

AGK

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 1343 OF 2014**

Shreeprakash Ramganesch Dube	...Petitioner
<i>Versus</i>	
The Executive Engineer, Bandra Division, Maharashtra Housing & Area Development Authority & Ors.	...Respondents

Mr. Sanjiv A. Sawant, *with Mr. Samir Suryawanshi*, for the
Petitioner.
Mr. V.P. Sawant, *for Respondent Nos. 1 to 4.*
Mr. R.A. Thorat, Senior Advocate, *with Mr. H.C. Pimple*, for
Respondent Nos. 5 & 6-B.M.C.

**CORAM: S.C. DHARMADHIKARI &
G.S. PATEL, JJ.**
DATED: 27th January 2016

PC:-

1. By this Petition under Article 226 of the Constitution of India, the Petitioner challenges an order dated 9th April 2014 which has been passed by the Respondent No. 1. Some details would be required so as to appreciate the challenge to the order passed on 9th April 2014 and by amendment another order dated 29th May 2015.

2. The first order that is impugned is passed by the Maharashtra Housing & Area Development Authority (“MHADA” for short) whereas the latest one is that of the 6th Respondent, namely, the Assistant Commissioner, Municipal Corporation of Greater Mumbai, K-West Ward, Andheri (West), Mumbai 400 056.

3. The Petitioner claims that a structure admeasuring 15 x 25 square feet divided into two parts by a tin wall belonged to him. One part was used for Tea Canteen and another for residence. The Petitioner states that he was in possession of these premises situate at New Link Road, Oshiwara, Jogeshwari (West), Mumbai – 400102. He was in possession from 1980 and started the residential-cum-commercial user from 1985. The certificate issued under the Bombay Shops & Establishment Act, 1948 dated 10th August 1985 and renewal thereof are relied upon.

4. The Petitioner also relies upon a ration card issued by the rationing authority on 19th August 1982. The Petitioner also relies upon the entry in electoral roll for the year 1983 of Municipal Ward No. 97, Oshiwara, Jogeshwari (West), Mumbai. The Petitioner also

relies upon the Legislative Assembly electoral roll, a copy of which is at Annexure "E". The Petitioner relies upon a survey conducted by the State of Maharashtra which would evidence existence of the structure both in the year 1990 and 2000.

5. The Petitioner states that he applied for electric meter and in the meantime action was initiated by the MHADA for granting alternate accommodation to the residents of certain hutments, particularly where the Petitioner's structure is situate. The request made to the then Minister for Housing and the letter dated 5th December 1990 from MHADA directing the Petitioner to submit the documents like ration card, electoral roll etc so as to confer on him the benefit of a permanent alternate accommodation are other materials relied upon.

6. However, the Petitioner states that in the year 1986 or thereabout a link road was proposed. For that proposed road, certain structures were to be demolished and the Petitioner's structure was one of them. A notice to that effect dated 20th April 1992 is relied upon. The Petitioner states that prior thereto from

1987 to 1990 the entitlement of the Petitioner for alternate accommodation and the processing thereof would denote that there is no dispute that there a structure existed at site. That structure was proceeded against by the notice issued by the Municipal Corporation of Greater Mumbai, a copy of which is at Annexure “L” and traceable to Section 314 of the Mumbai Municipal Corporation Act, 1888. That is how Suit (L) No. 2784 of 1992 was lodged in the Bombay City Civil Court. A notice of motion therein bearing Notice of Motion No. 2376 of 1992 for ad-interim/interim relief and disposal thereof on 7th March 1998 is also pressed into service. The Petitioner states that an Appeal from Order bearing No. 352 of 1998 was filed in this Court and an order was passed on that Appeal from Order on 1st April 1998 granting liberty to the Petitioner to make a representation for allotment of alternative accommodation. The Petitioner asserts in paragraph 13 of the Petition that the Municipal Corporation had been directed to consider his request to the above effect. The copies of the order passed by this Court and a representation made on 13th April 1998 are relied upon. Then on 10th April 2001 a personal hearing was given to the Petitioner by the Deputy Municipal Commissioner,

