



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 1463 OF 2013

1. **MANJIT SINGH VIRDI**,
aged 59 years of Mumbai, Indian
Inhabitant residing at 12, A/7
Navjivan Society, Mori Road,
Mahim
Mumbai 400 016.
2. **HARPREET KAUR HARINDER SINGH VIRDI**,
aged 63 years of Mumbai, Indian
Inhabitant, residing at 12, B/7
Navjivan Society, Mori Road,
Mahim
Mumbai 400 016.
3. **VIKRAMJIT SINGH HARJIT SINGH VIRDI**,
aged 36 years of Mumbai, Indian
Inhabitant, residing at 12, B/1
Navjivan Society, Mori Road,
Mahim
Mumbai 400 016.

...PETITIONERS

~ VERSUS ~

1. **MUNICIPAL CORPORATION OF GREATER MUMBAI**,
having its head office at Mahapalika
Marg, C.S.T. Mumbai 400 001.
2. **THE MUNICIPAL COMMISSIONER**,
Municipal Corporation of Greater
Mumbai, having its office at

AMOL
PREMNATH
JADHAV

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Mahapalika Marg, C.S.T. Mumbai
400 001.

3. ASSISTANT COMMISSIONER G/NORTH
WARD,
having his office at G/North
Municipal Ward Office,
Harishchandra Yewle Marg, Dadar
(West) Mumbai 400 028.
4. STATE OF MAHARASHTRA,
Through Urban Development Dept,
Mantralaya, Mumbai 400 032.

...RESPONDENTS

WITH

INTERIM APPLICATION NO. 440 OF 2019

IN

WRIT PETITION NO. 1463 OF 2013

1. MANJIT SINGH VIRDI,
aged 59 years of Mumbai, Indian
Inhabitant residing at 12, A/7
Navjivan Society, Mori Road,
Mahim
Mumbai 400 016.
2. HARPREET KAUR HARINDER SINGH VIRDI,
aged 63 years of Mumbai, Indian
Inhabitant, residing at 12, B/7
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Mumbai 400 016.
3. VIKRAMJIT SINGH HARJIT SINGH VIRDI,
aged 36 years of Mumbai, Indian

Inhabitant, residing at 12, B/1
Navjivan Society, Mori Road,
Mahim
Mumbai 400 016.

...APPLICANTS

In the matter between

1. MANJIT SINGH VIRDI,
aged 59 years of Mumbai, Indian
Inhabitant residing at 12, A/7
Navjivan Society, Mori Road,
Mahim
Mumbai 400 016.
2. HARPREET KAUR HARINDER SINGH VIRDI,
aged 63 years of Mumbai, Indian
Inhabitant, residing at 12, B/7
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Mumbai 400 016.
3. VIKRAMJIT SINGH HARJIT SINGH VIRDI,
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Harishchandra Yewle Marg, Dadar
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4. STATE OF MAHARASHTRA,
Through Urban Development Dept,
Mantralaya, Mumbai 400 032.

...RESPONDENTS

APPEARANCES

FOR THE PETITIONERS	Ms N V Sanglikar.
FOR RESPONDENT-BMC	Mr A Y Sakhare, Senior Advocate <i>with Kunal Waghmare, i/b Sunil K Sonawane.</i>
FOR RESPONDENT-STATE	Mrs Uma Palsuledesai, AGP.

CORAM : M.S.Sonak &
Kamal Khata, JJ.

Reserved On : 12 September 2024

Pronounced On : 19 September 2024

JUDGMENT (Per MS Sonak J):-

1. Heard learned Counsel for the parties. The Petitioners
seek the following substantial reliefs in this Petition:-

“(a) that his Hon’ble Court be pleased to issue a Writ of
Certiorari or such other appropriate Writ, order or direction

calling for the records relating to the Town Planning Scheme III (Mahim Division) Final and 1st Variation (Final);

(b) that this Hon'ble Court be pleased to issue a Writ of Mandamus or such other appropriate Writ, order or direction to Respondent Nos. 1-3 to hand over vacant and peaceful possession of Final Plot No. 838, Town Planning Scheme III (Mahim Division) free from encumbrances to the Petitioners;"

2. Ms Sanglikar, the learned Counsel for the Petitioners, submits that the Municipal Corporation of Greater Mumbai ("MCGM"), the planning authority under the provisions of the Maharashtra Regional and Town Planning Act, 1966 ("MRTP"), has approved the Town Planning Scheme ("TPS III") at Mahim Division. She submits that Final Plot No. 838, measuring 695 sq yds, has been allotted to the Petitioners in terms of this scheme.

