

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**ORDINARY ORIGINAL CIVIL JURISDICTION****WRIT PETITION (L) NO.520 OF 2016**

Ajmal Ismail Shaikh : Petitioner
v.
The State of Maharashtra and anr. : Respondents

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Mr. Mayur Khandeparkar a/w Mr. Omkar K. Shaikh for the Petitioner.
Mr. M.P. Jadhav, AGP for Respondents.
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CORAM : M. S. SONAK, J.

DATE : FEBRUARY 24, 2016

P.C.:

1. The challenge in this petition is to the orders dated 14/10/2013 and 06/01/2016 made by the Deputy Collector (Encroachment / Removal), Competent Authority and the Additional Collector (Encroachment / Removal), Competent Authority, Western Suburb, and Appellate Authority, ordering demolition of the said structures, on the ground that they are unauthorised by exercising its power under Section 3Z(2) of the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971 (the Slum Act).

2. Mr. Khandeparkar, learned counsel for the petitioner, has submitted that the petitioner in response to the Show Cause Notices dated 08/08/2013 submitted a reply dated 14/08/2013 and alongwith the said reply, the petitioner had also submitted a necessary documents in relation to the said structures. Mr. Khandeparkar submitted that the said documents were not at taken into consideration by the Deputy Collector. He further submitted that the Additional Collector (Appellate Authority), at the stage of consideration of

appeal, failed to take into consideration the Government Resolution (G.R.) dated 16/05/2015 as also, the several documents produced by the petitioner, which entitled the petitioner to benefit of said G.R. dated 16/5/2015.

3. Mr. Khandeparkar submitted that the Additional Collector has denied the benefit of G.R. dated 16/5/2015 to the petitioner, by merely observing that the Deputy Collector, who is otherwise competent authority under the G.R. dated 16/5/2015 to decide the issue of eligibility, has already held that the said structures are illegal and unauthorised. Mr. Khandeparkar submitted that this is not proper because at the stage when the Deputy Collector took such decision in his order dated 14/10/2013, the G.R. dated 16/5/2015 was not even in existence and therefore, the petitioner was not expected to submit documents, which would entitle the petitioner the benefits of G.R. dated 16/5/2015.

4. Finally, Mr. Khandeparkar submitted that on the basis of documents produced on record by the petitioner before the Deputy Collector and the Appellate Authority, the said structures would never have been regarded as illegal or unauthorised. For all these reasons, he submitted that action under Section 3Z(2) of the Slum Act was uncalled for and the impugned orders dated 14/10/2013, and 6/1/2016, warrant interference.

5. Mr. M.P. Jadhav, learned AGP appearing for the respondents, has pointed out that the two Authorities have recorded the concurrent findings of fact and held that the said structures are illegal and unauthorised. He further submitted that the petitioner has neither been candid nor consistent with the case set out by him. In the reply, to the show cause notices, there was no defence taken. All that was stated that the documents are being submitted alongwith the reply. In fact, no documents were submitted alongwith the reply. There is total variance with the case set out in the appeal memo and the present petition. There is no clarity as to the precise number of structures held

by the petitioner. There is no clarity in the documents produced by the petitioner before the Appellate Authority. Each of the documents make reference to different sites and consequently, there is nothing to co-relate the documents with the said structures. He submitted that is quite clear that the said structures are illegal and unauthorised and therefore, action was rightly taken under Section 3Z(2) of the Slum Act.

6. Mr. Jadhav, in the context of G.R. dated 16/5/2015, submitted that even now, the petitioner has not produced any documents, which, the G.R. prescribes as documents that can be considered for determining eligibility. Mr. Jadhav pointed out that the petitioner claims to have purchased the said structures by virtue of Agreements of Sale dated 14/03/2005 and June 2013. He submits that even these documents were never produced before the Deputy Collector or the Additional Collector. He submits that it is questionable whether such Agreements of Sale can at all entitle the petitioner to the benefits of G.R. dated 16/5/2015, as, the purpose of G.R. is to extend the benefit to genuine slum dwellers and not to enable the parties who purchased the properties in slum areas to thereafter trade on the basis of same. He submits that the petitioner has put-up or in any case, acquired some alleged interests in the said structures, which are patently illegal and unauthorised with the sole objective of claiming certain benefits of re-development under the Slum Act. For all these reasons, the learned AGP submits that the petition warrants dismissal by imposition of exemplary costs.

