

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Writ Petition NO. 11129 OF 2015

Shri. Dhananjay Gaikwad

...Petitioner

Versus

The Pune Municipal Corporation

And Ors

...Respondents

....

Mr.Abhijeet Anturkar i/b. Mr.Rushikesh Barge, Advocate for the
Petitioner.

Mr. Abhijit P. Kulkarni, Advocate for Respondents No.1 to 3.

....

CORAM : R. G. KETKAR, J.

DATE : 17th NOVEMBER, 2016

P.C.

1. Heard Mr.Abhijeet Anturkar, learned Counsel for the petitioner and Mr.Abhijit Kulkarni, learned Counsel for respondents No.1 to 3, at length.

2. By this Petition under Article 227 of the Constitution of India, the petitioner has challenged the order dated 24.12.2014 passed by the Deputy Municipal Commissioner, Slum Removal and Rehabilitation of Pune Municipal Corporation as also the judgment and order dated 5.10.2015 passed by the learned District Judge, Pune in Civil Appeal No.25/2015. By these orders, the petitioner is ordered to vacate Room No.7/54 in Vadarwadi colony No.11 in the proceedings initiated under Section 81-B of the

Maharashtra Municipal Corporation Act (for short, 'Act').

3. In support of this Petition, Mr.Anturkar strenuously contended that the Deputy Municipal Commissioner as also the learned District Judge have committed serious error in passing the impugned orders. He submitted that the petitioner has not sub-let the suit premises in favour of Shri Maruti Nama Patole. Shri Maruti Patole is his uncle and as such it cannot be said that the petitioner has sub-let the suit premises in his favour. He invited my attention to (1) receipt issued towards the payment of licence fees, (2) ration card, (3) marriage registration certificate, (3) identity card issued by Election Commission of India, and (4) electricity bill to contend that the petitioner has not parted with the possession and is in fact actually residing therein.

4. On the other hand, Mr.Kulkarni supported the impugned orders. He has taken me through the impugned orders and submitted that the authorities below have concurrently held that the petitioner has unlawfully sub-let the suit premises in favour of Shri Maruti Patole. He also invited my attention to the order dated 15.7.2016 passed by this Court (Coram: Smt.R.P. Sondurbaldota,J.) in Writ Petition No.2966/2014 instituted by Vishwas Laxman Jadhav against the Corporation. He submitted that the petitioner in that petition and the petitioner in the present

petition are identically situated.

5. Mr. Kulkarni also relied upon order dated 30.9.2014 passed by this Court [Coram:Ranjit More,J.] in Writ Petition No.3710/2014. This Court gave time to vacate the suit premises to the petitioner subject to filing usual undertaking. He submitted that as the Petitions raising identical issues are dismissed and the authorities below after appreciating the material on record passed the impugned orders, no case is made out for invocation of power under Article 227 of the Constitution of India.

6. I have considered rival submissions advanced by learned Counsel appearing for the parties. I have also perused the material on record. Perusal of the order passed by the Deputy Municipal Commissioner shows that while passing the impugned order, the Deputy Municipal Commissioner has considered the inspection reports submitted by the Officers of the Corporation. During the course of inspection it was found that the petitioner is not residing in the suit premises and Shri Maruti Patole is residing along with his family. The Deputy Municipal Commissioner, therefore, held that the petitioner has unlawfully sub-let the suit premises to Shri Maruti Patole and accordingly passed order.

7. Aggrieved by that decision, the petitioner preferred appeal which was dismissed by the learned District Judge.

In paragraph-18, the learned District Judge considered the explanation offered by the petitioner and noted that for taking care of petitioner's ailing mother, Maruti Patole is occupying the suit premises and secondly after the death of his mother the suit premises is occupied by Maruti Patole. In paragraph-19, the learned District Judge also noted that the respondents called upon the petitioner to produce documentary evidence about his relationship with Maruti Patole, but, the petitioner did not produce any document. As far as the threats of Bhartiya Kranti Sena are concerned, except bare words there is no evidence. The learned District Judge also observed that if at all there were threats to the occupants of the Municipal Corporation, there will be at least some report or complaint to the police authority. No such evidence is produced by the petitioner during the course of enquiry.

8. Mr.Anturkar submitted that the inspection carried out by the officers of the Corporation was one sided. It is not possible to accept this submission. The Authorities below after considering the material on record have concurrently found that the petitioner has unlawfully inducted Shri Maruti Patole in the suit premises. The learned District Judge also observed that the enquiry was conducted by giving reasonable opportunity to the petitioner and thus there is no violation of principles of natural justice.

9. Writ Petition No.2966/2014 was instituted by a person who is identically situated as the petitioner in the present petition. Said Petition was dismissed by this Court on 15.7.2016. For all these reasons, no case is made out for invoking power under Article 227 of the Constitution of India. Hence Petition fails and the same is dismissed.

10. At this stage, Mr. Anturkar orally prays for stay of this order for a period of four weeks. Mr. Kulkarni opposes this prayer on the ground that present Petition is instituted on 27.10.2015 and all along there is no interim order. In view thereof, oral application for stay is rejected.

(R. G. KETKAR, J.)

Deshmane (PS)