

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

WRIT PETITION NO.1805 OF 2015

Mrs.Prabhavati D. Kale and others	Petitioners
versus	
The State of Maharashtra and others	Respondents

Ms.Leela D. Malu i/by Ms.Leela d. Malu & Associates for
Petitioners.

None for the Respondents.

CORAM : S.C.DHARMADHIKARI AND
B.P.COLABAWALLA, JJ.

DATE : 26 November 2015

PC :

1. By this petition under Article 226 of the Constitution of India, the Petitioners are claiming a relief to quash and set aside the order dated 15 December 1995 passed in Appeal No.38 of 1995 and declare it illegal. The further relief sought is to issue a writ of certiorari or any other appropriate writ, order or direction calling for the records and proceedings in relation to this appeal and set aside the order dated 5 February 2007 cancelling the photo-pass/identity card issued in favour of the Petitioners.

2. The petition is filed on 7 January 2015. To get over the Court's query raised repeatedly as to how these reliefs can be granted in the year 2015, reliance is placed upon an order, a copy of which is at pages 348 and 349, Annexure-U, to the paper book. That is an order passed on the Petitioners' petition being Writ Petition No.1083 of 2014 by this Court on 16 June 2014. That order reads as under :

"1. The learned counsel appearing on behalf of the Petitioners merely seek inspection and the copies of orders, papers and proceedings on the basis of which pitch card of the Petitioners were cancelled. Cancellation of pitch cards of the Petitioners certainly affects the petitioners' interest and they are therefore entitled to the documents as it affects their rights. The effect or validity of the orders and cancellation are not relevant at this stage in view of limited relief sought.

2. The Respondents concerned shall furnish the copies of orders, papers and proceedings on the basis of which the orders of cancellation of pitch cards were passed to each of the respective Petitioners.

3. The writ petition is accordingly disposed of with liberty to file any other proceedings after receipt of above documents. This order shall be complied with within four weeks from today."

3. We find that repeatedly such petitions are filed and persons claiming to be innocent slum dwellers, illiterate and unaware of their legal rights, are brought before this Court. It is

stated that the statutory authorities and the private parties like the builders and developers are depriving them of their legitimate rights. Such claims are based on vague and general grounds. Whenever the Court finds it difficult to exercise its writ jurisdiction as the claim is barred by delay and laches, the above reasons are given for not approaching the Court earlier and in time.

4. However, in the present petition, we find that the Petitioners themselves in paragraph 1 have stated that they have been residing on a piece or parcel of land being CTS No.530 situated at Parashi Chawl, Indira Vikas Chawl, Dharavi, Mumbai-400 017. The Respondent no.1 exercises, according to the Petitioners, the powers under Maharashtra Slum Areas (Improvement, Clearances and Redevelopment) Act, 1971 ('Slum Act'). However, we find that Respondent no.2 in this petition is the Chief Minister of Maharashtra. We do not see any reason for impleading the Chief Minister as a party Respondent. The Respondent no.2 stands deleted from the array of parties. The other Respondents namely Respondent nos.3 to 6, according to the Petitioners, have failed to perform their duties and functions under the Slum Act. It is the claim of the Petitioners that since 1910, they have been residing on this piece of land. The earlier owner's name is referred in paragraph no.3 of the petition and it is stated that he abandoned the property. Nobody has come forward to collect any rent nor

anybody maintained the property. The structures thereon were neglected and the Petitioners were deprived of basic amenities such as road, electricity, water, toilets, bathrooms etc. Then it is stated in paragraphh 4 that one Abdulla Khan Sabat Khan, owner of Plot No.93-94, Survey No.530, on 26 November 1975 gave his no objection for providing the basic amenities. The survey in relation to this property is referred to and the declaration of the property as slum on 24 June 1976 as evidenced by Notification, a copy of which is at Annexure-B. It is stated that Respondent no.3 issued a notice on 13 July 1976 to the earlier owner Abdullah Khan. He was given time of 30 days to file an appeal against the notification declaring the area as slum. A reminder notice was also given. A reference to the same is made extensively in petition from paragraphs 6 onwards. Thereafter the appointment of competent authority has been made and it is stated that after the Notification dated 30 September 1978, Annexure-F, the acknowledgement thereof has not been attributed to the said Abdullah Khan but to the original owner. Then a reference is made to the notification published in official gazette on 2 November 1978. It is then stated that the original owner claimed that he has provided all basic amenities. It is stated that once the notification became final as none challenged it, from the year 1976 till 2012, then, that declaration of slum could not have been altered or done away with.

5. The Petitioners were shocked and surprised when they received a notice from the Court of Small Causes at Mumbai stating that one Motilal Jain who is respondent no.7 to this writ petition, has filed eviction proceedings against some of the Petitioners claiming to be the owner of the property. The said Mr.Jain placed reliance on a registered conveyance of 9th November 1993. It is stated that Mr.Jain averred in the proceedings particularly in the suit that the Slum Tribunal has passed a judgment on 15 November 1995 allowing the appeal against the declaration/notification declaring the property as slum. The Tribunal, therefore, set aside the notification and remanded the matter back to the competent authority for proper enquiry. It is stated that the claim of ownership by Mr.Jain and the proceedings in Appeal No.38 of 1995 would not enable cancellation of the pitch cards/photo pass issued in favour of the Petitioners. That is how the order at Annexure-O dated 5 February 2007 has been challenged.

