

(2013) 03 BOM CK 0093
In the Bombay High Court
Case No : Writ Petition No. 921 of 2012

Suresh

APPELLANT

Vs

The State of Maharashtra and Others

RESPONDENT

Date of Decision : 07-03-2013

Acts Referred:

Citation : (2013) 3 ABR 182 : (2013) 3 ALLMR 573 : (2013) 4 MhLj 636

Hon'ble Judges : T.V. Nalawade, J; R.M. Borde, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

R.M. Borde, J.

1 Heard. Rule. Rule made returnable forthwith and heard finally by consent of learned Counsel for respective parties. The petitioner is requesting for issuance of a declaration that deletion of his name from the record of town planning scheme No. 1 in respect of final plot No. 746/2, situate at Shrirampur, while finalising town planning scheme No. 1, is illegal and arbitrary. Petitioner is also seeking a direction against Respondent Nos. 1 to 4 to hand over vacant possession of final plot No. 746/2, admeasuring 340 square meters to the petitioner in view of the order passed on 01.05.2011 by Respondent No. 3 - the Arbitrator for Town Planning Scheme No. 1, Shrirampur. A direction is also sought for inclusion of name of petitioner in the final town planning scheme No. 1 in respect of final plot No. 746/2. A request is also made for issuance of writ of prohibition against Respondent Nos. 1 to 4 from taking any steps for alienating or altering or granting permission to construct in respect of final plot No. 746/2, admeasuring 340 square meters, which the petitioner claims to have been allotted in his favour.

2. According to the petitioner, his father purchased CTS No. 1567, admeasuring 6 ares for consideration of Rs. 3000/- on 19.04.1973. In the year 1975, town planning scheme No. 1 was sanctioned by Shrirampur Municipal Council and CTS

No. 1567 was renumbered as final plot No. 5 and was allotted to the father of petitioner. According to the petitioner, final plot, which has been allotted in the name of his father, was encroached upon and there were certain illegal developments on the plot. The first revised town planning scheme is published in the Official Gazette in 1985. In the meanwhile, father of the petitioner died in 1998 and after his demise, in view of the will deed executed by father of the petitioner, petitioner became entitled to claim final plot No. 5.

3. The petitioner tendered an objection with the Arbitrator stating that final plot No. 5 allotted to him has been encroached upon and as such, requested for allotment of alternate plot. The petitioner claims that a notice was issued by the Arbitrator to Respondent No. 5 - original owner of final plot No. 746 in respect of modification on 14.03.2000. Respondent No. 5 did not remain present and did not object to the claim raised by the petitioner. As such, the Arbitrator passed an order allotting alternate plot No. 746/2, admeasuring 340 square meters, out of final plot No. 746 allotted to the Respondent No. 5, on 01.05.2001.

4. Respondent No. 6 is a Contractor. He entered into an agreement for purchase of final plot No. 746. In pursuance to the public notice issued by Respondent No. 6, declaring his intention to purchase said plot, petitioner raised an objection contending that he has interest in plot No. 746/2. Respondent No. 6, however, purchased the property on 29.06.2010. Respondent No. 6 was permitted to develop the property subject to submission of his undertaking, that he will not raise construction over final plot No. 746/2 and also will not utilise F.S.I. admissible for the said plot.

5. The final town planning scheme was kept open for inspection of public in the month of September 2011. Petitioner inspected final town planning scheme and found that his name does not find place in the said scheme showing allotment of final plot No. 746/2, in view of order dated 01.05.2001. As such, he has presented instant writ petition claiming the reliefs as narrated above.

6. Respondent Nos. 1 to 3 and 7 have presented affidavits-in-reply wherein it has been stated that Shrirampur Town Planning Scheme No. 1 (final) has been sanctioned u/s 86(1) of the Maharashtra Regional & Town Planning Act, 1966, by the Government on 12.03.1975 and same came into force with effect from 01.06.1975. As per the said scheme, final plot No. 746 has been allotted in favour of K.J.Somaiyya and Nandlal Lalchand Navalkha in lieu of original plot No. 345/20 (CTS Nos. 228 to 261) (part). It is stated that final plot No. 5, admeasuring 6901 square meters is allotted jointly to Bhagwat Namdeo Morge, Raghunath Appaji Swar, Dagdu Fakira Muskute, Ganesh Balram Bijja and Smt.Balram Bijja in lieu of open plot No. 1/2, 1/4, 1/15 (CTS No. 1567) (part), admeasuring 6808.95 square meters. The joint owner of final plot No. 5 - Bhagwat Namdeo Morge sold his area to the extent of 600 square meters in favour of Ranjitkumar Bhakatavarsingh Chauhan in 1973 and petitioner's father Devkisan Kanhayyalal Oza purchased the same land from Mrs. Chauhan. Final plot No. 5 is included in Shrirampur Town Planning Scheme No. 1, which is

sanctioned by the Government vide letter dated 12.03.1975, which has come into force with effect from 01.06.1975. The petitioner has incorrectly stated that he has been allotted final plot No. 5 individually admeasuring 600 square meters. It is further stated that there is no provision of revision of town planning scheme, however, Shrirampur Municipal Council declared its intention to prepare Shrirampur Town Planning Scheme No. 1 (First Variation draft) on 23.01.1985. The first variation draft was sanctioned u/s 68(2) of the Maharashtra Regional & Town Planning Act, 1966, by the Director of Town Planning, Maharashtra State, on 06.03.1999.

