

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 2966 OF 2014

Vishwas Laxman Jadhav

.....Petitioner

V/s.

Pune Municipal Corporation and Ors.

.....Respondents

* * * * *

Mr. Pravartak Pathak, Advocate for the petitioner.

Mr. Abhijit P. Kulkarni a/w. Mr. Manoj Badgujar Advocate for respondents no.1 and 2.

CORAM :- SMT. R.P. SONDURBALDOTA, J.

DATED :- 15TH JULY, 2016.

P.C. :-

1). This petition challenges the order dated 30th September, 2013 passed by the District Court, Pune on Civil Appeal No. 198 of 2013 preferred by the petitioner under Section 81(f) of the Maharashtra Municipal Corporation Act, 1949 ("the said Act" for short). By that appeal, the petitioner challenged eviction order dated 24th January, 2013 passed by the Assistant Municipal Commissioner (Slum Rehabilitation), Pune Municipal Corporation under Section 81(B)(1) of the said Act.

2). The brief facts leading to the present petition are that, the Pune Municipal Corporation is the owner of the land at Survey

No.100/101. It had raised construction of single tenements chawl to be provided to the persons of poor strata of the society, particularly to the Wadar community. That colony has since been known as Wadarwadi Colony N.11, Chawl. No.33. The petitioner is an occupant of Room No.136 of the said chawl which admeasures 640 sq.ft ("the said premises in question"). Pune Municipal Corporation had allotted the said premises to one, Durgaram Hulgoji. The allotment conferred only a right to occupy the said premises and the premises were not transferable. It was subject to condition that the allottee would not increase the area of the room or sublet the same to anybody. Despite, these conditions of allotment Durgaram Hulgoji, by the agreement dated 1st June, 1972 transferred the premises to the petitioner and the petitioner has been occupying the same since then. Not just that, but he has had made encroachment on the front and the rear side of the room. Since the petitioner is a trespasser in respect of the said premises, the respondents issued notice dated 29th March, 2011 under Section 81(b) of the said Act to him. He was also served with the notice of hearing which was conducted on 6th September, 2012. On 24th January, 2013 order of eviction of the petitioner was passed. Being aggrieved by that order, the petitioner preferred Appeal No. 198 of 2013 before the District Court. That appeal came to be dismissed by the order impugned in the present petition. The contentions taken up by the petitioner before the Competent Authority and the District Court were that, his occupation in the said premises has been long standing and since he also belongs to the Wadar community, his occupation cannot be treated as illegal. He also claims to be a member of the family of the

original allottee, Durgaram Hulgoji. The Courts below have held that, the allotment of the premises to Durgaram Hulgoji was subject to specific condition of non-transferability. Therefore, the occupation of the petitioner by transfer from Durgaram Hulgoji cannot be held to be authorised or legal. Since the occupation of the petitioner is illegal, mere long standing occupation cannot legalise the same. Also the fact that the petitioner belongs to the same community i.e. Wadar community, cannot help him.

3). There is no dispute that the allotment of the premises to Hulgoji was subject to the condition of non-transferability. Further, there is also no dispute about the encroachment carried out by the petitioner. In the circumstances, there is no infirmity in the concurrent findings of the Courts below. Hence, the petition is dismissed.

(SMT. R.P. SONDURBALDOTA, J)