Zone III, Mumbai and thereafter he made an order on 27th December 2001/3rd January 2002 directing the Petitioner to remove himself. Annexure "O" is a copy of this order. The Petitioner questioned this order and the averments in paragraphs 16 and 17 of the Petition fairly state that another Long Cause Suit No. 1002 of 2002 was filed in the Bombay City Civil Court. Even their the request for interim relief was refused and as made by the Petitioner. Even that order was questioned in this Court by filing an Appeal from Order No. 280 of 2002. That Appeal from Order was also dismissed on 1st April 2002 and this time the Petitioner states that he was granted liberty to approach the MHADA for allotment of alternate accommodation.

7. It is on the above averments and in the backdrop of such multiple legal proceedings that the Petitioner prays that the structure being in existence prior to 1st January 1995, all the beneficial and welfare schemes of alternate housing to the dishoused or those rendered homeless by public projects be extended to the Petitioner. The Petitioner does not dispute that for such a scheme to be applied, he would have to stand on the same

footing as another litigant in this Court being *Shantabai @ Nilo Babu Rathod v. The Commissioner & Ors. in Appeal (L) No. 140 of 2009 in Writ Petition No. 2616 of 2008*. The order made by this Court in this case is relied upon for claiming the same benefits on the basis of the above cut-off date. Then reliance is placed on the Government Resolution dated 11th July 2001 and several orders of this Court.

8. When the Petition was originally filed and with the above request and alleging that repeated directions of this Court as well did not lead to the Petitioner being in a position to obtain the above benefits, a Reply Affidavit came to be filed and which was by the MHADA. That the Reply Affidavit of its Deputy Engineer, Bandra Division states that on 9th April 2014 the Petitioner was rightly informed by the MHADA that the request as made cannot be accepted. The reason for not accepting the request is that the Petitioner claims to have been carrying on business on a piece or parcel of land on which the link road was proposed. This structure originally fell in the lay out of the MHADA. However, some time in the year 1990 this portion of the land partly fell on road and partly

on nullah. It was as a whole handed over to the Municipal Corporation for road widening. The land is, therefore, in charge of this authority and on which the road is constructed. MHADA is no longer concerned with this land and, therefore, it has no obligation to allot any alternate accommodation more so, when the entire action of demolition is by the Municipal Corporation. It is on this basis that the Petitioner amended the Petition and claimed that he had also approached the Municipal Corporation.

9. In that relation, he relies upon an order passed in this Petition. He states that order dated 6th May 2015 came to be passed after perusing not only the entire Petition but prior orders and this Affidavit of MHADA. This order enables the Petitioner to approach the Mumbai Municipal Corporation for a similar relief. That is how he made a representation and which was examined by the Assistant Commissioner, K-West Ward and he made an order thereon on 29th May 2015 holding that the Petitioner does not have any authorisation to prove existence of a structure on the Municipal Road/property. That is how this Petition came to be amended and to include the challenge to the Municipal Corporation's order.

10. Thus, we have an order passed on 9th April 2014 by the MHADA and we also have an order passed by the Municipal Corporation. Mr. Sanjiv Sawant appearing on behalf of the Petitioner would submit that both orders are passed pursuant to this Court's directions. In the MHADA's order dated 9th April 2014, a copy of which is at page 137, the reference is to be found to an order passed by this Court on 13th November 2013.