3. Ms Sanglikar submits that this Final Plot No. 838 was originally Plot No. 88B, measuring 280 sq yds. She submits that Nusserwanji Jehangir Patel and Piroshaw Jehangir Patel were the lessees of Plot No. 88B, of which the Government of Maharashtra was an owner (lessor). She states that this was by virtue of a lease dated 8 November 1948. She submits that this lease, dated 8 November 1948, was assigned to the

Petitioners; consequently, even the names of the Petitioners are entered into the property card.

4. Ms Sanglikar submits that after the TPS III was finalised and the original Plot No. 88B was finalised as Final Plot No. 838, admeasuring 695 sq yds, Petitioners became entitled to this Final Plot No. 838, admeasuring 695 sq yds. She submitted that in terms of Sections 88, 89 and 90 of the MRTP, the planning authority, i.e., MCGM, not only has the power but the duty to enforce TPS III and handover the vacant and peaceful possession of Final Plot No. 838, admeasuring 695 sq yds to the Petitioners. Ms Sanglikar submitted that the Petitioners continue in possession, i.e., the original plot 88B. However, the additional area of 415 sq yds is encroached upon by some parties, and the MCGM is duty-bound to clear such encroachment and hand over the peaceful and vacant possession of this additional area of 415 sq yds to the Petitioners.

5. Ms Sanglikar submitted that the issue raised in this Petition is covered by the decision of the Hon'ble Supreme Court in the case of **The Municipal Corporation of Greater**

Bombay & Anr v. The Advance Builders (India) Pvt. Ltd. & Ors¹.

6. For all the above reasons, Ms Sanglikar submitted that the Rule in the Petition may be made absolute in terms of prayer clauses (a) and (b) of the Petition.

7. Mr Sakhare, the learned Senior Advocate appearing for the MCGM, submitted that the State of Maharashtra owned the property. He submitted that a portion of the property admeasuring 280 sq yds was leased by the State Government to the Nusserwanji Jehangir Patel and Piroshaw Jehangir Patel by an indenture of lease dated 8 November 1948 for 30 years along with the buildings and erections thereon. He submitted that there may have been an assignment of lease dated 8 November 1948 favouring the Petitioners. He, however, submitted that even this assignment gave the Petitioners some leasehold rights to only 280 sq yds, i.e., original Plot No. 88B and not to an area of 695 sq yds as is now claimed by the Petitioners. He submitted that this lease

1 AIR 1972 SC 793

of 8 November 1948 was for only 30 years, and there is no clarity on the renewals.

8. Mr Sakhare submitted that the MCGM is authorised to re-constitute plots while finalising a town planning scheme. However, that does not mean that an allottee of the original plot becomes either the owner, the lessee, or the assignee of a final plot, which, in the present case, is much in excess of the area of the original plot. He submits that MCGM, the planning authority, only re-constitutes the plots from the planning perspective. He, therefore, submits that based upon the final re-constitution or based upon the original plot 88B being reflected as final plot 838 in the TPS III, the Petitioners can neither claim any leasehold rights to any area over 280 sq yds nor can the Petitioners seek any Writ requiring the MCGM to evict alleged trespassers or encroaches on government land. He submitted that the alleged encroachers or trespassers have not even been impleaded in this petition, though the relief is to clear them from the final plot.

9. Mr Sakhare submitted that the provisions of Sections 88, 89, and 90 of the MRTP do not entitle the Petitioners to

the reliefs prayed for in this Petition. He submitted that the decision of the Hon'ble Supreme Court in *Advance Builders (supra)* is distinguishable and does not support the Petitioners' case.

