pointed out:

"We can also state from our experience at the bar that this type of suits are not unfamiliar to this part of our country. In fact in several areas of the state suits for determination of boundaries when the boundaries between the holdings are disputed are a matter of common occurrence and the maintainability of such suits, have not, till recently, been doubted. It is not necessary to further into this question since we see no warrant to follow the English Law based, as it is upon its peculiar historical background. The question in the Indian context is not whether any equitable consideration has to be shown before a plaintiff in a suit gets the relief and, therefore, what was said in the decisions of the English courts on this particular form of action may not have relevance here. As we pointed out earlier in this judgment the only question that may be relevant to the issue in a suit of this nature in the courts in India is whether the suit is one of a civil nature. Once it is shown that it is, no other question would arise and the courts will have to entertain the suit and try it on the merits. The decision in *Kavasji v. Hormasji* (supra) which has also been referred to by Varadaja Iyengar J. in *Rayappan v. Yagappan Nadar* (supra) has simply purported to follow the English cases without considering how far the law should be applicable to this country. We, therefore, are of the view that the decision in *Rayappan v. Yagappan Nadar* (supra) has not laid down the correct law and has therefore, to be overruled.

Justice Viswanatha Iyer who agreed with Justice Poti but added a brief note of his own, stated:

Disputes as regard the location of boundary separating adjacent lands of different owners may arise under ever so many circumstances. One common instance is where portions of survey field are transferred or allotted to different persons without mentioning either the side measurements or other necessary measurements to fix the geometrical shape of the plot at the spot. The area and location alone may have been shown in the transfer deed or the petition deed. Without changing the location, the area conveyed or allotted may be sought to be located in one or more alternative geometrical shape by one owner. This may clash with the claim of the other person to have his area located in a particular geometrical shape. Again any one party may wish to have the limits of the area

belonging to him demarcated so that he may either enclose the area to prevent trespass or to exercise acts of possession without encroaching into the neighbouring plot. If the other party on demand does not co-operate, a cause of action arises to have the limits of his property determined through court. Again the property conveyed or allotted may have been described only with reference to neighbouring properties. Those properties may or may not have been limited in extent and shape to a survey field. In that case, a fixation of the boundary of those properties may be necessary to fix the boundaries of the properties conveyed or allotted. If there is no cooperation in doing that, that may result in a dispute. These instances are only illustrative and not exhaustive. All these disputes are disputes of a civil nature and they can form the subject matter of a suit under Section 9 C.P.C. There is no express or implied bar under any other law. According to me, whenever there is a dispute between two parties as regards the location of a boundary separating their neighbouring properties and if on a demand to co-operate in fixing that boundary it is not given, a suit will lie at the instance of the demanding party. So I agree with my learned brother that the decision in *Rayappan v. Yagappan* (supra) is not correct and has to be overruled.

3. We agree with the reasoning of Justice Poti, J. and Viswanatha Iyer, J. The appeal is, therefore, dismissed, but in the circumstances, there will be no order as to costs."

17. Thus upon consideration of facts of the case and law laid down in the cases cited, we hold that the planning authority cannot enter into the private dispute and more so when the dispute relates/touches the boundaries of the lands, it is Civil Court, which alone has jurisdiction to adjudicate upon and answer the issue. In the case in hand, planning authority ventured to act upon complaint of third party through Revenue Authorities. It is not Corporation's case that the petitioners commenced the development unlawfully and/or the building permission has been granted in consequence of any material misrepresentation or fraudulent statements made by the petitioner in the notice or information furnished under Section 253 or 254 of the Maharashtra Municipal Corporation Act. That even otherwise, Maps which were produced for seeking development permission were drawn by the Revenue Officials, therefore even assuming that these Maps are incorrect, fault can't be attributed to the petitioners and they can't be penalized for it. In view of the facts of the case and for the reasons stated, we answer question no. 1 to hold that the Corporation being planning authority was not within its jurisdiction to take cognizance of alleged boundary dispute nor was justified in law in restraining the petitioners from continuing with the construction, until the boundary is fixed and settled by the Revenue Authorities.

18. As a result of the above discussion, the stop work order of the Corporation dated 24th January 2019 is set aside. In so far as order dated 24.01.2019 passed by the Superintendent of Land Records is concerned, petitioners are at

liberty to challenge it, in accordance with law, and we decline to interfere with it. We clarify that the rival versions on the factual dispute about measurement, boundary etc. are expressly kept open. Our order in this petition does not render any opinion on the same.

19. The petition is partly allowed in the aforesaid terms and disposed of. Rule is discharged.