11. A representation was made on 27th September 2012 addressed to the Vice President and Chief Executive Officer of MHADA, Chief Officer of Mumbai Building Repairs & Reconstruction Board and there is a Office Letter dated 8th January 2014. Mr. Sanjiv Sawant would submit that when the Petitioner's structure is not in existence today it is very well to say for both authorities that it was partly on road and partly on nullah and, therefore, there is a jurisdictional issue. So long as the structure was forming part of lay out of MHADA it did not, in any manner, dispute the entitlement of the Petitioner. Though the portion of land on which it stood falls within the lay out, it was handed over to the Municipal Corporation does not mean that the Petitioner

should be made to run from one local authority to another. This approach deprives the Petitioner of an accommodation for his residence and his livelihood. Our attention is invited to the detailed representations. Our attention is also invited to the policy or measures where the State allots residential-cum-commercial or residential/commercial accommodation to those eligible persons who have put up any structure on a land within the local limits/ Municipal limits prior to the cut-off date, namely, 1st January 1995. Mr. Sawant would submit that once these structures including that of the Petitioner was in existence and came to be demolished by a notice under Section 314, the factum of its existence cannot be disputed. Therefore, now this Court should proceed on the footing that the municipal road being property of the Municipal Corporation at least that authority has the power to house the Petitioner.

12. Mr. Vishwajeet Sawant and Mr. R.A. Thorat, learned Senior Advocate appearing on behalf of MHADA and Municipal Corporation respectively relied upon their Affidavits.

13. Mr. Thorat, learned Senior Advocate elaborating his contention further would submit that in the instant case the doctrine of election would apply. The Petitioner is approbating and reprobating simply because on one hand he claims that he is entitled to approach the MHADA as the structure fell in its lay out. Thereafter, he relies upon a notice under Section 314 issued by the Municipal Corporation and the stand of MHADA so as to claim benefit of an alternate accommodation from the Municipal Corporation. However, he forgets that there was a prolonged legal battle. In that prolonged legal battle, he never succeeded. His structure was always termed as unauthorized and illegal. When those findings were rendered, he rested with a liberty and was satisfied with this Court's direction allowing him to approach firstly the Corporation and thereafter the MHADA. Those requests are also examined by the Corporation and there is no substance in them. All the contentions including the existence of the structure on the cut off date were examined and once these aspects were examined and the requests based thereon were not granted, then, in this round and in writ jurisdiction which is discretionary and equitable, the Petitioner cannot claim any relief.

14. Once the Corporation took this stand in its detailed Affidavit filed in this Court after its joinder on 18th January 2016, a rejoinder Affidavit has been filed by the Petitioner.

15. We have examined all these materials and carefully. We are mindful of the fact that a party like the Petitioner who had put up a structure, its existence having not been disputed because it was proceeded against for demolition by a statutory authority ordinarily, therefore, he could have requested for some beneficial scheme or relief so as to reside in Mumbai and carry on a small business as a source of livelihood.

16. However, what we have found from the entire record is that the Petitioner is really racking up a claim which, according to us, was founded on an action commencing in 1990. On the own showing of the Petitioner, there are conflicting claims. First, the Petitioner relies upon the fact that there was a lay out prepared by MHADA on 29th September 1997 and which was received by the Petitioner under the Right to Information Act. That shows that the Petitioner's structure was in existence. Then he relies upon the

documents which are produced, namely, ration card, the extract of electoral roll etc. to urge that there is a datum line and which is determined and which he satisfies in the present case. However, the Petitioner conveniently does not refer to the consequences of a notice under Section 314 of the Mumbai Municipal Corporation Act, 1888. These documents as are relied upon by him may be of some assistance had the Petitioner not been proceeded against under the above provision. That was for having obstructed or put up a hurdle in implementation of a decision of the Municipal Corporation to widen the existing road or to construct a link road. The new link road as proposed by the Corporation may have resulted in uprooting several hutments or persons from the site. All such persons did not choose to institute proceedings as were instituted by the Petitioner. The Petitioner relied upon the fact that a structure put up by him was not on any nullah nor was it an obstructing structure in any manner. That action commenced by filing a first suit which resulted in denial of interim relief and upholding of that order by this Court. In that round, the Petitioner was happy with a direction to approach the Municipal Corporation. Based on that liberty, the Petitioner did approach the Municipal

