

nsc.

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

WRIT PETITION NO.701 OF 2012

Rahimabi Abdul Wahab

...Petitioner

v/s.

The Municipal Corporation of Greater Mumbai and Ors.

...Respondents.

Ms.Duraiya S. Retiwala, for the Petitioner.

Ms.Shobha Ajitkumar, for Respondent No.1 – BMC.

Ms.Anjali Helekar, AGP for Respondent Nos. 2 to 4.

**CORAM: A. S. OKA &
REVATI MOHITE DERE, JJ.**

DATED : 10th JUNE, 2015.

P.C.

1. The specific case of the petitioner is that she was conducting a business of running a merry-go-round on the Juhu Beach at Bombay. The case made out in the petition is that the said merry-go-round was removed by the first Respondent – Municipal Corporation. The first substantive prayer in this petition under Article 226 of the Constitution of India is for directing the respondent to act upon the order dated 21st October, 2005 passed in the Civil Suit and to provide alternate premises to the petitioner.

In the alternative, there is a prayer made to allow the petitioner to operate from the same place.

2. Learned Counsel for the petitioner invited our attention to the order dated 21st October, 2005 passed by this Court. The said order reads thus :-

“1. By our order dated October 10, 2005, the suits which were pending in the Bombay City Civil Court have been transferred to this Court.

2. We have heard the learned counsel appearing for the plaintiffs in all the suits. The learned counsel appearing for the plaintiffs in all the suits fairly submits that the plaintiffs in the transferred suits are willing to move from the present area to other areas. These plaintiffs undertake to file suitable applications to the Collector within two weeks from today. The Collector is directed to decide the applications of the Plaintiffs so filed within two weeks thereafter by a reasoned order”.

3. Learned Counsel for the petitioner submits that the petitioner was holding a pitch holder's card. She has invited our attention to the license issued to the petitioner under the Bombay Shops and Establishments Act, 1948 as well as the Premises License and the

Performance License issued under the Rules framed under the Bombay Police Act, 1951. The submission of the learned counsel appearing for the petitioner is that the merry-go-round was installed at Juhu Beach on a specific plot in possession of the petitioner in respect of which pitch holder's card was issued to the petitioner. Inviting our attention to the Government Order dated 15th July, 2000 annexed to the affidavit in reply of the Deputy Collector (E/R), Bandra, Mumbai, she submitted that as per the said order, a fresh survey was to be carried out for which necessary amount has been paid by the petitioner. She, therefore, submitted that either the petitioner be allotted another plot of land or the petitioner may be permitted to continue to operate from the same plot where the petitioner had earlier installed a merry-go-round . The contention of the learned counsel for the petitioner is that the merry-go-round was embedded in the earth and therefore, the petitioner has right in respect of the plot on which the merry-go-round was installed.

4. We have considered the submissions. We have perused the documents annexed to the petition. We have also perused the affidavit of the Deputy Collector. Apart from the admitted position set out in paragraph 2, the photographs annexed by the petitioner to the petition

from page 92 onwards show that the merry-go-round was installed by the petitioner right on the Juhu Beach. We fail to understand what right an individual can claim in respect of any portion of a Beach. Moreover, the stand taken by the Deputy Collector in the reply is that the pitch holder's card or photo pass produced by the petitioner is of 9th March, 1978 issued in Hutment Census Scheme. It is pointed out that by the order of the State Government dated 15th July, 2000, the passes issued under the Hutment Census Scheme have been cancelled. In paragraph 5, it is stated that as the merry-go-round was on the beach, the same is affected by the Coastal Regulation Zone.

5. In view of the admitted position that the petitioner had installed a merry-go-round on Juhu Beach, no detailed reasons are required to be recorded to record a conclusion that the petitioner is not entitled to claim any right in respect of the portion of the Juhu Beach on which the merry-go-round was installed. The petitioner cannot be protected under any existing policy. The petitioner has no right to seek another plot in lieu of the plot on which earlier she had installed the merry-go-round. Apart from the fact that the petitioner has not established any right, considering the fact that the petitioner is claiming a right in respect of a portion of the

Juhu Beach, the petitioner cannot be allowed to invoke the extra ordinary jurisdiction of this Court under Article 226 of the Constitution of India.

6. The petition is accordingly rejected.

(REVATI MOHITE DERE,J.)

(A.S. OKA,J.)