

RCS No. 34/2021
Nizam @ Nizamoddin Rasul Lohar Vs.
Municipal Corporation, Dondaicha and anr.
CNR No. MHDH040008022021

ORDER BELOW EXH. 18

Present application is filed by defendants for rejection of the plaint under Order VII, Rule 11 of the Civil Procedure Code. The plaintiff filed his say below Exh.19. Perused application and say. Heard both sides at length.

2. It is submitted for defendants that, plaintiff filed present suit for declaration and injunction against the Municipal Corporation. In present suit main prayer of the plaintiff is that, notices issued by defendants and actions taken thereto be declare as illegal, not as per rules and not binding upon his rights. The plaintiff also prayed injunction against defendants vide notice issued dated 26/11/2021. In those notices plaintiff has mentioned in respect of development plan of Dondaicha city. Thus, under these circumstances the suit is hit by the provisions of section 149 of the Maharashtra Regional and Town Planning Act, 1966 (hereinafter referred as 'the Act'). The Civil Court has no jurisdiction to entertain present suit.

3. In notices filed by plaintiff there is mention of development plan of city and its road and squares. Defendants are authorised as per the Act to develop the city as per sanctioned development plan. Accordingly, defendants called objections and in the year 2012 prepared and sanctioned the development plan and action taken by them as per said development plan. Thus, this Court is having no jurisdiction to entertain present suit. As per Order VII, Rule 11 (d), when suit is bared by any law, it is to be rejected. Therefore, prayed to reject the plaint accordingly.

4. On the contrary it is submitted for the plaintiff that, contents of

application are not true, correct, legal and proper and thereby denied all contentions of the application. Defendants in order to mislead the Court, falsely stated in respect of the city development plan and bar of the suit under section 149 of the Act. The main prayer of the plaintiff in the suit is in respect of restraining defendants from taking actions on the basis of contradictory notices. The relief sought by plaintiff is in respect of the Specific Reliefs Act and the Civil Court is having jurisdiction for the same. Defendants have not filed any documents in support of their contentions.

5. The plaintiff has not raised any objection or dispute regarding city development plan of defendants. The plaintiff has sought injunction order against defendants, wherein he is residing in the suit property since last 80 years and paying taxes to Municipal Corporation. Defendants without following due procedure of law for acquisition of the land, trying to dispossess the plaintiff. The issue involved in the suit is mixed question of law and facts, it is necessary to frame issues and lead evidence in that regard. The main prayer of the plaintiff is for a permanent injunction against the illegal acts of defendants and by way of an ancillary relief of declaration is sought by the plaintiff. Therefore, present application filed by defendants is not maintainable and prayed to reject the same.

6. In view of submissions of both sides, here it is necessary to see whether in view of the provision of section 149, the Civil Court is having jurisdiction to entertain present suit or not. It is the case of defendants that, since notices are issued by defendants under the Act, it is final and cannot be questioned in the Court. On the other hand it is the case of the plaintiff that, since defendants have not followed due procedure of law for acquisition of his land and issued said notices, those are not legal and binding on him. Here, the plaintiff challenged notices issued by defendants as illegal as those were issued without following due procedure of law. Therefore, here is it to see whether those notices issued by defendants are as per provisions of the Act or

not. Unless and until those notices issued by defendants are not as per the Act and in consonance with other provisions of the Act, those cannot attain finality as mentioned in section 149 of the Act. Thus, first of all it is necessary to see whether, notices issued by defendants are as per the Act and in consonance with other provisions of the Act or not. For that purpose, certain facts of the case need to be considered.

7. As per contentions in the plaint, the suit property was owned by Janglu Natthu Bhoi and grandfather of the plaintiff had taken the suit property on leasehold. Plaintiff, his father and grandfather paid rent to said owner and after death of original owner, nobody knows whereabouts of his heirs. Thus, as plaintiff is in possession of the land since long, he became possessor and owner of the suit property. In support of his claim plaintiff has filed certain documents on record such as property cards, receipts of payment of tax and license issued by the Municipal Corporation. As per those documents the suit property appears to be in name of said Janglu Bhoi as owner and father and grandfather of the plaintiff as occupant since year 1969 and they are paying tax to the Municipal Corporation. It also appears that, license of business of blacksmith in name of father of plaintiff was issued by the Municipal Corporation in the year 1989. Thus, the suit property appears to be owned by private person and it is not a public land. As the suit property is owned by private person and plaintiff is in settled possession of it, then to acquire the same for public purpose, defendant Municipal Corporation has to follow due procedure established by law.

8. In order to acquire any land owned by private person for public purpose, detailed procedure is provided in the chapter VII and more specifically in section 126 of the Act. As per said provisions, the Planning Authority has to acquire the land by compensating the owner or possessor of the suit property. Unless and until, the procedure of acquiring private land for the public purpose as per the Act is not followed and the owner or possessor is

not compensated, the Planning Authority is having no right to dispossess the person in possession of the property.

9. As per first notice dated 17/06/2021 issued by defendants it appears, plaintiff was called by defendants with documents of ownership for acquisition of the suit property. Accordingly, plaintiff replied the said notice of defendants on 25/06/2021 and submitted that, since he is possessor of the land as a tenant, proper procedure for acquisition of land be initiated as per law. It was further, informed by plaintiff by said reply that, defendants without giving him opportunity of being heard and having any agreement issued said notice. He also communicated his willingness of cooperation. By said reply plaintiff also sought attention of defendants towards visit of his officers to shop and threatening to him to dispossess without following due procedure of law.

