

Sequeira

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

WRIT PETITION NO. 420 OF 2016

Ms. Laila Nadar.

.. Petitioner

Vs

The Secretary,

Indira Nagar, Rahiwasi Seva

Sangh Sant Dnyaneshwar Marg & ors. .. Respondents

Mr.Sandeep S.Koregave, for the Petitioner.

Mr.Santosh S.Pathak, for Respondent No.2.

Mr.Shyam B.Mohite i/b Mr.Jagdish G.Reddy, for Respondent No.3.

***CORAM : N.M.Jamdar, J.
Tuesday, 18 October 2016.***

P.C. :

The Petitioner challenges the order passed by the learned City Civil Court, Judge, Dindoshi dated 19 November 2015, rejecting the Chamber Summons taken out for amendment of the plaint.

2. The Petitioner has instituted various proceedings against Respondents in respect of the subject matter in the suit. Suit no.1536 of 2006 is filed on 4 April 2006 in respect of the structure which was stated to be in possession of the Petitioner. On 10 April 2006, an ad-interim order was passed wherein order of status-quo

was directed. On 20 May 2006, the proceedings taken out before the competent authority under section 33 and 38 of the Maharashtra Slum Area (Clearance, Improvement and Redevelopment) Act 1971, were dismissed. Thereafter the suit structure was demolished in May 2006. In September 2007 Contempt proceedings were filed. Contempt petition was dismissed by the learned City Civil Court Judge. Thereafter appeal from order was filed by the Petitioner which was dismissed for default. An application for amendment was moved in the year 2014 which was withdrawn and thereafter another amendment application was moved in the year 2015 seeking to place on record factum of demolition which has occurred in the year 2006. By the impugned order learned City Civil Court Judge has rejected the application for Chamber Summons.

3. The learned counsel for the Petitioner submitted that the Petitioner had changed various advocates and she had not been guided properly and the demolition took place in contravention of the order of status-quo. He submitted that no prejudice will be caused if the amendment is allowed. Firstly, the factum of the demolition has taken place in the year 2006. The present application for amendment was moved in the year 2015, earlier amendment application of the year 2014 was withdrawn. If the demolition had taken place there was no impediment for the Petitioner to move the application immediately. It cannot be that the Petitioner would pursue all other forms of remedies including that of

contempt, but does not choose to amend the plaint to seek redressal of the grievance. Furthermore, as far as the right of the Petitioner as an eligible slum dweller, an order has been passed in May 2006 holding the Petitioner eligible. This order has been reiterated on 24 August 2015. The Petitioner has not pursued the challenge to the eligibility, which will determine her right in the property. Therefore, the Petitioner is only trying to pursue the Contempt Petition so as to force Respondents to accept the claim of the Petitioner without either amending the plaint in time or taking out substantive proceedings. The Petitioner has engaged in various proceedings and has dragged the Respondents in the Civil Court as well as in this Court. Appeal from order has been dismissed for non-prosecution. It cannot be that the Court will keep in mind only the interest of the Petitioner ignoring judicial time spent in the litigation instituted by the Petitioner, which could be spent on redressing the grievance of the other litigants. Thus, if the Petitioner wanted the relief in the suit the Petitioner ought to have moved the amendment at the earliest. As far as the claim of the Petitioner as an eligible slum dweller is concerned, it is open to the Petitioner to pursue the challenge if the same challenge is available in law. It is also open to the Petitioner to pursue the contempt petitions if they are maintainable. In backdrop of the litigation and the conduct of the Petitioner, it cannot be said that the order passed by the learned City Civil Court Judge in not granting amendment after lapse of ten years

can be stated to be perverse use of discretion. With the clarifications which are given in respect of the right of the Petitioner as above, the Writ Petition is disposed of.

(N.M.Jamdar, J.)