7. The Arbitrator came to be appointed u/s 72(1) of the Maharashtra Regional & Town Planning Act, 1966, for consideration of town planning scheme No. 1 (first variation). It is stated by Respondents that draft plan of Shrirampur Town Planning Scheme No. 1 (First Variation) sanctioned by the Director of Town Planning, does not include plot No. 5. The scope of enquiry by Arbitrator u/s 72(3) of the Maharashtra Regional & Town Planning Act, 1966 read with Rule 13, is limited to the area under the draft scheme (variation), sanctioned by the Director of Town Planning, u/s 68(2) of the Act. The petitioner raised objection in respect of final plot No. 5, which was located outside the draft scheme (variation) and as such, it was not open for the Arbitrator to take any decision and allot final plot No. 746/2, admeasuring 340 square meters, to the petitioner.

8. The contention of the petitioner that the order of the Arbitrator has attained finality is also incorrect since the draft plan (first variation) is required to be sanctioned by the State Government in view of provisions of the Maharashtra Regional & Town Planning Act, 1966. Since the Arbitrator did not have jurisdiction to consider any objection relating to final plot No. 5 while considering Shrirampur Town Planning Scheme No. 1 (First Variation) draft scheme, it was not open for him to pass an order allotting plot No. 746/2 in favour of the petitioner. The order passed by the Arbitrator, on which reliance is placed by the petitioner, is without jurisdiction and same has been corrected while finalising the scheme u/s 72(3) of the Act. The final town planning scheme for Shrirampur Municipal Council (First Variation) has been sanctioned with certain modifications mentioned in the schedule on 22.09.1999 and it has been published in the Official Gazette dated 30.12.1999. It is, thus, contended that petitioner is not entitled to claim any interest in respect of final plot No. 746/2.

9. Shri Dhorde, learned Senior Counsel, appearing for the petitioner, vehemently contends that in view of the decision rendered by the Arbitrator on 01.05.2001, petitioner is entitled to claim final plot No. 746/2, admeasuring 340 square meters. The decision taken by the Arbitrator has attained finality in view of provisions of Section 72(3)(ii) read with Section 73 of the Maharashtra Regional & Town Planning Act, 1966 and same binds the parties including planning authority. It is contended that review of said decision is not permissible since there is no power of review. Reliance is placed on the judgment in the matter of Patel Narshi Thakershi and Others Vs. Shri Pradyumansinghji Arjunsinghji, . In

the said judgment, the Supreme Court has held that power to review is not an inherent power. It must be conferred by law either specifically or by necessary implication. Reliance is also placed, by the petitioner, on the judgment in the matter of Assistant Commercial Taxes Officer Vs. Makkad Plastic Agencies, , in support of the said proposition.

10. It is the contention of the petitioner that Respondent Nos. 5 and 6 are instrumental in bringing about political interference in the matter and due to extraneous influence, order passed by the earlier Arbitrator has been reviewed. It is the contention of the petitioner that an area to the extent of 340 square meters, out of final plot No. 746 was in fact carved out separately and it was not permissible for the Arbitrator to make any changes at later stage.

11. In order to appreciate contentions raised by the petitioner, it would be beneficial to refer to the provisions of Maharashtra Regional & Town Planning Act, 1966. Chapter V of the Act relates to Town Planning Schemes. Section 59 provides for preparation and contents of the Town Planning Scheme. In view of Section 60 of the Act, the planning authority may, by resolution, declare its intention to make a town planning scheme in respect of any part of the area within its jurisdiction and such declaration needs to be published in the Official Gazette in the manner prescribed. In view of Section 61 of the Act, not later than twelve months from the date of declaration, subject, however, to subsection (3), the planning authority shall, in consultation with Director of Town Planning, make a draft scheme for the area in respect of which declaration was made and publish a notice in the Official Gazette and in such other manner as may be prescribed stating that the draft scheme in respect of such area has been made. The notice is also required to state name of the place where copy of the scheme shall be available for inspection by the public. Section 62 provides for inclusion of additional area in the draft scheme and such exercise has to be done by the planning authority after informing the State Government and giving notice in the Official Gazette and also in one or more local newspapers, and thereupon, all the provisions of Sections 59, 60 and 61 shall apply to the additional area, as they apply to the original area of the scheme. The State Government is also empowered to require the planning authority to make the scheme. Section 64 of the Act gives details of contents of the scheme. The objections to the draft scheme are to be considered in consonance with Section 67 of the Act. The State Government is empowered to sanction draft scheme in accordance with Section 68 of the Act. Section 72 of the Act authorises the State Government to appoint Arbitrator possessing requisite qualification to perform the duties provided in the said Section. Section 73 provides for certain decisions of the Arbitrator except in the matters arising out of clauses (iv) to (xi) both inclusive, and clauses (xiv), (xv) and (xvi) of sub-section (3) of Section 72, shall be final, conclusive and binding on all the parties including the planning authority. Section 86 of the Act provides that the State Government may, within a period of four months from the date of receipt of final scheme u/s 82 of the Act from the Arbitrator or within such further period as the State Government may extend, by Notification in the

Official Gazette, sanction the scheme or refuse to give sanction, provided that in sanctioning the scheme, the State Government may make such modifications, as may, in its opinion, be necessary, for the purposes of correcting an error, irregularity or infirmity.

