

Sequeira

*IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION*

WRIT PETITION NO. 9308 OF 2016

M/s.Wahid Rashid and Company

... Petitioner

Vs.

Municipal Corporation for Greater
Mumbai & ors.

... Respondents

Mr.Dubey S.Kamta, for the Petitioner.

Mr.Vinod Mahadik, for Respondent - BMC.

***CORAM : N.M.Jamdar, J.
Tuesday, 30 August 2016.***

P.C. :

By this petition, the Petitioner challenges the order passed by the City Civil Court, Mumbai dated 12 July 2016 in Appeal No.43 of 2016 arising out of the proceedings under Section 105(B) of Mumbai Municipal Corporation Act, 1888.

2. The dispute pertains to plot No.59 Deonar, Govandi. The Petitioner was allotted a plot for development and establishing an ancillary industry to the Deonar Abattoir under a Lease deed for a period of 60 years on 30 October 1985, subject to the conditions stipulated therein. On the ground that the Petitioner did not develop the property or set up an industry as stipulated in the lease, a notice for eviction was issued on 1 July 1995. From 1 July 1995, the

Petitioner litigated in the courts and authorities, and finally an order of eviction was passed on 30 March 2001. The order was challenged in appeal and it was set aside and the matter was remanded, to give fresh hearing to the Petitioner. Thereafter the Enquiry Officer passed an order on 26 April 2016. Appeal was filed by the Petitioner which has been rejected by the impugned order.

3. The learned counsel for the Petitioner submitted that an application was made by the Petitioner for cross-examination which was rejected and immediately the impugned order was passed by the Enquiry Officer. The learned City Civil Court Judge, has noted the conduct of the Petitioner that he took a risk in not appearing before the Enquiry Officer and pursuant to the time-bound direction the Enquiry Officer had to complete the proceeding. Apart from this position, the Petitioner had an adequate opportunity to put forth his case in the appeal as well as in this Court. It has to be kept in mind that the proceedings under Section 105(B) of the Act are summary proceedings and are not akin to a civil trial.

4. As regards the contention of the Petitioner that the Petitioner has carried out substantial development, the factual finding rendered is against the Petitioner. On their own showing the Petitioner has not set up any industry but at the most, by his own case, set up only a compound wall. This cannot be considered as a development which is contemplated under the policy under which land was allotted. The Petitioner was under obligation to develop the premises. Merely by

erecting the compound wall, which is also in dispute, the object of the policy in giving such lands on lease for industrial development, is clearly nullified by the Petitioner. In the circumstances no error can be found in the order passed by the learned City Civil Court Judge and the Enquiry Officer. No case is made out for interference. The Writ Petition is accordingly rejected.

5. The learned counsel for the Petitioner at this stage, seeks continuation of the interim order granted on 8 August 2016. This order of status-quo is continued for a period of six weeks. It however needs to be noted that the learned City Civil Court Judge, has recorded a finding of fact that the possession has been taken by the Corporation on 24 September 2002.

(N.M.Jamdar, J.)