

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 6790 OF 2012

Bachnu Ghanoo Yadav. ... Petitioner.

V/s.

The Executive Engineer, Housing Bandra
Division, Maharashtra Housing & Area
Development Authority.

... Respondent.

S.M.Gorwadkar, Senior Advocate i/b. Direndra Mishra for the petitioner.

Mrs.Geeta Mulekar for the respondent.

CORAM : A.S. OKA AND C.V.BHADANG, JJ

DATED : 22nd February 2016.

PC. :

Heard the learned senior counsel appearing for the petitioner. The petitioner was claiming to be the tenant of one Zoroastrian Radih Society in respect of the land admeasuring 375 sq.meters bearing Survey No.33 and CTS No.10 of village- Oshiwara, Taluka- Andheri, Jogeshwari (West), Mumbai. The petitioner filed S.C.Suit No.7536/1993 in the City Civil Court at Mumbai. The suit was decreed on 23rd September 2002. Following is the operative part of the decree:

- “1. The Suit is decreed with costs.
2. The defendants, their servants and agents are perpetually restrained from taking possession of

the suit property from the plaintiff without following due process of law.”

It appears that on the basis of the said decree, proceedings of eviction of the petitioner were initiated by the Competent Authority under the Maharashtra Housing and Area Development Act, 1976 (for short “MHADA”). A notice was served to the petitioner on 26th March 2007 under sub-section (2) of section 66 of the MHADA Act. The notice was given on the ground that the petitioner has made unauthorised construction of a structure on the land vested in MHADA. The order of eviction was passed by the authority under sub-section (1) of section 66 of the MHADA Act. An appeal was preferred against the said order before the Appellate Authority by the petitioner. By the judgment and order dated 17th July 2007, the said appeal was dismissed. The appellate authority observed that the petitioner has not produced any document to show that he is an authorized occupant. It is also observed that the structure is illegal. Being aggrieved by the aforesaid two orders, the present petitioner filed Writ Petition No.5640 of 2007. The learned single Judge of this Court by the judgment and order dated 24th August 2007 dismissed the said petition. The learned single Judge confirmed the concurrent findings of both the authorities that induction of the petitioner in the property was not lawful and was not traceable to any authority of the owner.

2. The petitioner filed review application seeking review of the order passed in the aforesaid writ petition. The review application came to be dismissed. A Civil Application No.2650/2007 was filed for

restoration of the review application in which a prayer was made that time to vacate be granted. The said Civil Application No.2650/2007 was dismissed in default. Thereafter Civil Application No.1039/2008 was filed by the present petitioner for restoration of the said Civil Application. In the said Civil Application, the petitioner gave an undertaking to vacate the property which was the subject matter of the order of eviction. A reply was filed to the said civil application by Shri Abhimanyu Kale, Joint Chief Officer of MHADA, a regional unit of MHADA. Paragraph-2 of the said affidavit reads thus:

“2. I say that the Petitioner has undertaken to vacate and hand over peaceful and vacant possession of the premises in dispute on or about 11th October, 2007. The Respondent has agreed to take possession thereof. The Petitioner has also prayed that he be rehabilitated in the adjoining Redevelopment Scheme by providing him 4 shops each of 225 sq.ft. Carpet area in lieu of the area hitherto occupied by him. I say that the Petitioner was apparently in possession of the premises in his occupation prior to 1995. He may be accommodated in the said scheme accordingly and maybe allotted the shops of an area of not more than 225 sq.ft. Carpet area each in accordance with the guidelines issues by the government to MHADA in respect thereof, subject to the approval of this Hon'ble Court. The estimated time for completion of the said scheme is about 18 months from its commencement. However, since the Petitioner has unconditionally agreed to take vacant physical possession to the Respondents, he would not be granted any transit accommodation in respect thereof. Hence this Affidavit.”

In view of the said affidavit, Civil Application No.1039/2008 was disposed of vide order dated 28th April 2008.

