

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 4263 OF 2014
WITH
WRIT PETITION NO. 4260 OF 2014

Milind S. Shah

..Petitioner

versus

The State of Maharashtra & Ors.

..Respondents

Ms Niharika S. Waradkar i/b Mr. Rompal S. Kohli for the Petitioner.
Mr. B.V. Samant, AGP for Respondents – State.

CORAM: S. C. DHARMADHIKARI &
SMT. BHARATI HARISH DANGRE, JJ.
DATE : 9TH FEBRUARY, 2018.

P. C. :

1] By these petitions, under Article 226 of the Constitution of India, the petitioner seeks the relief in terms of prayer clause (b) in both the petitions.

2] On the earlier occasion, after hearing both sides, we had directed learned AGP to take complete instructions and file a proper affidavit.

3] On the earlier occasion, the learned counsel Mr. Girish Godbole was fair enough to bring to our notice the two orders of the Division Bench of this Court and by which, identical petitions have been dismissed. However, all that we wanted is an assurance from the Government and particularly the Revenue Officials that they would carry out and fulfill their legal duties expeditiously. If there are un-authorised structures on the land in question, when those will be removed was our prime concern. Secondly, if there are any equipments and machinery on

the site, then, equally those will have to be removed.

4] Mr. Samant, learned AGP has tendered an affidavit of Tahsildar, Kalyan, District Thane.

5] Mr. Samant, on instructions, states that now the moveables are completely removed and there are no equipments or machineries lying at the site. The question remains of un-authorised structure, but Mr.Samant says that the petitioner is one of the owner of the land situated at Survey No.52, Village-Kamba, Taluka – Kalyan, Dist. - Thane. It is the claim that the petitioner has not given specific details as to the exact portion of the land owned by him. The petitioner claims the land, namely, entire Survey No. 52.

6] In paragraph 4 of the affidavit filed today, it is stated as under..

“4. I say that as per the information of this Respondent, Survey No. 52 is sub divided in four parts numbered as 52/1, 52/2, 52/3 and 52/4. I say that as per the record, it appears that the Petitioner is having rights in Survey No. 52/1 only. I say that, however, local inspection of the said place reveals that no actual division and demarcation of the said plot has been done. I say that, therefore, as on today it is not clear as to exactly to which portion of the said Survey No. 52, the Petitioner is entitled too. I say that to that extent the reliefs claimed by the Petitioner in the present Petition are vague and uncertain and cannot be granted.”

7] The statements made in paragraph 4 of the affidavit-in-reply are accepted as undertakings to the court.

8] After hearing both the sides at some length, we indicated to Mr.Samant that we are not directing removal of the un-authorised structures forthwith. All that we are directing is that the law be set in motion so as to cause remove of unauthorised structures as early as

possible. If there are impediments in removal of the structures, those impediments and hurdles have to be cleared and removed by legally known process. If today, the land is not demarcated with any boundary and with any fencing, but in the revenue record, it is stated that Survey No.52 is sub-divided, then, as per the official records, the officials to proceed and complete the remaining steps namely of actual division and demarcation. Thereafter, the necessary steps for removal of encroachment shall be taken.

9] We grant time of four months for this purpose and after accepting the statements in paragraph 4 of the affidavit as undertakings to this Court. It is in these circumstances that we do not wish to enter into any larger controversy.

10] The writ petitions are disposed of with the above directions.

(SMT. BHARATI H. DANGRE, J.)

(S. C. DHARMADHIKARI, J.)

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