

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

WRIT PETITION NO.10627 OF 2015

Gurmukh Pahlajrai Kukreja and ors. : Petitioners.
Versus
Ulhasnagar Municipal Corporation & ors. : Respondents.

Mr. J S Chandnani for the Petitioners.
Mr. Vijay D Patil for the Respondent Nos.1 and 2.
Mr. S D Rayrikar, AGP, for the Respondent No.4.

CORAM : R. M. SAVANT, J.
DATE : 30th March 2016

P.C.

1 The writ jurisdiction of this Court is invoked against the order dated 30/05/2012 passed by the Sub-Divisional Officer, Ulhasnagar by which order the Petitioners' claim for allotment of alternate site has been rejected.

2 Though the impugned order has been passed as long as back on 30/05/2012, the instant Petition has been filed only on 04/09/2015 i.e. almost after a period of 3 years and 4 months of the order being passed. The explanation for the delay, if any, is contained in paragraph 20 of the Petition. The said explanation does not meet the requirement of sufficient cause being shown by the Petitioners for the said huge delay. Hence the above Petition challenging the order passed as long as back on 30/05/2012 suffers from delay and laches and is required to be dismissed on the said ground.

3 Since by the impugned order the Petitioners' application for allotment of alternate site has been rejected, this Court has ventured to consider the above Petition on merits also.

 The Petitioners are the heirs of one Avatibai Pahelajrai Kukreja. The said Avatibai it seems had purchased the structure in question which was a shop some time in the year 1986. The said structure was coming within the widening of the road in question and was therefore required to be demolished for the purposes of road widening by the Municipal Corporation of Ulhasnagar. This happened in the year 2003. After the Petitioners' structure was demolished it seems that the Petitioners approached the Ulhasnagar Municipal Corporation for allotment of alternate site. In view of the said approach of the Petitioners, a letter came to be issued by the Commissioner of the Ulhasnagar Municipal Corporation dated 25/10/2015 to the effect that the Petitioners' structure has been demolished as it was coming within the road widening and the Sub-Divisional Officer was requested to consider the request of the Petitioners for allotment of alternate site under the Displaced Persons (Compensation and Rehabilitation) Act, as according to the Commissioner it was his belief that the Petitioners were entitled to such allotment under the said Act. On the ground that the said request of the Petitioners was not being considered by the Sub-Divisional Officer, Ulhasnagar, the Petitioners filed a Writ Petition in this Court being No.728 of 2011. The said Writ Petition came to be disposed of by the Division Bench of this Court by the order dated

07/03/2012 and the Division Bench directed the Sub-Divisional Officer to consider the request of the Petitioners in terms of the letter of the Commissioner of Ulhasnagar Municipal Corporation. It is in terms of the said direction that the request of the Petitioners was considered and the Sub-Divisional Officer, Ulhasnagar has by the impugned order dated 30/05/2012 rejected the said application of the Petitioners. The said request has been rejected on two fold grounds viz. that the Petitioners lay a claim to the said suit shop on the basis of the sale deed dated 28/04/1986 and therefore the said shop being Unit No.120, Sheet No.11 was in the occupation of the Petitioners i.e. the Applicants after 11/05/1965. The second reason mentioned is that no proceedings filed by the Petitioners were pending on the date of the repeal of the Displaced Persons (Compensation and Rehabilitation) Act, 1954 and therefore in terms of the interim stay granted by the Apex Court in Special Leave to Appeal (Civil) No.6703 of 2008, the Petitioners request could not be acceded to. As indicated above it is the said order dated 30/05/2012 passed by the Sub-Divisional Officer, Ulhasnagar Division, Ulhasnagar which is taken exception to by way of the above Petition.

4 The learned counsel for the Petitioners based his contention as regards the entitlement of the Petitioners on the policy decision of the State Government as contained in the Circular of the State Government dated 09/03/2013 which is annexed to the above Petition as Exhibit-A. The said

Circular governs the manner in which the application for regularization of the encroachment on Government land by the Displaced Persons is to be carried out. The cut off date for the structures is 11/05/1965. There are various contingencies which are mentioned in the said Circular and for which remedial measures have been suggested in the said Circular. In the instant case, however, it is required to be noted that the Petitioners' claim to have purchased the structure in the year 1986 and it is not the case of the Petitioners that they were in possession of the said structure since prior to 11/05/1965. It is also required to be noted that the Petitioners till their structure was demolished in the year 2003 had not approached the authorities for regularization of the structure under the said policy. Therefore it necessary leads to an inference that the Petitioners were not entitled to any such regularization as otherwise there was no reason for the Petitioners in not approaching the authorities after they purchased the structure in the year 1986.

5 Be that as it may, a perusal of the averments in the Writ Petition filed by the Petitioners before a Division Bench of this Court being No.728 of 2011 would disclose that the claim of the Petitioners for allotment of alternate site is based on the demolition of the structure of the Petitioners by the Ulhasnagar Municipal Corporation for road widening and it is not based on the policy of the State Government as contained in the said Circular dated 09/03/1983. In fact there is not a whisper in the Writ Petition as regards the

provisions of the Displaced Persons (Compensation and Rehabilitation) Act or the said Circular dated 09/03/1983. On behalf of the Petitioners much store was sought to be laid on the letter of the Commissioner of the Ulhasnagar Municipal Corporation. The said letter of the Commissioner can be said to be recommendatory letter as it has been stated in the said letter that it is the belief of the Commissioner that the Petitioners would be entitled to allotment of alternate site under the Displaced Persons (Compensation and Rehabilitation) Act. Obviously the observation of the Commissioner cannot bind the Sub-Divisional Officer, Ulhasnagar who is exercising the powers under the Displaced Persons (Compensation and Rehabilitation) Act. It is also required to be noted that the consideration of the application under the Displaced Persons (Compensation and Rehabilitation) Act is now restricted in terms of the interim order passed by the Apex Court in Special Leave to Appeal (Civil) No.6703 of 2008 only in those matters in which the proceedings were pending on the date of the repeal of the said Act. In the instant case in so far as the Petitioners are concerned, no proceedings were pending before the Sub-Divisional Officer, Ulhasnagar under the Displaced Persons (Compensation and Rehabilitation) Act on the cut off date. Hence the order passed by the Sub-Divisional Officer, Ulhasnagar even on merits does not merit any interdiction at the hands of this Court in its writ jurisdiction. Hence both on the ground of delay and laches as also on merits the above Writ Petition is dismissed.

[R.M.SAVANT, J]