

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
ORDINARY ORIGINAL CIVIL JURISDICTION  
WRIT PETITION NO.65 OF 2016

Shiv Welfare Co-operative Housing Society  
and Others.

.. Petitioners

Vs

State of Maharashtra and Others.

.. Respondents

—

Shri Omprakash Pandey for the Petitioners.

Ms. Geeta Shastri, Additional Government Pleader for Respondents.

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CORAM : A.S. OKA &  
SMT.ANUJA PRABHUDESSAI, JJ

DATED : 1ST DECEMBER 2016

PC.

1. In this Petition filed under Article 226 of the Constitution of India on behalf of the first Petitioner Society, a writ of mandamus is sought directing that the Application made by the first Petitioner Society on 24<sup>th</sup> November 2005 for allotment of a Government plot be directed to be decided by passing an order of allotment in the name of the first Petitioner. The second and third Petitioners are the office bearers of the first Petitioner Society. We find from the Exhibit-Q to the Petition that by a communication dated 12<sup>th</sup> January 2011, the Revenue and Forest Department of the State Government informed the District Collector that the prayer for grant of plot in question to the first Petitioner has been rejected by the State Government and the first Petitioner be informed accordingly.

2. We have carefully perused the letter dated 5<sup>th</sup> May 2015 addressed by the first Petitioner to the Hon'ble Chief Minister. The said letter is signed by the third Petitioner in his capacity as the Chief Promoter of the first Petitioner Society. In the second Paragraph of the said letter, it is stated that the first Petitioner Society which is a proposed Co-operative Society is in possession of the plot in question since the year 1991. The second paragraph records that with a view to ensure that the anti social elements should not use the plot in question, the first Petitioner Society appointed one Shri Salim Shaikh, a member of the first Petitioner Society, who carried out construction of a fencing. Thereafter, the proceedings were initiated by the State Government against the said Shri Salim Shaikh for eviction. It is further stated that Shri Salim Shaikh filed a suit on behalf of the first Petitioner Society in which the stay order was issued. It appears from some of the documents annexed to the Petition that the said suit was subsequently withdrawn.

3. Firstly, we find from the Exhibit-Q to the Petition that the prayer made by the first Petitioner Society has been rejected by the State Government way back in January 2011. Secondly, the first Petitioner Society is brazen enough to record in the said letter dated 5<sup>th</sup> May 2015 that by taking over the possession of the plot of which allotment was sought, the first Petitioner Society instructed its member

Shri Salim Shaikh to maintain the plot and thereafter, a fencing was erected by the said Salim Shaikh on behalf of the first Petitioner Society. Not only that the fencing was erected on behalf of the first Petitioner Society by Shri Salim Shaikh, but he also filed a suit in which the ad-interim order was passed. Thus, it is an admitted position that the first Petitioner Society through its member has encroached upon the Government plot of land and in fact, a suit was filed on behalf of the first Petitioner Society to protect the said encroachment.

4. The first Petitioner Society has relied upon the letter dated 2<sup>nd</sup> September 2015 (Exhibit-U to the Petition) addressed by a Member of the Legislative Assembly and Ex Minister to the then Hon'ble Revenue Minister on which an order is written by the then Hon'ble Revenue Minister that after examining the matter, a proposal be submitted. Obviously, the said order recorded by the then Hon'ble Revenue Minister is by ignoring the earlier decision of the State Government of January 2011 of rejecting the prayer for allotment of plot of land.

5. Therefore, in our considered view, apart from the fact that the prayer of the first Petitioner Society was rejected in the month of January 2011, considering the conduct of the first Petitioner Society and its members, this is not a fit case to exercise writ jurisdiction at the instance of the Petitioners.

6. Faced with this difficulty, the learned counsel appearing for the Petitioner seeks permission to withdraw this Petition. Accordingly, the Petition is dismissed as withdrawn.

(SMT.ANUJA PRABHUDESSAI, J)

(A.S. OKA, J)