

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 2050 OF 2016

Manigandan P. Chettiar

.. Petitioner

vs.

State of Maharashtra and anr.

.. Respondents

Mr. B.P. Shukla for the Petitioner.

Ms Aparna Vhatkar, AGP for Respondents

CORAM : M. S. SONAK, J.

DATE : 18 FEBRUARY 2016.

P.C. :-

1] The challenge in this petition is to the order dated 8 February 2016 made by the Additional Collector (Encroachment/Removal), Eastern Suburbs, Mumbai Suburban District, Mumbai, dismissing the Petitioner's appeal against the notice dated 5 February 2016 issued by the Competent Authority.

2] Mr. Shukla, learned counsel for the Petitioner, has submitted that the order dated 25 May 2012 purportedly made in Petitioner's Appeal No. 372 of 2011 was never communicated to the Petitioner and therefore, there was no question of the Petitioner challenging the same. That apart, Mr. Shukla pointed out that the suit structure is located upon MHADA land and consequently, the Competent Authority has no jurisdiction to issue the impugned notice dated 5 February 2016, requiring the Petitioner to demolish the suit

structure. Mr. Shukla also pointed out that the suit structure is indicated in the city survey record and further, in terms of revised policy formulated by the State of Maharashtra vide Government Resolution (G.R.) dated 16 May 2015, the structure of the Petitioner is a protected structure and the Petitioner is entitled to benefits. For all these reasons, Mr. Shukla submits that the impugned order warrants interference under Article 227 of the Constitution of India.

3] The record indicates that on 21 December 2010, the show cause notice was issued to the Petitioner requiring the Petitioner to show cause as to why action in terms of Section 3-Z(2) of the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971 (Slum Act) be not initiated against the Petitioner's structure. The Petitioner filed response on 22 December 2010, but before any orders could be passed thereon, the Petitioner instituted an appeal before the Divisional Commissioner, Konkan Division being Appeal No. 1562 of 2010. This appeal was disposed of by the Divisional Commissioner on 23 December 2010, directing the Competent Authority to pass necessary order after hearing the Petitioner and by following due process of law. It was also made clear that no adverse action be taken against the Petitioner until, the

Competent Authority disposes of the show cause notice dated 21 December 2010, by making an appropriate order thereon.

4] The Competent Authority, thereafter, upon due compliance of natural justice and fair play has made an order on 31 March 2011 holding that the structure of the Petitioner is not protected and that the Petitioner is also not entitled to any benefits of SRA schemes.

5] The Petitioner, claims that thereafter the Petitioner instituted an Appeal bearing Appeal No. 372 of 2011 before the Divisional Commissioner, Konkan Division in order to impugned the order dated 31 March 2011. The appeal memo, is not produced on record. However, the Petitioner has placed reliance upon handwritten stay order granted by the Divisional Commissioner on 5 April 2011. This order, had directed the maintenance of *status quo* and had also noted the contention of the Petitioner that the suit structure is on MHADA's land. This handwritten note, makes it clear that the next date of hearing would be 13 April 2011.

6] It is the case of the Petitioner that the Petitioner has never been communicated any orders made in Appeal No. 372 of 2011

instituted by the Petitioner. However, on 5 February 2016, the Competent Authority threatened the action against the Petitioner. The Petitioner, therefore, instituted yet another Appeal No. 1 of 2016 before the Additional Collector under Section 35 of the Slum Act. By the impugned order dated 8 February 2016, this appeal has been dismissed, *inter alia* by observing that the Petitioner's Appeal No. 372 of 2011 has already been disposed of by the order dated 25 May 2012 and in absence of any challenge to the said order, the Petitioner is not entitled to any reliefs or protection.

7] At this belated stage, it is not possible to accept the Petitioner's contention with regard to non-communication of the order dated 25 May 2012 disposing of the Petitioner's Appeal No. 372 of 2011. From the stay order dated 5 April 2011, upon which the Petitioner has placed reliance, it is quite clear that the next returnable date was indicated as 13 April 2011. In the petition, there are no averments with regard to the Petitioner attending the office of the Divisional Commissioner either on 13 April 2011 or on certain subsequent dates that may have been granted in the appeal. The learned counsel for the Petitioner orally submits that the Petitioner made efforts to trace the records, but the records are not available in the office of

the Divisional Commissioner, since records have been transferred to some office in New Bombay. In this regard, it is required to be noted that the Petitioner again instituted an appeal, obtained ad-interim relief and thereafter not pursue the matter at all. After five years, the Petitioner cannot contend that he has no knowledge about the proceedings instituted in the appeal by him and that final orders made therein have never been communicated to him. The Petitioner was duty bound to pursue the appeal with due diligence and only thereafter, could have made any complaints with regard to failure of communication or failure in compliance with the principle of natural justice and fair play. In these circumstances, it is not possible to award the Petitioner any premium for the apparent lack of diligence in a matter of pursuing his appeal.

8] As noted earlier, in the entire petition, there is nothing set out as to the efforts undertaken by the Petitioner right from 5 April 2011 till the receipt of notice dated 5 February 2016, in relation to Appeal No. 372 of 2011. In absence of any such averments, it is not possible to give any credence to the submission made across the bar that the Petitioner was indeed pursuing the matter.

9] At this stage, there is no question of considering the so called challenges to jurisdiction being raised by the Petitioner. Similarly, at this stage, it is not possible to consider the effect of policy formulated in G.R dated 16 May 2015, insofar as the Petitioner's structurer and the Petitioner's case is concerned.

10] Ms Aparna Vhatkar, learned AGP for the Respondents, has pointed out that the Petitioner has claims to have purchased the suit structure by executing Affidavits and Power of Attorneys dated 1 February 1997, 2 May 1998, 29 March 2008, 14 October 2008, 25 May 1994 and 22 August 1998. If this is true, then all this, also reflects of the entitlement of the Petitioner. The protection under Slum Act is basically extended to the occupants of the slum before the datum line. The protection, is not available to the purchasers after datum line or purchasers, who purchased such structure only for the purposes of obtaining the benefits of various SRA Schemes. All these are only *prima-faie* observations. The Petitioner is basically not entitled to any relief in this petition for want of challenge to the order dated 25 May 2012 by which the Petitioner's appeal was dismissed. The Petitioner is not also entitled to any relief, as the Petitioner was not at all diligent in pursuing his own appeal.

11] For the aforesaid reasons, this petition is dismissed. There shall, however, be no order as to costs.

(M. S. SONAK, J.)

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