

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

WRIT PETITION NO.10105 OF 2015

Kiran Kashinath Patil : Petitioner.
Versus
Municipal Corporation of Greater Mumbai
and ors. : Respondents.

Mr. A R Pitale for the Petitioner.
Mr. Vinod Mahadik for the Respondents-Corporation.

CORAM : R. M. SAVANT, J.
DATE : 19th September 2016

P.C.

1 The writ jurisdiction of this Court under Article 227 of the Constitution of India is invoked against the order dated 30/04/2015 passed by the learned Judge of the Sixth Labour Court, Mumbai by which order the Complaint (ULP) No.208 of 2010 filed by the Petitioner came to be dismissed.

2 The Petitioner herein is the heir of one Ragho Krishna Patil who was owning lands bearing Survey Nos.13/1, 84A and 84B in village Mahap Dist. Thane. The said Ragho Krishna Patil is the grand father of the Petitioner, and also the grand father of one Sandip Gajanan Patil who is the paternal cousin of the Petitioner. It seems that the said Ragho Krishna Patil expired in the year 1965 pursuant thereto the name of the father of the Petitioner i.e. Kashinath, and the name of the father of the said Sandip i.e. Gajanan along with the other heirs of the said Ragho Krishna Patil came to be mutated vide

Mutation Entry No.277 dated 15/11/1968 to the said lands in question. The said lands came to be acquired by the Respondent-Corporation for laying its pipeline, and Award in respect of the said acquisition bearing LAQ/SR/29 dated 10/06/1968 came to be passed. It seems that the Respondent – Corporation with a view to rehabilitate the persons from whom the lands were acquired came out with a policy for appointment of persons from the category of project affected persons. The said policy/guidelines are comprised in the circular dated 03/04/2008. The said circular in so far as appointment from the joint families are concerned postulates that persons comprising joint family would be deemed as one unit and that a person from the said unit would be entitled to appointment as a project affected person. The said policy came to be clarified by the circular dated 08/12/2009 wherein the aforesaid clarification was issued. The said policy/guidelines contemplate an application for appointment as a project affected person to be accompanied by the list of family members belonging to the person from whom the land was acquired as also the No Objection of the other family members in respect of appointment of the applicant. It seems that the applicants under the said category were subjected to a test before their appointment.

3 The Petitioner accordingly appeared for the test and submitted his testimonials for appointment as a project affected person in terms of the said policy. The Petitioner was accordingly issued appointment letter dated

13/10/2008 appointing him in Class IV category on probation. It seems that prior thereto the Petitioner's paternal cousin Sandip Gajanan Patil was also given appointment as a project affected person for acquisition of the same lands i.e. lands bearing Survey No.13/1/, 84A and 84B. As indicated above the father of the said Sandip i.e. Gajanan is the brother of Kashinath i.e. the father of the present Petitioner. It seems that an enquiry was conducted by Hydraulics Department of the Respondent – Corporation in which enquiry it was revealed that for the acquisition of the same lands i.e. Survey Nos. 13/1, 84A and 84B two appointments have been made i.e. one in the name of the present Petitioner and second in the name of the said Sandip Gajanan Patil who is the Petitioner's paternal cousin. Since the Petitioner was appointed as a probationer, the Petitioner's service came to be terminated by the order dated 09/12/2010. On the Petitioner's service being terminated the Petitioner filed the instant Complaint (ULP) No. 208 of 2010 alleging unfair labour practice under Items 1(a), (b), (d) and (f) of Schedule IV of the MRTU and PULP Act 1971. Under the said Complaint the Petitioner narrated the facts antecedent to his said appointment. It was the case of the Petitioner that since he had completed 240 days of service in a calender year, he had attained permanency and therefore his services could not be terminated without following the due process of law. It was the case of the Petitioner that his services were terminated without even hearing him.

4 The Respondent – Corporation filed its Written Statement. The sum and substance of the case of the Respondent – Corporation was that the Petitioner had obtained the said appointment by fraud and misrepresentation. It was the case of the Respondent – Corporation that the Petitioner had not disclosed in his application that his paternal cousin Sandip Gajanan Patil has already been appointed as a project affected person under the policy of the Corporation for the acquisition of the same lands for which acquisition the Petitioner had sought the appointment as a project affected person.

5 On the basis of the above pleadings, the learned Judge of the Labour Court framed issues amongst which was the issue as to whether the termination of the Petitioner was legal and proper. It seems that the Respondent – Corporation justified the termination by leading evidence in the Court. On the basis of the material on record, the learned Judge of the Labour Court dismissed the complaint. The gist of the reasoning of the Labour Court was that since the appointment of the Petitioner was on account of fraud and misrepresentation having regard to the fact that more than one appointment was sought as project affected person, though the scheme contemplates that family be taken as one unit, the Labour Court held that the said fraud vitiates the appointment of the Petitioner and even if no enquiry was held the termination was justified. However, the learned Judge of the Labour Court in so far as the said aspect was concerned held that since the Respondent

Corporation had led evidence in the Court in respect of the termination of the services of the Petitioner, the requirement in law has been satisfied by the Respondent Corporation. The learned Judge of the Labour Court has referred to catena of judgments which were cited before him by either of the parties for and against their respective assertions. However, as indicated above, the order of the Labour Court is revolving around fraud and misrepresentation which vitiated the appointment of the Petitioner.

6 The learned counsel appearing for the Petitioner Shri A R Pitale would seek to reiterate the case of the Petitioner before the Labour Court as regards the manner in which the services of the Petitioner were terminated. The learned counsel for the Petitioner would contend that the interpretation of the Labour Court in respect of the said Scheme is not proper and according to the learned counsel each member of the family of the original land owner is entitled to appointment under the said Scheme.

7 In my view, it is not possible to accept the said contentions of the learned counsel for the Petitioner having regard to the findings of fact recorded by the Labour Court. In so far as the interpretation of the Scheme is concerned, it would have to be borne in mind that the Scheme has to be construed having regard to its object. The relevant clause of the said Scheme as indicated above contemplates all male members of the joint family from whom land is acquired

to be treated as one unit. In the instant case it is required to be noted that the acquisition was completed in the year 1968. It seems that thereafter the names of the sons of the said Ragho Krishna Patil were mutated vide Mutation Entry No.277. The said fact of the names being mutated would be of no avail to the Petitioner to claim more than one appointment in the category of project affected person. The learned Judge of the Labour Court has adverted to all the aforesaid facts and thereafter has deemed it appropriate to dismiss the complaint.

8 In my view, the order passed by the learned Judge of the Labour Court does not suffer from any error of jurisdiction or any other illegality or infirmity for this Court to exercise its writ jurisdiction under Article 227 of the Constitution of India. The above Writ Petition is accordingly dismissed.

9 Needless to state that if any application is made in terms of the requirements of the Scheme wherein No Objection etc of all the family members is obtained and only one appointment is sought, the said application would then be considered by the Respondent Corporation on its own merits and in accordance with law.

[R.M.SAVANT, J]