

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 2252 OF 2017

WITH

CHAMBER SUMMONS (L) NO. 374 OF 2017

Dashrath M. Yadav ... Petitioner.

V/s.

State of Maharashtra and ors. ... Respondents.

Mr. Rajesh Devgavkar and Mr. Prathamesh Ayare i/b R.A. M. Legal for the Petitioner.

Mr. Sukanta Karmakar, AGP for Respondent – State.

Mr. I.K. Tripathi i/b Mr. Pramod Gautam for the Applicant in Chamber Summons.

CORAM : A.S. OKA AND M.S. SONAK, JJ.

DATE : 14TH DECEMBER 2017.

PC.:

1] Heard learned counsel appearing for the petitioner.

2] The grievance in this petition under Article 226 of the Constitution of India, in short, is that a premises, which is the subject matter of this petition, has been demolished by the 2nd respondent without following due process of law. In short, the contention is that the action is null and void.

3] There is a reply filed by Mr. Madhu B. Halikar, Assistant Engineer (Building and Factory), in which, it is contended that a Show Cause Notice under Section 351 of the Mumbai Municipal Corporation Act, 1888 was issued, which was served upon one Shri. Ratan Verma on 11th April 2017, who is stated to be a servant of the petitioner. It is stated that within the time prescribed by the said notice, no reply was received and therefore, by order dated 22nd April 2017 demolition was ordered and accordingly, the premises has been demolished.

4] The contention of the learned counsel appearing for the petitioner is that firstly the said Ratan Verma is not concerned with the petitioner in any manner and he was never a servant of the petitioner. He has tendered across the bar a complaint filed in the Court of learned Metropolitan Magistrate, 17th Court, Borivali, Mumbai invoking Section 156 (3) of the Code of Criminal Procedure, 1973 for prosecuting the said Ratan Verma for an offence of criminal tress-pass.

5] The contention is that as the said Ratan Verma was never in possession and was not authorised to accept any such notice, the action of demolition is without following due process of law and hence, is a nullity.

6] Notwithstanding the bar of suit, a Civil Court can always entertain a suit wherein it is contended that the action of demolition is nullity. If this petition is entertained, this Court will have to decide whether the said Ratan Verma was served with the notice as contended by the Municipal Corporation and whether said Ratan Verma was a servant of the petitioner. This issue cannot be decided without recording the evidence and therefore, several disputed questions of fact are involved and only on that ground that we decline to entertain this petition. The petition is disposed of. However, the remedy of the petitioner before the Civil Court is kept open. All contentions of all parties are kept open.

7] The Chamber Summons (L) No. 374 of 2017 does not survive and the same is disposed of.

(M. S. SONAK, J.)

(A.S.OKA, J.)