3. In the present petition, a grievance was made that the assurance given in the aforesaid affidavit has not been complied with. An affidavit has been filed in the present petition by Shri Sudhir Patil, Executive Engineer of MHADA stating that the Joint Chief Officer was willing to consider the case of the petitioner for eligibility for allotment of a premises. Accordingly, the petitioner appeared before the said officer and produced the documents. Thereafter, an order dated 23rd March 2015 was passed by the Joint Chief Officer. Under the order dated 17th June 2015 this Court set aside the said order dated 23rd March 2015 as no reasons were recorded by the Joint Chief Officer. Accordingly, directions were given to the Joint Chief Officer to hear the petitioner and pass a reasoned order. In terms of the said direction, an order dated 6th August 2015 has been passed by the Joint Chief Officer. The said order holds that the documents produced by the petitioner shows that he is only in possession of one structure admeasuring 33.75 sq.meters. There was no evidence to prove eligibility for four shops as claimed by him.

4. This order dated 6th August 2015 has been challenged in this petition by carrying out amendment. The learned senior counsel appearing for the petitioner invited our attention to the assurance contained in the affidavit of Shri Abhimanyu Kale which was filed in Civil Application No.1039/2008. He submitted that the impugned order dated 6th August 2015 does not refer to the contents of any of the 13 documents which were produced by the petitioner before the Joint Chief Officer. He urged that the assurance contained in the affidavit of Shri Kale has not been complied with in its true letter and spirit. His submission is that the

documents on record show that the petitioner was in possession of an area of 375 sq. meters and the said fact has not been taken into consideration by the Joint Chief Officer. He urged that merely because the name of the petitioner is included in the in Annexure-II issued to the adjoining society for implementing the rehabilitation scheme, the petitioner cannot be deprived of alternate accommodation in lieu of the area of 375 sq.meters.

5. We have considered the submissions and we have perused the affidavit of Shri Abhimanyu Kale dated 23rd October 2007. We have already reproduced paragraph-2 of the said affidavit. If the said paragraph-2 is considered in its entirety, the assurance was to consider the case of the petitioner for allotment of four shops each having 225 sq.ft. of carpet area. There is no positive assurance to allot four shops to the petitioner.

6. The learned senior counsel appearing for the petitioner has placed on record a compilation of documents which were produced before the Joint Chief Officer. We have perused the said compilation. We have also perused the copy of the plaint in S.C.Suit No.7536/2003 filed by the petitioner in the City Civil Court. In the plaint, the petitioner has not claimed that he was having four shops on the land having an area of 375 sq.meters bearing CTS No.10 of village- Oshiwara. On the contrary, in paragraph-3, there is a specific pleading that the petitioner had constructed one structure on the said land and a part of which is being used for the purpose of stable. In the said suit, a licence granted to the petitioner has been annexed. The said licence has been granted for

keeping the cattle. We have perused the order dated 15th May 1982 passed by the Additional Tahasildar (N.A.) Andheri. It notes that on the area of 375 sq.meters, there was a structure admeasuring 80 sq.meters. The petitioner relied upon the order made under section 145 of Code of Criminal Procedure, 1973 by the learned Metropolitan Magistrate, Andheri. Even the said order does not refer to the existence of four shops. The judgment of the City Civil Court dated 23rd September 2002 does not refer to the existence of four shops and, in fact, it was not even the case made out by the petitioner in the suit that he was having four shops

7. The petitioner is relying upon the order dated 6th August 1994 passed by the Small Causes Court on the interim notice taken out by the petitioner in R.A.D. Suit No.4996/1986. The said order makes it clear that the petitioner was claiming to be in possession of the land admeasuring 375 sq.meters out of CTS No.10 and that there is one structure thereon.

8. The observation made by the Joint Chief Officer in the impugned order dated 6th August 2015 is that the petitioner failed to prove that he was in possession of four shops. As per the norms of the Slum Rehabilitation Scheme, the name of the petitioner has already been included in the Annexure-II issued to the Seva Co-operative Housing Society and the petitioner is held eligible for allotment of premises having a carpet area 33.75 sq.meters for the commercial use which is the maximum entitlement under the Slum Rehabilitation Scheme.

9. In absence of any documentary evidence to show that the petitioner was having four shops on the land bearing CTS No.10, we cannot find fault with the impugned order passed by the Joint Chief Officer. No case for interference under writ jurisdiction is made out. The writ petition is rejected.

(C.V. BHADANG, J)

(A.S.OKA, J)