10. Mr Sakhare submitted that the Rule issued in this Petition may be discharged.

11. The rival contentions now fall for our determinations.

12. The Petitioners have pleaded in the Petition that they are the legal heirs and representatives of the assignees of Final Plot No. 838 TPS III. However, the records show that this statement may be only partially correct but not entirely correct.

13. Admittedly, the property, which comprises earlier Plot No. 88B and the Final Plot No. 838, is owned by the State of Maharashtra (Government property).

14. Further, admittedly, by an indenture lease dated 8 November 1948, the original Plot No. 88B, measuring 280 sq yds, was leased by the State of Maharashtra to Nusserwanji

Jehangir Patel and Piroshaw Jehangir Patel for a term of 30 years from 22 November 1945, subject to payment of rents.

15. The record also shows that by an indenture of assignment dated 27 June 1950, Nusserwanji Jehangir Patel and Piroshaw Jehangir Patel assigned the lease to this plot of 280 sq yds unto Rutonshaw Nusserwanji Toddywalla and Bai Tehmina with the structures thereon.

16. The Petitioners have pleaded that Rutonshaw Nusserwanji Toddywalla died intestate on 27 August 1959. Similarly, his wife died intestate on 22 February 1971, leaving behind three sons and four married daughters as their only legal heirs and legal representatives. There is a pleading that the option to renew the lease has also been exercised by this time.

17. The six surviving heirs of Rutonshaw Nusserwanji Toddywalla and Bai Tehmina, by deed of assignment dated 25 September 1996, assigned/conveyed original Plot No. 88B together with the structures standing thereon to the Petitioners. These pleadings are found in paragraph 6.3 of the Petition, read with synopsis/dates of events against the date

25 September 1996. Thus, the area assigned to the petitioners was only 280 sq. yards by Deed of Assignment dated 25 September 1996 recorded in the Survey Register for the Town and Island of Bombay at Exhibit 'A' Page 26 of the Petition.

18. As pointed out by Mr Sakhare, there is no clarity on the aspect of the State of Maharashtra's renewal of the lease. In any event, even if we proceed on the premise that such a lease was renewed, the pleadings indicate that the Petitioners acquired some rights only in the original Plot No. 88B, measuring 280 sq yds.

19. Ms Sanglikar did contend that after TPS III entered force on 1 March 1961 and original Plot No. 88B, measuring 280 sq yds, was reconstituted as Final Plot No. 838, measuring 695 sq yds, the Petitioners acquired rights in the Final Plot No. 838, measuring 695 sq yds. However, she could not substantiate or make good this submission either based on any documents on record or by way of the provisions of the MRTP.

20. Ms Sanglikar, in support of her contention that the Petitioners, under the reconstitution of original Plot No. 88B

into Final Plot No. 838, had acquired right or interest in the larger plot admeasuring 695 sq yds even though the deed of assignment dated 25 September 1996 refers only to assignment the original Plot No. 88B admeasuring 280 sq yds firstly referred to the property card at Exhibit 'A' to the Petition. She submitted that this property card refers to Final Plot No. 838 TPS III, and the Petitioners' names are entered in the column of the "person in beneficial ownership".

21. On perusal and evaluation of the property card at Exhibit 'A' (page 26), it is evident that the names of the Government of Maharashtra (lessor), the Nusserwanji Jehangir Patel and Piroshaw Jehangir Patel (lessees), Toddywallas (holder lessees-joint tenants), the legal representatives of Rutonshaw Nusserwanji Toddywalla and Bai Tehmina and the Petitioners appear in the column of the "name of person in beneficial ownership". Besides, in the adjacent column dealing with the mode of acquisition by the present owner, the Nusserwanji Jehangir Patel and Piroshaw Jehangir Patel are stated to be lessees under an indenture lease dated 8 November 1948 for the area of 280 sq yds. The Rutonshaw Nusserwanji Toddywalla and Bai Tehmina were

assigned this area of 280 sq yds vide a deed of assignment dated 27 July 1950. The legal representatives of The Rutonshaw Nusserwanji Toddywalla acquired some rights in the area of 280 sq yds under a declaration dated 21 February 2004. Finally, the Petitioners again acquired interest vide deed of assignment dated 25 September 1996 to the same original Plot No. 88B measuring 280 sq yds.

