

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.1443 OF 2016
WITH
CIVIL APPLICATION (STAMP) NO.4655 OF 2016

Anant Atmaram Shirsekar.] ... Petitioner

Versus

Deputy Collector (Encroachment and Eviction)]
and Competent Authority.] ... Respondent

Mr. Balasaheb R. Deshmukh for Petitioner.

Ms. Aparna Vhatkar, AGP, for State.

Mr. Rupesh Lanjekar for Proposed Respondent-M/s. Sagar Developers.

CORAM :- M. S. SONAK, J.

DATE :- FEBRUARY 16, 2016

P. C. :-

1. The challenge in this petition is to the order dated 27/01/2016 made by the Additional Collector (Encroachment and Eviction), Western Suburb.

2. The events which transpired on 03/02/2016 have been set out in the order made on 03/02/2016. Thereafter, Mr.Thakur Surendrasingh Yashwantsingh, Naib Tahasildar (Encroachment & Removal), Andheri, Mumbai, has filed an affidavit-in-reply in which he has stated that the eviction commenced at around 11.54 a.m. In

the affidavit, some photographs have been annexed which, *prima-facie*, support the statement made by the affiant. In these circumstance and also in view of the order which is proposed to be made in the main petition, there is no necessity to pursue the matter further insofar as the events which transpired on 03/02/2016.

3. Mr. Balasaheb Deshmukh, learned Counsel for petitioner, has submitted that the impugned order is virtually non-speaking insofar as determination of the petitioner's eligibility of obtaining permanent alternate accommodation on the basis that the petitioner was occupying the premises which have since been demolished for the purposes of development, for residential as well as commercial purposes. He submitted that until this issue is sorted out, the petitioner cannot be asked to vacate the transit accommodation. For these reasons, he submitted that the impugned order dated 27/01/2016 warrants interference.

4. The submissions of Mr. Deshmukh that the petitioner cannot be evicted from the transit accommodation until the issue as to whether the original premises held by him were used for composite purposes or not, cannot be accepted. Any determination upon the said issue is quite irrelevant to the issue as to whether the petitioner can insist upon continuing in the transit accommodation. The record indicates that the petitioner has already been awarded permanent alternate accommodation on the basis that he was using the previous premises only on residential basis. Therefore, it is not as if the

petitioner is going to be left in a lurch. At the highest, if it is ultimately determined that the petitioner was using the earlier premises for the composite purpose of residence and commerce, the petitioner may be entitled to certain further benefits under the scheme. For that purpose, the petitioner cannot insist to continue in the transit accommodation. Accordingly, that portion of the impugned order which directs the eviction of the petitioner from the transit accommodation, requires no interference whatsoever.

5. In fact, the petitioner, in para 15 (F) of his petition, has himself made a without prejudice averment which reads thus :-

“Without prejudice to the aforesaid contentions the Petitioner herein is ready to shift from transit accommodation to the permanent alternate accommodation without prejudice to the rights and contentions and subject to the decision of the Appeal/ Complaint filed by the Complainant before the Respondent herein. Hence, interference of this Hon'ble is necessary.”

6. Mr. Deshmukh thereafter submitted that directions be issued to the Additional Collector to dispose of representations dated 06/05/2008, 27/05/2008 and 31/05/2008 in the matter of determining whether the petitioner was using the previous premises for composite purposes. At this stage, there is no question of issuing any direction for the disposal of the said representations. Further, it is to be noticed that the petitioner himself requested the Additional Collector, who is the Appellate Authority, to decide the issue of his eligibility in the context of composite user. This is evident from the

reading of the impugned order and the circumstance that the petitioner placed on record certain documents in respect of his claim. The representations, therefore, stand disposed of by the impugned order.

7. However, the impugned order has brushed aside all the documents produced by the petitioner by merely observing that the documents produced do not support the theory of composite user. There is no discussion whatsoever in the impugned order on this aspect. There are not even minimal reasons set out as to why the documents produced by the petitioner are either irrelevant or do not support the case put forth by him. To that extent therefore, Mr.Deshmukh is right in contending that the impugned order is non-speaking.

8. On the aforesaid short ground, the impugned order, to the extent it rejects the petitioner's claim for eligibility on the basis of composite user, is hereby set aside. The matter is remanded to the Additional Collector for fresh determination in accordance with law and on its own merits. Whatever decisions the Additional Collector may arrive at, should be backed by at least some minimal reasons.

9. Accordingly, Rule is made absolute to the aforesaid extent only. It is clarified that the impugned order, insofar as it directs the eviction of the petitioner from the transit accommodation, is not interfered with. In fact, the petitioner is already evicted from the

transit accommodation. The *status-quo* order granted on 03/02/2016 is hereby vacated. The Additional Collector is, however, directed to re-decide the issue of petitioner's eligibility in the context of his claim of composite user, as expeditiously as possible and in any case, within a period of three months from today.

10. The petitioner to implead M/s. Sagar Developers as party-respondent to the proceedings before the Additional Collector. The Additional Collector to afford opportunity of hearing to M/s. Sagar Developers as well in pursuance of the remand made by this order.

11. All contentions of all parties are left open.

12. Civil Application (Stamp) No.4655 of 2016 by which M/s.Sagar Developers seeks intervention in this petition, does not survive and the same is also disposed of.

13. The learned AGP states that the articles seized from the transit accommodation which was earlier occupied by the petitioner, have been handed over to Om Siddhivinayak Society, in terms of the panchanama at pages 59 and 61. The petitioner is at liberty to obtain the said articles from the society.

14. All concerned to act on basis of authenticated copy of this order.

(M. S. SONAK, J.)