12. So far as instant matter is concerned, it is not disputed that father of the petitioner has purchased 6 ares" area out of larger area of CTS No. 1567 from one of the owner of the property on 19.04.1973. It is also not disputed that by an order dated 12.03.1975, the State Government sanctioned final town planning scheme submitted by the Arbitrator in exercise of powers conferred u/s 86(1) read with Section 165 of the Maharashtra Regional & Town Planning Act. On perusal of redistribution and valuation statement prepared by the Arbitrator while preparing Shrirampur Town Planning Scheme No. 1 (final), it appears that final plot No. 5 has been allotted in favour of Bhagwat Namdeo Morge, Raghunath Appaji Swar, Dagdu Fakira Muskute and Ganesh Balram Bijja. The allotment of final plot No. 5 under the scheme has attained finality with the sanction of the State Government to the scheme u/s 86(1) of the Act.

13. It is to be noted that the planning authority declared its intention to effect modifications in the final town planning scheme in exercise of powers u/s 92 read with Section 60(1) of the Act. A draft of the scheme was published and notification, in the Official Gazette, as prescribed under the Act, was also published on 28.01.1985. The items of variation were mentioned in the Official Gazette published on 28.01.1985. The draft variations were kept for inspection of the public at the office of Shrirampur Municipal Council during office hours of the Council. The draft town planning scheme (first variation) has been accorded final sanction on 22.09.1999 and it has also been published in the Official Gazette dated 30.12.1999. It is to be noted that the first variations in the town planning scheme for Shrirampur is restricted only in respect of the items mentioned in the draft which have been published on 28.01.1985. The Arbitrator, appointed for the purposes of sanctioning draft town planning scheme No. 1 (first variation), was required to restrict his inquiry in respect of items of variations mentioned in the draft. The inquiry by the Arbitrator in respect of variations does not extend to effect any changes in the original scheme, which has been finalised in 1975.

14. It also cannot be disputed that final plot No. 5, with which petitioner is concerned, was not part of variation of town planning scheme No. 1 for Shrirampur. It was not open for the Arbitrator to entertain any objection concerning final plot No. 5 raised by the petitioner. It is also beyond competence of the Arbitrator to direct that plot No. 5, which the petitioner claims to have been allotted to him, shall be earmarked as open space and that the petitioner shall be allotted an alternate area out of final plot No. 746. So far as prescribing reservation in respect of any property is concerned, procedure has been prescribed under the MRTP Act and it is beyond purview of exercise of jurisdiction by the Arbitrator to provide for reservation in respect of any property under the town planning scheme. It is also an error on the part of the Arbitrator to consider

the objection raised by the petitioner concerning final plot No. 5 since it was not part of Shrirampur draft town planning scheme No. 1 (variation). The initial order passed by the Arbitrator on 01.05.2001 is without jurisdiction and the illegality occurred has been rightly corrected.

15. It is also to be taken note of that any decision of the Arbitrator, during finalisation of the scheme, is always subject to the final sanction by the State Government u/s 86 of the Act. The State Government is empowered to sanction final scheme with such modifications, as may, in its opinion, be necessary for the purposes of correcting, error, irregularity or infirmity in the scheme.

16. The argument advanced by the petitioner, that the decision of the Arbitrator dated 01.05.2001, is final, is not acceptable in view of Section 86 of the Maharashtra Regional Town Planning Act, 1966. It is to be noted that town planning scheme No. 1 for Shrirampur town was finalised in 1975 and plot No. 5, which the petitioner claims to have been allotted in his favour, was part of the said scheme. It is also to be taken note of that the record placed before us also does not indicate that plot No. 5 was allotted in favour of petitioner. Even if assuming that petitioner has some interest in part of the area out of final plot No. 5, the scheme, in that regard, has attained finality in 1975 with the final sanction of the Government u/s 86 of the Maharashtra Regional & Town Planning Act. The said plot i.e. plot No. 5 was not part of the variation of the scheme as per the draft published on 28.01.1985. It was not open for the Arbitrator to pass any order concerning final plot No. 5 and order passed by the Arbitrator is without jurisdiction.

17. It is also to be noted that town planning scheme for Shrirampur (first variation) has been sanctioned by the State Government u/s 86(1) of the Act on 22.09.1999 and contents of the said scheme do not disclose any interest of the petitioner in respect of final plot No. 746.

18. For the reasons set out above and considering legal provisions, to which reference is made hereinabove, we are of the opinion that grievance made by the petitioner, in the instant petition, is without any substance. There is no merit in the petition. Writ Petition, therefore, stands dismissed. Rule discharged. In the facts and circumstances of this case, there shall be no order as to costs.