22. The property card is thus consistent with the Petitioners' pleadings and the various documents referred to in the pleading about the acquisition of rights to an area of 280 sq. yards but not 695 sq. yards. There is absolutely nothing in the property card from which it would be inferred that the Petitioners acquired the right to any area beyond 280 sq yds or to the area of 695 sq yds just because of the original Plot 88B being re-constituted as a larger Final Plot No. 838 admeasuring 695 sq. yds under TPS III.

23. Ms Sanglikar secondly referred to Exhibit 'F2' on page 63-B, Exhibit 'F6' on page 63-F, and finally, the Collector's letter dated 1 July 2019 annexed as Exhibit 'F11' on page 63-P addressed to the Petitioners reference in Final Plot No. 838

TPS III. These documents do not even remotely support the Petitioners case of acquiring rights to any area in excess of 280 sq yds for reasons briefly discussed hereafter.

24. The documents at Exhibit 'F2' and 'F6' do not state or suggest that the petitioners acquired any rights over an area over 280 sq. yards. The communication dated 1 July 2019 (Exhibit F11) was the collector's response to the petitioner's application dated 22 February 2018. This communication lists the flow of title but does not even remotely state that the government has allotted to the Petitioners lease of any area beyond 280 sq yds. This communication, in fact, states that the original lease deed with Nusserwanji Jehangir Patel and Piroshaw Jehangir Patel expired on 21 November 1975, about 44 years ago, and no steps have been taken for renewal of said lease. Thus, this communication dated 1 July 2019, far from supporting the Petitioner's case, goes against the Petitioner's case.

25. Since the Petitioners have instituted the Petition on the incorrect premise that they were entitled to the entire Final Plot admeasuring 695 sq yds or that they are entitled to any

area over 280 sq yds, this Petition is liable to fail once this premise is found wanting. Unless this basic fact was established, there is no question of reference to the provisions of Sections 88, 89 and 90 of the MRTP and seek the reliefs prayed for in this petition.

26. In any event, Section 88 of the MRTP provides that on and after the day on which the preliminary scheme comes into force,

(a) All lands required by the planning authority shall, unless it is otherwise determined in such scheme, vests absolutely in the planning authority free from all encumbrances;

(b) All rights in the original plots which have been re-constituted shall determine, and the re-constituted plot shall become subject to the rights settled by the Arbitrator.

27. The Petitioners have not shown that the arbitrator determined that they were now the lessees in respect of Final Plot No. 838, measuring 695 sq yds. This is assuming that the

arbitrator could have made such a determination to the prejudice of the State of Maharashtra, which is admittedly the owner of the land, and the parties in occupation of the land beyond 280 sq. yards for which the petitioners have an assignment deed. The petitioners have simply but incorrectly assumed this position and petitioned this Court for the above reliefs.

28. Section 89 of the MRTP deals with the Power of the Planning Authority to evict summarily. It provides that:

(1) On and after the day on which a [preliminary scheme] comes into force, any person continuing to occupy any land which he is not entitled to occupy under the [preliminary scheme] may, in accordance with the prescribed procedure be summarily evicted by the Planning Authority or any of its officers authorised in that behalf by that Authority.

(2) If the Planning Authority is opposed or impeded in evicting such person or taking possession of the land from such person, the Commissioner of Police, or as the case may be, the District Magistrate shall at the request

of the Planning Authority enforce the eviction of such person or secure delivery of possession of the land to the Planning Authority as may be necessary.

29. Section 90(1)(a) confers the powers of the planning authority to enforce the scheme, and this includes among other things power to remove, pull down or alter any building or other work in the area included in the scheme which is such as to contravene the scheme or in the erection of which or to carrying out of which, any provision of the scheme has not been complied with.

30. Since the Petitioners have failed to establish that they are entitled to any right in respect of an area over 280 sq yds, the Petitioners cannot insist that the MCGM exercise its powers under Sections 89 and 90 of the MRTP to evict any alleged encroachers on the balance government land in which the Petitioners have failed to establish any right title or interest. The petitioners have pleaded that they already possess an area of 280 sq. yards, and there is no issue about that. Therefore, based upon the provisions of Sections 88, 89

and 90 of the MRTP, no relief can be granted to the Petitioners.

