

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

WRIT PETITION NO.1891 OF 2009

Ramesh Balchand Rathod

...

...Petitioner

v/s.

Municipal Corporation for

Gr.Mumbai & Anr.

...Respondents

...

Mr.S.P.Srivastava for the Petitioner.

Mr.A.Y.Sakhare, Sr.Advocate with Ms.K.H.Mastakar for the Respondent-BMC.

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CORAM : A.A. SAYED, J.

DATED : 3 JULY 2015

P.C.

The challenge in this Petition is to the order dated 18 May 2009 passed by the Respondent No.2-Asst.Municipal Commissioner H/East Ward, Mumbai. The operative part of the impugned order reads as under:-

“ ORDER

The documents submitted by the Petitioner are not in Petitioner's name Shri Ramesh Kumar B. Rathod to consider alternate accommodation claim i.e. Photopass is not in the name of Shri Ramesh Kumar B. Rathod. Hence he is not eligible for alternate accommodation.

Therefore, the Petitioner is not considered as eligible for any alternate accommodation.”

2. The grievance of the Petitioner in the Petition is that though his shop was demolished by Respondent No.1-Corporation for the purpose of road widening and other similarly situate shop owners were allotted equivalent alternate shops in lieu of their demolished shops, the Petitioner has not been allotted alternate shop. The Petitioner had initially filed a Writ Petition being Writ Petition No.269 of 2009, which was disposed for on 2 March 2009 by recording a statement of the learned Counsel for the Respondent-Corporation that they will examine the matter and pass appropriate orders. Pursuant thereto, on 18 May 2009, the impugned order came to be passed, the operative part whereof has been reproduced in para 1 hereinabove.

3. The issue for consideration in the Petition is thus essentially whether the Petitioner is entitled to alternate accommodation as per the Government Policy, which grants protection to structures existing prior to 1 January 1995. The Petitioner has ,*inter alia*, relied upon Registration Certificate of Establishment issued on 21 April 1994 under the Bombay Shops & Establishments Act, 1948. Prima facie, the said document itself suggests that the premises which was occupied by the Petitioner existed prior to 1 January 1995. The Inspection Report dated 12 April 1994, at the time of issuance of Establishment Certificate, which has been placed on record by the Respondent-Corporation (and marked "X" for identification) clearly

states- "Verified and found correct except Column No.10- The premises is in physical possession of the present owner at the time of visit". The Shops & Establishment Certificate indicates the nature of business as "sale of Readymade garments and the date of commencement of business is 1 April 1994. The said Establishment is in the name of "M/s.Shakti Stores" and the name of the Petitioner is shown as an employer. Though it is alleged in the Petition that the premises admeasuring 10 x 18', the learned Counsel for the Petitioner fairly states that the Petitioner ready to accept commercial area admeasuring 10 x 12', as stated in the Advocate's notice and as stated in the Affidavit of Shri Kishore L. Patel, who was the previous owner as reflected at page 36 of the Petition. By making an endorsement in the registration Certificate that "This is merely a Registration Certificate and not a licence and it does not by itself bestow any legality on the structure or confer any right on the employer so far the date and time of existence of the structure in which this ship/establishment is located" would not absolve the Respondent-Corporation of its obligation to provide alternate premises. The policy of the Government is to grant protection to structures prior to 1 January 1995, irrespective of legality thereof. The Petitioner has been running from pillar to post right since 2009 seeking allotment of alternate commercial premises after his commercial structure was demolished. Pertinently the impugned order records that the photo-pass is not in the

name of the Petitioner, which indicates that the existence of the structure prior to 1 January 1995 is, really speaking, not disputed. Prima facie, the policy of the Government grants protection to the structure, irrespective of the subsequent transfers of the structures. Nothing is discussed in the impugned order on this aspect.

4. Having considered the facts and circumstances of the case, in my prima facie view, the Petitioner has been unjustly denied of his right to alternate commercial premises. Having regard to the facts and circumstances of the case, I pass the following order:

- (i) The impugned order of the Asst.Municipal Commissioner, H/East Ward is set aside.
- (ii) The Dy.Municipal Commissioner, Zone-III, Mumbai shall examine the case of the Petitioner afresh, without being influenced by the earlier orders.
- (iii) Learned Counsel for the Petitioner states that the Petitioner will appear before the Dy.Municipal Commissioner, Zone-III on 3 August 2015 at 11 a.m. with a covering letter alongwith copy of this order and the copy of the Petition, when necessary directions as to hearing may be issued by him.
- (iv) The Dy.Municipal Commissioner shall hear the Petitioner and pass a speaking order on the eligibility of the Petitioner for alternate commercial structure after examining all the documents.

- (v) The Petitioner would be at liberty to furnish further documents in support of his case.
 - (vi) The Dy.Municipal Commissioner shall also examine the photo-pass, which has been relied upon by the Petitioner, and whether the policy of the Government protects the structure itself irrespective of subsequent transfers.
 - (vii) The Dy.Municipal Commissioner shall take decision as expeditiously as possible and in any case within a period of twelve weeks from 3 August 2015.
5. The Petition is disposed of in the aforesaid terms.

(A.A. SAYED, J.)