10. As per second notice dated 14/07/2021 issued by defendants it appears that, plaintiff was called by defendants with documents of tenancy for acquisition of the suit property. Accordingly, plaintiff replied the said notice of defendants on 22/07/2021 and submitted that, he has supplied all documents to defendants in respect of his possession over the suit property. He also asked defendants to acquire the suit property as per procedure established by law for acquisition of the land.

11. In this factual background, defendants again on 26/11/2021 issued notice to plaintiff. Upon perusal of said notice it appears that, defendants asked plaintiff to remove encroachments on public land. It was further directed that, upon failure to remove said encroachments within 24 hours, it will be removed by defendants and its expenses are to be borne by the plaintiff. In reply to said notice present suit is came to be filed by the plaintiff seeking injunction and declaration against defendants.

12. Thus, on bare perusal of all these three notices issued by

defendants and contentions in the plaint it appears that, initially defendants called plaintiff for acquisition of the suit property being owner and possessor and suddenly one day called him as an encroacher on the suit property. Though, defendants initially called the plaintiff in order to acquire the suit property by purchasing the same. But, later on by issuing the notice dated 26/11/2021, without compensating the plaintiff, defendants declared him as encroacher. Thus, it appears that, as defendants declared the plaintiff as encroacher and not compensated him as required. Therefore, where defendants failed to follow procedure of acquisition as mentioned in section 126 of the Act by compensating the plaintiff, they failed to follow due procedure of the law for acquisition of the land for public purpose. Therefore, notice dated 26/11/2021 issued by defendants is not in consonance with other provisions of the Act and thus it does not attend finality as per section 149 of the Act. Thus, the jurisdiction of the Civil Court is not barred to entertain the suit against such act of defendants of dispossessing plaintiff, without following due procedure of the law.

13. Further, it was argued by the Ld. Advocate for defendants that, said notice dated 26/11/2021 was issued under section 55 and 56 of the Act and thus, the suit is not tenable against such notice. In this regard here it is pertinent to mention that, section 55 and 56 are applicable for removal of unauthorized development. As per section 43 of the Act, once development plan is published, restrictions are imposed on owners of the land which falls in area of development, from making further development in the same. If, any persons makes any such development in contraventions of the provisions of the Act, then it becomes unauthorized development. The Planning Authority is having power to remove the said unauthorized development by following procedure given under sections 53, 54, 55 and 56 of the Act.

14. In present case, as earlier discussed plaintiff is in settled possession of the suit property. As per notices mentioned and contentions of

the plaint it appears that, defendants have not come with a case that, plaintiff has made any such unauthorized development in the suit property. It is neither appears from the notice dated 26/11/2021 or earlier notices that, the plaintiff has made any unauthorized development in the suit property after publication of the development plan. Thus, where the plaintiff has not made any such unauthorized development in the suit property after publication of the development plan, then provisions of sections 53, 54, 55 and 56 of the Act are not applicable in the present case.

15. Ld. Advocate for defendants relied on judgments of the Hon'ble Bombay High Court in cases of *Kalyan Dombivli Municipal Corporation Vs. Prakash Mutha, 2008 (3) MhLJ 686* and *Ulhasnagar Municipal Corporation Vs. Kailash Tikamdas Mulchandani, 2008 (5) AIR Bom R 250*. On the other hand Ld. Advocate for plaintiff relied on judgment of the Hon'ble Bombay High Court in case of *Municipal Commissioner, Nagpur Vs. M/s. Shivdatt and Sons, 2019 NearLaw (BombayHC Nagpur) Online 2659*.

16. on perusal of these cases it appears that, in the case of *Kalyan Dombivli Municipal Corporation* and *Ulhasnagar Municipal Corporation* mentioned supra, the Hon'ble High Court observed that, notice issued under section 55(1) of the Act cannot be questioned in the Court. Said notice comes under the preview of section 149 of the Act and thus the Civil Court has no jurisdiction. Upon perusal of facts of these cases cited it appears that, there was unauthorized development made by owners and the Municipal Corporation issued notice for removal of the same. However, in present case though defendants claimed it as unauthorized development and issued notice, but as per record and as discussed earlier, the plaintiff has not made any unauthorized development. Thus, facts of the case in hand and the cited cases are different and therefore, not applicable to present case.

17. Further, in the case of *Municipal Commissioner, Nagpur*

mentioned supra, the Hon'ble High Court observed that, landlord and the Municipal Corporation acted in fraudulent manner and issued notice without recourse to section 16 of the Rent Control Act and thereby violated protection of tenant provided under section 16(1)(i) of the Rent Control Act. Thus, suit filed before the Small Causes Court is maintainable despite of bar of jurisdiction contained under section 149 of the Act. Upon perusal of facts of the case cited it appears that, in that case plaintiff came with a specific case of fraud on his landlord and the Municipal Corporation, to evict him without following procedure envisaged under the Rent Control Act. However, in present case, there is no such allegations of fraud on the part of landlord or the Municipal Corporation to evict the tenant without taking recourse of section 16 of the Maharashtra Rent Control Act. On the contrary, defendant came with a case that, the plaintiff is an encroacher. Thus, facts of the case in hand and the cited case are different and therefore, not applicable to present case.

18. In view of the facts and circumstances of the case, above said discussion and as per pleadings I found that, the suit is not bared by section 149 of the Act. Thus, the case of plaintiff does not fall under Order VII, Rule 11 (d) of the Civil Procedure Code and there is no any circumstance to reject or return of the plaint as claimed by defendants. Therefore, application of the defendant is liable to be rejected. Hence, I pass following order.

ORDER

1. The application is rejected.
2. Costs in cause.

Date: 21/12/2021

(Sujit A. Rathod)
Civil Judge Junior Division,
Dondaicha.

- Certificate -

I certify that the contents of this PDF File are word to word as per Original Judgment / Order.

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Sd/-
Stenographer (L.G.)