

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 2503 OF 2014

M/s. Midas Constructions	}	Petitioner
versus		
The State of Maharashtra	}	
and Ors.	}	Respondents

Mr. Kapil Moya with Mr. Sanjay Singh i/b.
Mr. Nitin P. Dalvi for the Petitioner.

Mr. P. G. Lad for Respondent No. 2.

Mr. Vijay D. Patil for Respondent No. 3.

CORAM :- S. C. DHARMADHIKARI &
G. S. PATEL, JJ.

DATED :- JANUARY 8, 2016

P.C. :-

1) By this Writ Petition under Article 226 of the
Constitution of India, the Petitioner prays for the following
reliefs:-

“(b) This Hon’ble Court be pleased to issue appropriate writ in the nature of Mandamus thereby directing the Respondent no. 2 to prepare and issue Annexure II as expeditiously as possible within time bound framework.

(c) This Hon’ble Court be pleased to issue appropriate writ in the nature of Mandamus thereby directing the Respondent no. 3 to expedite the process of issuance of Letter of Intent and all further permissions required for redevelopment in respect of project of S. R. A. at land bearing C. T. S. No. 3556 (Pt.) survey No. 265 at New Bhabrekar Nagar, Near Aakashwani, Ambujwadi, Malvani, Malad (w), Mumbai;”

2) The Petitioner claims to be a partnership firm carrying on business as builders and developers. Respondent No. 1 State, Respondent No. 2 Maharashtra Housing and Area Development Authority and Respondent No. 3 Slum Rehabilitation Authority are impleaded by the Petitioner on the footing that the land more particularly described in para 5 of the Petition is declared and notified as a slum. The Petitioner has been engaged by the slum dwellers, who have formed themselves into an association/proposed society. The Petitioner was appointed so as to develop the property and for rehabilitating the slum dwellers. Para 5 of the Petition proceeds on the footing that the Petitioner had taken steps to appoint an Architect and thereafter it submitted a proposal so as to enable the Respondents to start working on the scheme. The first step, according to the Petitioner, is preparation of Annexure - II. The society has submitted the list of members/hutments dwellers and they are stated to be 1321. Respondent No. 1 had demolished their huts. The Petitioner, possibly alerted by the fact that some other builders and developers are evincing interest in a huge tract of land in Mumbai, firstly instituted a Writ Petition in this Court. On that Writ Petition, the following order came to be passed by a Division Bench of this Court:-

“1] The petitioners merely seek an order directing the respondents to consider and decide the proposal submitted by them. The respondents are directed to consider the proposal.

2] We make it clear that this order does not create any right or equities in favour of the petitioners except to the extent of directing the authorities to consider the petitioners’ alleged proposal. The respondents state that a proposal has not even been received upto date. This is in fact the endorsement at the foot of Exhibit ‘A’. The respondents further state that even the annexure II has not been furnished. We do not wish to do anything more in the matter except to direct the respondents to consider the proposal in accordance with law. The application shall be considered in its turn. Even the maintainability of the application is left open.

3] The writ petition is, disposed of, accordingly.

4] As the petition has been disposed of, the chamber summons is, disposed of, accordingly.”

3) Now, this second Petition proceeds on the footing that after the first order, the Respondents before this Court earlier and now have not taken any steps. The Petitioner brought to the notice of the authority the order of this Court and reliance is placed on a document stated to be an Advocate’s notice. That states that the Petitioner’s application be decided for issuance of Annexure – II.

4) That was followed by another letter dated 16th September, 2013. Thereafter, the Petitioner claims to have obtained certain information under the Right to Information Act, 2005. The Petitioner’s information is that five proposals have

been dealt with by the authorities while its own proposal is kept pending.

5) We do not see how a Writ Petition and that too a second one on the same cause of action and for same reliefs can be entertained. The order passed on the first Writ Petition, as reproduced above, is clear. Merely because the Petitioner puts in some application or proposal without any legal right being established and proved, there is no obligation on any authority to consider it. This Court has clarified that the Petitioner has no right or equities in its favour. Yet, the order was passed directing the authorities to consider the proposal. Once the Petitioner has failed to establish any right, title or interest, save and except being engaged by the proposed society, who themselves are encroachers on public property, then, all the more we cannot assist the Petitioner in Writ Jurisdiction. As is well settled, the writ jurisdiction is equitable and discretionary. The Petitioner, therefore, cannot claim any such relief as can be granted in our equitable and discretionary jurisdiction. Hence, the Writ Petition is dismissed.

(G.S.PATEL, J.)

(S.C.DHARMADHIKARI, J.)