

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 3381 OF 2018

M/s. Eastern Machinery and Trading Company and Ors.	}	Petitioners
versus		
Sub-Divisional Officer cum Administrator, Ulhasnagar City and Anr.	}	Respondents

Mr. S. U. Kamdar-Senior Advocate with
Mr. S. P. Kanuga for the petitioners.

Mr. A. I. Patel-Additional Government
Pleader for the State.

**CORAM :- S. C. DHARMADHIKARI &
PRAKASH. D. NAIK, JJ.**

DATED :- MARCH 21, 2018

P.C. :-

1. Heard both sides.
2. At the outset, Mr. Kamdar learned senior counsel appearing for the petitioners refers to para 24 of this petition and states that the petitioners withdraw the legal proceedings, particularly mentioned in para 24. We accept this statement, made on instructions, as an undertaking given to this court and proceed to pass the final orders on the petition.

3. At the further outset, we wish to clarify that we are not at all concerned with the competence, authority, power and jurisdiction of the statutory functionaries under the Displaced Persons (Compensation and Rehabilitation) Act, 1954, the Administration of Evacuee Properties Act, 1950 and the Maharashtra Land Revenue Code, 1966.

4. The petitioners have filed this petition challenging an order passed by the first respondent in respect of Plot Nos. 3 and 4, City Survey No. 1700-1701 situated at Sheet No. 97, Ulhasnagar - 421001 (hereinafter referred to as "the subject property").

5. The petitioners claim that petitioner no. 1 is the absolute owner of the subject property having purchased it from the President of India under the provisions of the Displaced Persons (Compensation and Rehabilitation) Act, 1954 and Rules made thereunder. Petitioner nos. 2 and 3 are developers of the property and have put up a residential complex on a part of the subject property. After setting out the history and in relation to the statute, the allotment and referring to the requisite documents, it is stated that petitioner no. 1 has set up a machine tool industry on a part of the land/property and part of it was used for residential purpose and further part thereof was lying vacant, on which, certain structures, which are slum like, have

come into existence. The petitioners refer to a development plan for Ulhasnagar City and state that the subject property is reserved for residential user partly and partly for industrial purpose. It is stated that the petitioner no. 1 entered into a development agreement with petitioner no. 2 to develop a part of the subject land for constructing buildings of units/flats and to the extent of 13931.58 square meters. A proposal was put up for construction of eight buildings and the planning authority issued Commencement Certificate dated 4th April, 2013. Thereafter, a proposal was put up to change the user and it is stated that from 2013 to 2015, the third petitioner, as a sub-developer, constructed eight buildings and three shops and a club house. There is also a recreation ground on a part of the plot. The six buildings are of stilt plus seven floors with each building having 28 flats. Two buildings are of stilt plus seven floors with each building having 42 flats and two buildings of stilt plus one floor are complete with revised sanction obtained on 17th August, 2015. Three shops of ground plus one floor are lying ready. The club house is completed and was being used till recently. The flats in the eight buildings have been sold under the agreement styled as MOFA (Maharashtra Ownership of Flat Act) Agreement. The purchasers have occupied the flats after the application for occupation certificate has been made and according to the

petitioners, there is a deemed grant of such certificate. The petitioners claim that there is no violation of any statutory rules and regulations. The petitioners have also complied with the conditions, based on which, the permission for development was granted. Then, there is a reference made to certain political developments in para 13 of the petition and in para 14, there is a reference made to a notice dated 30th November, 2017 issued by respondent no. 1 alleging breach of the terms and conditions of an order of December, 1960. There was a *Sanad* issued and which incorporates the terms and conditions and they have been also breached allegedly by the petitioners. Thus, after issuance of what is styled as a notice, according to the petitioners and not yet adjudicated upon, but pending, suddenly, the authority, particularly respondent no. 1 took up the case with the Sub-Registrar of Assurances by directing him not to register any documents. So far so good, the petitioners refer to both, the show cause notice dated 30th November, 2017 calling upon them to appear before the first respondent on 6th December, 2017 and this prior letter to the Sub-Registrar of Assurances. However, in paras 19 to 21 of this petition, the petitioners allege as under:-

“19. The Petitioners state that in the meanwhile also, the Respondent no. 1 has caused to be placed on the property of the Petitioners, a Board that no one should purchase the flat and the buildings are illegal although they were knowing that the buildings have been constructed as per

the building plans and as per the title deed conveyed to Petitioner No. 1 by the President of India. The photograph of board is marked **Exhibit - I**.

20. The Petitioners state that with undue haste, Respondent No. 1 passed the order dated 5th March, 2018, confiscating the properties of the Petitioners to the State Government. On the very next day, the Respondent No. 1 directed his subordinates to go, attach and seal the Club and thereby preventing the members from using the pool and gym facilities. It also put up notice board that the entire property is confiscated. The copy of the order dated 5th March, 2018, is annexed hereto and marked **Exhibit - J**.