31. In *Advance Builders (supra)*, the town planning scheme entered force on 1 January 1959. This was known as the Bombay Town Planning Scheme, Santacruz No. VI and covered an area of about 169 acres divided into two parts by the Ghodbunder Road, which ran from south to north. A part of this area belonged to the N J Wadia Trust. This was covered by unauthorised huts, sheds and stables. Removing all these slums or slum-like structures was one of the objectives of introducing the town planning scheme. While determining the rights for the scheme, the arbitrator had made a specific observation that the construction of new roads, the provision of public sides/drains and the removal of slums was necessary for the development of this part of the suburb on proper lines.

32. Despite the above, the MCGM, which was duty-bound to implement the scheme by removing the slums, sheds, and temporary structures and providing roads and drains as directed by the scheme, remained inactive and failed to take any steps. Therefore, Advance Builders, who had acquired

rights to this property from the N J Wadia Trust, sought the writ of mandamus to direct the MCGM to remove all the huts, sheds, stables and temporary structures and to construct roads and drains as indicated in the town planning scheme and to complete the scheme for use within such time as may be fixed Court.

33. In the above facts, the only question which arose for determination before the Hon'ble Supreme Court was whether the MCGM was bound under the law to remove such the structures, sheds and huts situated in the plots of Advance Builders/N J Wadia Trust in so far as they contravened the town planning scheme. On analyzing the provisions of the Town Planning Act 1954, the Hon'ble Supreme Court held that the MCGM was so bound.

34. In Advance Builders, there was no dispute that Advance Builders/N J Wadia Trust were the owners or had an interest in the property from where they sought the removal of huts, sheds and other structures. There was no dispute that removing such huts, sheds, and other structures was one of the prime purposes of the town planning scheme, and without

such removal, the scheme could not be enforced. The arbitrator's determination was also unambiguous. Based on these admitted or established facts, the Hon'ble Supreme Court held that the MCGM could not avoid enforcing its scheme and removing the huts, sheds and structures that were obstructing the effective implementation of the scheme.

35. The facts in the present case are not comparable to those in *Advance Builders (supra)*. Here, the Petitioners have failed to establish any right or interest in the area beyond 280 sq yds. There is no allegation about any encroachments in the area within 280 sqds. In fact, the Petitioners have their structure within this area. The TPS III or the arbitrator's determination does not give Petitioners rights to any additional area beyond 280 sq yds. Therefore, there is nothing to show that the parties putting up any structures beyond 280 sq yds were encroachers on Government land or, in any event, on land to which the petitioners could establish any interest. Nothing has shown us that removing such structures beyond 280 sq yds was one of the objectives of TPS III. All these factors are sufficient to distinguish the decision in *Advance*

Builders (supra). Therefore, no relief is due to the Petitioners based on the said decision.

36. The Petitioners, who have established some semblance of interest in the plot admeasuring 280 sq. yds, cannot, based on the finalization of a Town Planning Scheme (TPS III), claim rights in a larger plot admeasuring 695 sqyds and seek to recover possession of the additional area after clearing all the structures therein by instituting a Writ Petition. The Petitioners have failed to establish any right through any deed, document or agreement and payment of any consideration for acquiring any right to the plot beyond 280 sq. yds to secure such relief. Consequently, the petitioners cannot claim to enforce any corresponding duty of the MCGM in this regard.

37. Incidentally, the petitioners seek relief involving the MCGM evicting some alleged encroachers or trespassers on government land over which the petitioners have established no interest or rights. No details of such alleged encroachments or trespassing are provided, nor are the alleged encroachers or trespassers impleaded as parties. Apart from the circumstance

that the petitioners have made out no case for any relief on merits, assuming they had, no relief could be granted without impleadment of such parties who would be directly and most prejudicially affected.

38. In view of the dismissal of the Writ Petition, pending Interim Application stands disposed of. For all the above reasons, we dismiss this Writ Petition. The Rule is discharged without any orders of costs.

(Kamal Khata, J)

(M. S. Sonak, J)