7. Upon hearing the learned counsel for the parties and perusal of the material on record, in my judgment, there is no case made out to interfere with the impugned orders, which have recorded concurrent findings to the effect that the said structures are illegal and unauthorised. Besides, the conduct of the petitioner is such as disentitles him to any equitable reliefs under Articles 226 and 227 of the Constitution of India.

8. The petitioner, in his reply dated 14/8/2013 in response to the show cause notices dated 8/8/2013, has neither stated anything about the said structures nor has he demonstrated as to why the said structures can be regarded as legal or authorised. The reply merely states that some documents have been submitted alongwith the reply. There is neither any list of such documents nor is there any reference to the documents in the reply. The Authorities have denied receiving any documents alongwith the reply. There is no reason to doubt the statement of the Authorities that there were no documents accompanying the reply. If, the petitioner had indeed submitted any documents alongwith the reply to establish the legality of the said structures, it is reasonable to expect that the petitioner would make some reference to such documents in the reply itself or at least furnish some list of the documents allegedly submitted. The reply merely states that all the documents in possession of the petitioner are being submitted without any reference, much less details regards such documents. The reply contains no defence whatsoever apart from the statement that the documents in possession of the petitioner are being filed alongwith the reply. In such circumstances, there is no reason whatsoever to fault the order dated 14/10/2013 made by the Deputy Collector in the present petition.

9. The petitioner, thereafter instituted an appeal before the Appellate Authority against the Deputy Collector's order dated 14/10/2013. The memo of appeal makes an interesting reading. The petitioner has been deliberately vague and far from candid, both with the authorities as also this Court. In the memo of appeal, the petitioner has expressed surprise at the issue of show cause notices dated 8/8/2013 to him. The petitioner, in the appeal memo, has stated that the petitioner's employer Smt. Sunanda Utekar is the original occupier of the said structure and the notice has been deliberately issued to the petitioner only to harass him. The petitioner has gone to the extent of stating

that he is not occupier of the said structure but his employer Smt. Sunanda Utekar is the original occupier of the structure. This appeal was instituted some time in January 2014. In the petition, it is the case of the petitioner that he had purchased these structures from Sunanda Utekar and Agarwal by Agreements of Sale 14/3/2005 and June 2013. This circumstance, if true, was suppressed by the petitioner in the memo of appeal. There was absolutely no reference to the so called purchase of the said structures from Sunanda Utekar and on the contrary, the statement was made that the petitioner is not even the occupier of the said structures. In fact, the appeal instituted by the petitioner deserved dismissal on the grounds of suppression and the misstatement. However, the Appellate Authority has entertained the petitioner's appeal, but dismissed the same on merits.

10. There is absolutely no case made out to interfere with the order dated 6/1/2016 made by the Appellate Authority. The Appellate Authority has taken into consideration the documents upon which the petitioner placed reliance. In regard to such documents, it is necessary to record that there are several discrepancies and inconsistencies. The addresses in the documents differ. There is no basis to co-relate the documents with the said structures. At some places in the documents, there is reference to structures at Juhu Galli, at other place there is reference to Khandeshi Mohalla. Besides, most of the documents do not relate to any date prior to the datum line. In these circumstances, there is no reason or case made out to fault with the order made by the Appellate Authority on 6/1/2016.

11. The petitioner, has not at all been candid insofar as the averments in the petition are concerned. In paragraph '2' of the petition, the petitioner has stated that prior to 2006, he was residing/carrying on business from structure admeasuring 8 x 12 sq.ft. Situated on land bearing CTS No. 208, Gilbert Hill Road, Andheri (West), Mumbai. Thereafter, the petitioner has pleaded that in

the year 2005, the petitioner purchased one structure from erstwhile owner Sunanda Tukaram Utekar pursuant to Agreement dated 14/3/2005. The petitioner has further pleaded that he purchased second structure in the year 2013 from one Baby Agrawal. The petitioner did not bother to annex the copies of such Agreement, but merely state that he craves leave of this Court to refer to and rely upon the said Agreements when produced. These averments, give an impression that the petitioner is concerned with three structures. One, in which he that he resides/carries on business from prior to 2006 and two others, allegedly purchased by him from Sunanda and Baby by Agreement dated 14/3/2005 and Agreement of the year 2013. In the course of arguments, however, there was absolutely no clarity with regard to even the number of structures allegedly held or occupied by the petitioner.