21. The Petitioners state that shockingly the Respondent No. 1 has passed the above cryptic order travelling beyond the scope of show cause notice and noticing that subject property is not the state property, has laid his hands on three statutes out of which two are central statutes which are repealed and on rules of state govt regarding disposal of lands which is not stated in show cause notice and ex facie is not applicable. The impugned order discloses errors apparent on the face of record and clearly show that Respondent No. 1 has acted malafide and to oblige his bosses by taking hasty action and without any justification and refused the petitioner by couching order in language that is not expected of quasi judicial authority. Further, the Respondent No. 1 has thrown temper and language of quasi judicial authority to the winds and called the petitioner as having committed crime for which there is no ground. Further, the Respondent No. 1 has displayed that Respondent No. 1 is not sure of his ground on which he intends to exercise his powers and shows his mind is fully confused. Thus, the order is without jurisdiction and without authority of law. The haste in which illegal order is sought to be executed without first serving the petitioners and giving them reasonable time to challenge the same, has been executed on the property and notice board of confiscation and sealing the club house is put up in flagrant disregard of discipline expected from quasi judicial authority exercising drastic power of confiscating properties of citizens. The Petitioner has therefore no other alternate remedy but to approach this Hon'ble Court on the following amongst other grounds and the said grounds are urged without prejudice to one another."

6. It is only with regard to the above that this writ petition, which was mentioned yesterday, was placed "For Admission" today. We specifically inquired from Mr. Patel learned Additional Government Pleader appearing for the respondents as to how he justifies the above steps and actions. All that he would submit is that on 5th March, 2018, there is an order passed by the first respondent. He has adjudicated the show cause notice. He considered the arguments of the petitioners and has now proceeded to pass the final orders. Once these final orders are passed, then, the incidental directions, which can be and are issued, empower him to seal this property and to the extent sealed, he would also be empowered to place a board, which informs the persons not to deal with the property any further and there was no intent to either take away the legal rights much less confiscate the property or forfeit it.

7. Once this was indicated to us and the learned AGP found it difficult to support the entering upon the property taking over the health club/gymnasium, sealing of the shops under a panchanama, particularly without giving any opportunity to the petitioners to challenge this order before a competent forum, then, we have no alternative but to allow this writ petition.

8. We do not proceed to quash and set aside the impugned order, but hold that in the absence of any legal sanction, merely on the strength of the impugned order, the first respondent could not have entered upon the property, caused the board to be displayed as also seal the shops and take over the club house area. We are informed now by Mr. Kamdar, on instructions, that when the petition was circulated for today, yesterday respondent no. 1 has removed his agents/officers and subordinates from the club house portion and permitted its usage. However, the shops continue to be sealed. We direct the first respondent, particularly in the light of the un-controverted factual allegations, to forthwith remove the seal on the shops and to cause removal of any board displayed on the property or any outside portion thereof. Both these shall be removed as expeditiously as possible and in any event on or before 23rd March, 2018.

9. We have also not been shown any justification for issuance of any letter to the Sub-Registrar of Assurances not to register any deeds in relation to the dealings and transaction about the subject property. We, therefore, direct that the Sub-Registrar of Assurances shall proceed strictly in accordance with the provisions of law, namely, the Registration Act, 1908 while registering the documents, if any, in relation to such transactions

and by ignoring the contents of the letter dated 24th November, 2017. However, we clarify that our order and directions shall not preclude or prevent all concerned, including the authorities from proceeding in accordance with law. All contentions and issues in relation to such proceedings are kept open.

10. When this matter was called out in the morning session, we expected Mr. Patel to take instructions and from respondent no. 1 whether on his own he would take the corrective steps as his action is clearly high handed and arbitrary. Mr. Patel, on instructions informed this court that though these actions have been initiated and completed, it is not open now for the first respondent to take any corrective steps. Meaning thereby, respondent no. 1 cannot remove the seal or the board placed on the property on his own and he would require an order from the court in that behalf. It is in these circumstances that we are compelled to pass the above order and directions. We are aghast that these officials and styling themselves as public servants serve the public in this fashion. They are posted to subserve and safeguard the public interest, first and last. They have to act strictly in accordance with law. It is surprising that their superiors also ignore such high handed actions and do not proceed departmentally against the officers although indicted by

this court. We, therefore, direct the Collector of the District to initiate disciplinary proceedings against the first respondent for having tried to takeover the property in the above high handed manner. He shall be proceeded against by treating his act as a misconduct punishable under the Discipline and Control Rules. We direct that such action be taken as expeditiously as possible and concluded within a period of three months from today.

11. With the aforesaid directions, the writ petition is disposed of.

(PRAKASH.D.NAIK, J.)

(S.C.DHARMADHIKARI, J.)