6. The Petitioners' Advocate sought to raise several contentions. She would firstly submit that the Petitioners had no knowledge of such proceedings and which resulted in the slum declaration being set aside. Secondly, the Petitioners have no knowledge of Respondent no.7 Mr.Jain taking over the property. The Petitioners also have no knowledge of unilateral cancellation of the pitch cards/photo pass. Therefore, there is

grave injustice and serious prejudice caused to the Petitioners. They deserve to be protected and by intervention of this Court.

7. We find that none of the reliefs that are claimed, can be granted and upon careful perusal of the petition and annexures. Admittedly a petition had earlier been filed in this Court wherein the Petitioners had raised same grounds as in the present petition. Indeed the Petitioners had raised same pleas, but this Court permitted them to obtain copies of relevant documents by approaching competent authorities. We find that the Petitioners' counsel then engaged did not press any of other challenges but requested the Court that the Petitioners are seeking copies of orders and papers and proceedings in which the pitch cards were cancelled. Cancellation of pitch cards affects their interests and, therefore, they are entitled to get these documents. They rested the case only on this request and this Court directed the concerned authorities that copies of relevant documents, papers and proceedings be provided to the Petitioners and this Court disposed of the said writ petition with liberty to the Petitioners to file any other proceedings after receipt of the documents.

8. The Petitioners' counsel would submit that pursuant to such liberty and after obtaining the required documents, this writ petition has been filed.

9. In that regard, we have perused the typed copy of the order of Slum Tribunal in Appeal No.38 of 1995. There the declaration has been challenged and the appeal was filed under sub-Section 3 of Section 4 of Slum Act. The declaration was challenged on the ground that the appellant in that appeal had no preliminary notice and no opportunity to appear before the competent authority and to make submissions about lack of basic amenities. The appeal is admittedly filed by Mr.Jain. The Slum Tribunal was of the opinion that the Respondents could not produce any record proving service of preliminary notice on the appellant. Since there was no such record, the Slum Tribunal accepted the contention of Mr.Jain and set aside the order on the limited ground. The declaration insofar as it relates to Mr.Jain's property, was set aside.

10. We find that the Petitioners in the earlier round and in Writ Petition No.1083 of 2014 filed in this Court, and in the present petition, did not press for the reliefs. Though the prayer clause is not seeking specifically quashing or setting aside the Tribunal's order, all the averments in the writ petition filed earlier are identical to the one raised before us. When all reliefs could have been claimed or pressed but the Petitioners did not do so, then, in this further round, they cannot expect the Court to come to their rescue or assist them. The liberty granted by this Court is not to file another writ petition. Thus, the present proceedings are entirely misconceived and not maintainable.

The pitch cards were cancelled by an order copy of which is annexed to the petition as Annexure-O, at pages 283 to 285. That says that Petitioner no.1 Prabhavati Kale was issued a pitch card/photo pass by the Deputy Collector, Encroachment Removal, Dharavi Division, Mumbai City pursuant to a survey of the slums and in terms of the applicable policy in 2000. However, in the light of the order of Slum Tribunal dated 13 December 1995 and since the property is no longer a slum, that pitch card/photo pass cannot be termed as valid any longer. Therefore, the pitch cards/photo passes were cancelled.

11. It is, therefore, apparent that relying on the order dated 13 December 2005 that the photo passes have been cancelled. Admittedly, the Petitioners did not challenge that order by proceedings known to law. They only filed a writ petition before this Court and that too in 2014. From the year 1995 till 2014, the Petitioners did not take any steps to get the order of Slum Tribunal quashed. They also did not take any steps to cancel a registered conveyance in favour of Mr.Jain. That conveyance is of 9th November 1993. Merely because the Petitioners are claiming to be poor and illiterate, does not mean that this Court should assist them repeatedly. There is no explanation muchless reasonable and satisfactory for this enormous delay. The Petitioners having knowledge of public documents such as registered conveyance and advised to file writ petition in this Court in the year 2014, could have very well

taken resort to appropriate proceedings earlier. If they were slum dwellers residing on the property and were aware of the notification published in the official gazette from time to time, the notice published in terms of statutory powers of the statutory authorities, then nothing prevented them from questioning them earlier.

12. The present proceedings are, therefore, not maintainable, being barred by delay and laches. We cannot, therefore, assist the Petitioners in our extraordinary and discretionary jurisdiction under Article 226 of the Constitution of India. None of the precedents brought to our notice can have any application simply because the same were rendered in the peculiar facts and circumstances of those cases. In the present case, the delay is gross, enormous and unexplained. The petition is, therefore, dismissed.

(S.C.DHARMADHIKARI, J.)

(B.P.COLABAWALLA, J.)