12. In paragraph '3' of the petition, the petitioner has pleaded that despite there being two structures, the petitioner served with three notices dated 8/8/2013. It is pertinent to note that the original pleading was '*one single structure*'. However, the expression '*one single*' has been scored off and in its place, the word "two" inserted. Similarly, scoring off is visible in paragraph '3' of the petition. From all this, it is clear that the petitioner is not candid with the Court even with regard to the number of structures, in which, he claims interests in the slum area. The material on record indeed creates the impression that the petitioner is not some genuine or bonafide slum dweller, but rather, the petitioner is only interested in purchasing structures in slum areas with the view to obtain the benefits of slum rehabilitation schemes or in any case, to establish some sort of rights in the slum area, possibly, with a view to strike some bargains at the stage of implementation of slum redevelopment schemes. Curiously, as noted earlier, the petitioner had not made reference to Agreement dated 14/3/2005, by which, he claims to have purchased at least one of the structure from Sunanda Utekar. Rather, in the appeal memo, surprise was expressed by the petitioner, at the issue of notice to him instead of said

Sunanda Utekar. The petitioner has even gone to the extent of pleading that he was not even the occupier of the structure and the structure was occupied by the Sunanda Utekar. The petitioner of such nature, is certainly not entitled to any equitable relief in exercise of extra ordinary jurisdiction under Articles 226 and 227 of the Constitution of India.

13. The petitioner has not produced any material on record to establish that he has put-up said structures in the slum area prior to the datum line or that the documents and produced on record relate to the said structures. The petitioner has not even bothered to disclose the nature, number or the area of said structures. In the appeal memo, the petitioner has even denied being in occupation of the said structures, though, in the petition, a different case is sought to be pleaded. There is no consistency between the case set out by the petitioner in the memo of appeal as well as the present petition. All these are sufficient reasons to deny the petitioner any relief in these proceedings.

14. There is no substance in the contention raised by Mr. Khandeparkar that the Appellate Authority should not have relied upon the order of the Deputy Collector in the matter of extension of benefit of G.R. dated 16/5/2015 to the petitioner. Even though, the G.R. dated 16/5/2015 was not in existence when the Deputy Collector disposed of the show cause notices by his order dated 14/10/2013, it is reasonable to proceed on the basis that the petitioner, if indeed, possessed the documents to establish the legality of the structures, would have produced the same in response to the show cause notices. There is no appreciable difference between the documents that are required to be produced to establish legality of the structures and the documents which are required to be produced for claiming benefits under G.R. dated 16/5/2015. In any case, the documents produced by the petitioner alongwith memo of appeal, are not the documents as contemplated by annexure to G.R. dated 16/5/2015. Even in the course of arguments, the petitioner was not in a

position to produce any documents as contemplated by the annexure to G.R. dated 16/5/2015. That apart, the petitioner was not able to establish as to how the petitioner is at all entitled to benefit of G.R. dated 16/5/2015.

15. The purpose of issuing G.R. dated 16/5/2015 is certainly not to enable any parties to purchase properties in slum areas, as and by way of some real estate propositions. In the facts and circumstances of the present case, it is quite clear that the petitioner is merely interested in purchasing structures whether legal or not in slum areas and thereafter, to claim benefits of slum redevelopment. This is certainly not the purpose for which the benefits under G.R dated 16/5/2015 can be claimed. The petitioner has approached the authorities as well as this Court with inconsistent and contradictory claims. The petitioner , has been far from candid in the matter of full and effective disclosures. The petitioner has failed to establish the legality of the structures. For all these reasons, the petitioner is dis-entitled to any reliefs in this petition.

16. Considering that the petitioner, on the basis of patently false, contradictory and inconsistent pleas has succeeded in protecting the illegal and unauthorised structures in slum areas, it is only appropriate that he is saddled with some costs. Accordingly, this petition is dismissed with costs assessed at Rs.15,000/- (Rupees Fifteen Thousand). The petitioner to pay costs within a period of four weeks from today in the office of Deputy Collector (Encroachment/Removal) at Andheri.

17. This petition is therefore dismissed with costs as above.

18. All concerned to act on basis of authenticated copy of this order.

(M. S. SONAK, J.)