

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Writ Petition NO. 4982 OF 2017

Yeshwant Vithal Shigam

...Petitioner

Versus

Govt. Of Maharashtra

And Ors.

...Respondents

With

Writ Petition NO. 4983 OF 2017

Dattaram Vithal Shigam

...Petitioner

Versus

Govt. Of Maharashtra

And Ors.

...Respondents

....

Mr.Vasant B. Ghorpade, Advocate for the Petitioners.

Ms. Vaishali Nimbalkar, AGP for respondents No.1 to 3.

Mr.P.S. Dani, Senior Advocate a/w. T.D. Deshmukh, Advocate for respondent No.5.

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CORAM : R. G. KETKAR, J.

DATE : 26th APRIL, 2017

P.C.

1. Heard Mr.Vasant Ghorpade, learned counsel for the petitioners, Ms. Vaishali Nimbalkar, learned A.G.P. for respondents No.1 to 3 and Mr. P.S. Dani, learned Senior Counsel for respondent No.5 in both the petitions, at length.

2. By this Petition under Article 227 of the Constitution of India, the petitioners have challenged the judgment and order dated 3.2.2016 passed by the Deputy Collector (Encroachment/Removal)-cum-Competent Authority, Dharavi Division, Mumbai City as also the judgment and order dated 18.4.2017 passed by the Additional Collector-cum-Appellate Authority, Mumbai City. By these orders, the authorities below had declared that the unauthorized construction of the petitioners is not protected and the petitioners are directed to vacate the structures in their possession within seven days failing which action will be taken against them for eviction and also land revenue will be recovered.

3. In support of these Petitions, Mr. Ghorpade submitted that on 2.3.2016, the petitioners made application in the prescribed format before the Additional Collector, Mumbai City for inclusion of their names in Annexure-II. Said applications are pending. He submitted that the authorities below did not consider pendency of the applications made by the petitioners before the Additional Collector. He submitted that as the

applications dated 2.3.2016 made by the petitioners are pending before the Additional Collector, appropriate direction may be given to the authorities to decide the applications in a time bound manner and till such time the applications are decided, structures of the petitioners may be protected.

4. Mr. Ghorpade submitted that the structures of the petitioners are in existence from 1985. He has invited my attention to the certificates issued by the Election Officer recording that the petitioners names are included in the voters list of 1989 also of 1992. The petitioners name appear in the revised voters list of 2001. He submitted that in fact Annexure-II prepared by respondent No.4 society, the petitioners names appeared at Sr.Nos.395 and 395A. This conclusively establish existence of structures of the petitioners since 1985. He submitted that the authorities below committed serious error in holding that the structures of the petitioners are not protected. He submitted that if the directions are not issued to the Additional Collector to decide the applications dated 2.3.2016 within stipulated period, the respondents will demolish the structures thereby rendering the applications infructuous. He, therefore, submitted that the petitions require consideration.

5. On the other hand, Ms.Nimbalkar has invited my attention to the reports dated 7.12.2015 made by the Head Surveyor and the map attached to that survey. Mr. Dani invited my attention to the appeal memo filed by the petitioners and the rough sketch annexed to the appeal memo. It was submitted that the authorities below after considering report dated 7.12.2015 have concurrently found that the petitioner's father Vitthal Shigam is found eligible as his structure being Hut No.343 is a protected structure. The authorities below have recorded a categoric finding that there is otta, bath room and the petitioners and their father are not residing separately. He, therefore, submitted that no case is made out for invocation of powers under Article 227 of the Constitution of India.

6. I have considered the rival submissions advanced by learned Counsel appearing for the parties. I have also perused the material on record. It is not in dispute that show cause notice under Section 3Z(2) of the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971 was issued to the petitioners. After that Head Surveyor has carried out the survey. A perusal of the survey dated 7.12.2015 clearly

shows that the petitioners case was duly considered. It was observed that hut No.343 is in the name of Vitthal Shigam and is found eligible. Rear half portion of said hut is shown in the names of the petitioners. However, there is common otta, bath-room and the petitioners and their father are not residing separately. A perusal of the map annexed to that report also substantiates the conclusions recorded in the report.

7. A perusal of the appeal memo filed by the petitioners also shows that along with the appeal memo, the petitioners have annexed rough sketch which also shows that hut No.343 of the petitioners father is divided into three parts. The order of Deputy Collector was challenged by filing appeal under Section 35 before the Additional Collector. Additional Collector considered the report submitted by the society dated 24.7.2015 showing that the petitioners names are not included in Annexure-II. Mr. Dani submitted that the final Annexure-II was prepared on 13.10.2006 and the names of the petitioners are not included in Annexure-II. Mr. Ghorpade submitted that in fact on 2.3.2016, the petitioners have made application before the Additional Collector for inclusion of their names in Annexure-II and said applications are pending.

8. I have perused those applications. As noted earlier, the Deputy Collector decided the matter on 3.2.2016. Appeal was preferred in February, 2016 and the applications are made on 2.3.2016. A perusal of the applications even remotely does not indicate that any reference is made to the order passed by the Deputy Collector. As the petitioners claims have been considered by the authorities below, I do not find any merit in the submission of Mr. Ghorpade that the Additional Collector be directed to decide the applications in a time bound manner. After considering the material on record and more particularly the impugned orders, I find that the authorities below have concurrently held that the petitioners structures are not protected. The material relied upon by the petitioners was considered by the authorities below. In view thereof, no case is made out for invocation of powers under Article 227 of the Constitution of India. The Petitions fail and the same are dismissed.

9. At this stage Mr.Ghorpade orally applies for one month's time or in the alternative 15 days time for vacating the premises. In view thereof, notwithstanding dismissal of the petitions, the impugned orders shall not be enforced for a period

of two weeks with an express understanding that no extension shall be sought and granted. Order accordingly.

(R. G. KETKAR, J.)

Deshmane (PS)