Corporation. The Municipal Corporation on that representation of the Petitioner passed a detailed order. That order and the findings therein make interesting reading. The Petitioner in the memo of Petition itself does not dispute that pursuant to the liberty granted by this Court he did approach the Municipal Corporation. He relies upon the fact that before the Deputy Municipal Commissioner, K-West Ward he had produced all the documents. The order dated 27th December 2001/3rd January 2002 directed the Petitioner to remove himself. A copy of that order is at Annexure "O". In that order, the Officer finds that the Petitioner's request is unacceptable. That is simply because the documents that are produced and each one of them having been scrutinized, the Petitioner's claim can be accepted provided the datum line and evolved as a policy by the Municipal Corporation is satisfied. That datum line is 1st April 1962. The Petitioner asserted that he was at site prior to this datum line but all the documents examined were subsequent in point of time. Hence, that request came to be rejected by this order and with a direction to the Petitioner to remove himself. This direction at pages 72-73 of the paper-book was once again a subject matter of another Suit and that Suit resulted in an adverse order against the

Petitioner. That adverse order was questioned in Appeal from Order No. 280 of 2002. This Court passed an order on 1st April 2002 dismissing that Appeal from Order but granting liberty to the Petitioner to approach the MHADA. The MHADA examined such a request and based on this direction but turned it down on 9th April 2014. That was turned down on the basis that the MHADA is no longer in control of the entire land and the portion on which the Petitioner's structure at one time existed came to be handed over to the Municipal Corporation.

17. We, therefore, cannot countenance the request of Mr. Sanjiv Sawant and to allow the Petitioner to fall back on another Scheme now evolved by the State so as to house and permanently those persons who have been displaced on account of a public project provided they prove the existence of their structure on or before 1st January 1995.

18. Now the argument is that the structure in any event was standing on 1st January 1995, therefore, a permanent alternate accommodation by MHADA from its own scheme or extending the

benefit of any State scheme be granted. This assertion is factually incorrect as the structure was not existing but demolished much prior to 1st January 1995. This is not a case where such of those persons who either encroached or were found in possession of a land on which the project or some scheme is implemented by MHADA need protection. That protection is extended by relying on the Government Resolutions and mainly to those dishoused as would enable the hutment dwellers to obtain a permanent alternate accommodation provided they were found in possession of an existing structure on 1st January 1995. If the Petitioner's case has to be equated with such persons, then, we do not see how the Petitioner can be so equated when above vital condition was not satisfied. He has taken a chance as he first approached MHADA and then the Corporation. Being unsuccessful throughout he will not be able to turn around and rely on altogether different scheme. The purport of the Petition may be that such schemes are in existence; that Government has passed several resolutions. However, if the Petitioner's prior litigation has to be completely ignored, then, that is not possible. It is that aspect which has weighed with the MHADA and even the Municipal Corporation.

Both having refused to extend any benefits to the Petitioner, we cannot assist him now in further rounds and in a Writ Petition under Article 226 of the Constitution of India. We are mindful of the fact that a liberty was granted to the Petitioner and that is how the Petitioner's representation dated 27th September 2012 was considered by the Municipal Corporation. That does not mean that the Petitioner reserved liberty also to obtain some benefit from MHADA. The court orders and especially of the highest Court in the State are not to be construed and interpreted in this manner. That would not render somebody assistance and to seek reliefs contrary to specific pleadings and the assertions or arguments based thereon.

19. We do not see, therefore, anything in the order passed by this Court earlier which would enable us now to direct MHADA or to the Municipal Corporation to extend any benefit to the Petitioner much less the State. As a result of the above discussion, we do not find any merit in the Petition and the same is dismissed.

(G. S. PATEL, J.)

(S.C. DHARMADHIKARI, J.)