

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

WRIT PETITION (L) NO.2311 OF 2016

Fahimuddin Sarafuddin Shaikh

..Petitioner

Versus

**Administrator and Divisional Commissioner,
Konkan Division, Mumbai and another**

..Respondents

Mr. Sanket Mungale for the Petitioner.

Mr. Milind More Additional GP for the Respondents.

CORAM : R. M. SAVANT, J.

DATE : 30th AUGUST, 2016

PC.

1 The writ jurisdiction of this Court is invoked against the order dated 05.11.2012 passed by the Administrator and Divisional Commissioner, Konkan Division, Mumbai, by which order, the Appeal filed by the Petitioner came to be dismissed and resultantly, the order dated 14.08.2012 passed by the Deputy Collector (Encroachment/Removal) and Competent Authority, Bandra came to be confirmed.

2 The Petitioner claims to have purchased the structure in question by an agreement dated 09.11.2012 i.e. after the order dated 05.11.2012 came to be passed. It is the case of the Petitioner that he was not aware of the said order dated 05.11.2012 and therefore could not challenge the said order and has therefore resulted in delay of about four years in challenging the said order. In so far as the predecessor of the

Petitioner is concerned, he appears to be one Rammilan Ramlakhan Sharma who had his structure on the plot of land in question. It seems that on 20.10.2010 a demolition drive was undertaken in Juhu Koliwada, Bhaiyawadi and pursuant to the said demolition drive an area of 11573 sq.mtrs. was made free of encroachment. The area was thereafter enclosed by a compound by the Mumbai Metropolitan Regional Development Authority i.e. MMRDA. Pursuant to the notice issued to the predecessor of the Petitioner i.e. said Rammilan Ramlakhan Sharma, he produced a number of documents i.e. electricity bill dated 05.06.2012, driving licence dated 27.08.2002, Power of Attorney executed in his favour by Kapurabai Rajkumar Chaudhary dated 10.06.2008, census report in the name of Kapurabai Chaudhary of the year 2005, the election card dated 17.03.1995, the voters' list predating 01.01.1995 and the ration card dated 06.01.1984. The documents were considered by the Competent Authority i.e. Deputy Collector (Encroachment/Removal) and on such consideration Deputy Collector (Encroachment/Removal) came to a conclusion that the said documents do not relate to the structure in question and Deputy Collector (Encroachment/Removal) also adverted to the fact that demolition was carried out on 20.10.2010, in which demolition the area of 11573 sq.mtrs. has been freed of encroachment and the said Rammilan Sharma has not been able to demonstrate that

the structure was beyond the said enclosed area. The Competent Authority accordingly made the notice absolute and issued directions under Section 3Z-2(4) of the Maharashtra Slum Areas (Improvement, Clearance And Redevelopment) Act, 1971, directing the predecessor of the Petitioner to remove the structure or the same would be demolished and the charges for the same would be recovered from the predecessor of the Petitioner.

3 The predecessor of the Petitioner aggrieved by the said order dated 14.08.2012 passed by the Competent Authority challenged the same by way of an Appeal before the Administrator and Divisional Commissioner, Konkan Division, Mumbai. The Appellate Authority adverted to the antecedent facts as above and reiterated the finding of the Competent Authority and accordingly confirmed the order passed by the Competent Authority and dismissed the Appeal by the impugned order.

4 The Learned Counsel appearing on behalf of the Petitioner would contend that the Petitioner is in occupation of the structure in question and that his predecessor had proved that the structure was in existence prior to cut of date i.e. 01.01.2000 and therefore was required to be protected.

5 In my view, it is not possible to accept the contentions urged on behalf of the Petitioner. It is required to be noted that the Petitioner has purchased the structure from his predecessor by agreement dated 09.11.2012 after the order dated 05.11.2012 came to be passed by the Competent Authority directing the demolition of the structure. The Petitioner ought to have acted with due diligence having regard to the fact that an order dated 05.11.2012 had already been passed by the Appellate Authority dismissing the Appeal filed by the predecessor of the Petitioner. The Petitioner has himself to blame if he has agreed to purchase a structure which is ordered to be demolished by the Authorities under the Slum Act as it does not qualify for being protected. The findings of fact recorded by the Authorities below on the basis of the documents produced by the predecessor of the Petitioner also cannot be taken exception to. Most of the documents are post the year 2010 when demolition had taken place and the area was freed of encroachment. The Authorities below were also right in concluding that the documents in question do not relate to the structure of the predecessor of the Petitioner. In that view of the matter, no case for interference in the writ jurisdiction of this Court is made out. The Writ Petition is accordingly dismissed.

[R.M.SAVANT, J]