

Shailaja

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION
WRIT PETITION NO. 12464 OF 2018

Mukhtar Ahmed Khan	]	Petitioner
Vs.		
The Grievance Redressal Committee	]	
(Mumbai City) Bandra (East),	]	
Mumbai – 400 051.	]	Respondent

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Mr. Jash B. Vyas, for Petitioner.
Mr. Y.D. Patil, A.G.P, for Respondents No.1 and 2.
Ms. Sheetal Mane, for Respondent No.3.

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CORAM : R.G. KETKAR, J.

DATE: 14th DECEMBER, 2018.

P.C.

Heard Mr. Vyas, learned Counsel for the petitioner, Mr. Patil, learned A.G.P, for respondents No.1 and 2 and Ms. Mane, learned Counsel for respondent No.3 at length.

2. By this Petition under Article 227 of the Constitution of India, the petitioner has challenged;

- [1] the notice dated 7th December, 2017 issued by Assistant Commissioner, F South Ward under section 3 Z-1 (1) of the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971 (for short 'Act');
- [2] the order dated 16th December, 2017 passed by the same Authority.

[3] the order dated 12th June, 2018 passed by respondent No.2-Additional Collector, Mumbai City.

[4] the order dated 28th September, 2018 passed by respondent No.1-Grievance Redressal Committee (Mumbai City) (for short 'Committee').

3. The relevant material facts that are necessary for disposal of the present Petition, briefly stated, are as under;

Respondent No.3 herein issued notice to the petitioner to show cause as to why unauthorized structure admeasuring approximately 10'x9' above the ground floor as also construction of gallery admeasuring 3x2' feet made by the petitioner, not be demolished when as per the government policy, the height of residential structure is permissible up to 14' feet and commercial up to 10 feet. The notice also recited that when site inspection was carried out, it was found that the petitioner has unauthorizedly extended the existing structure. The petitioner was called upon to produce documentary evidence. It was also recited therein that in addition to this extension, the petitioner had also erected steel ladder outside his structure. He was called upon to submit explanation along with the supporting documents.

4. In pursuance thereof, the petitioner submitted supporting documents before respondent No.3. By order dated 16th December, 2017, respondent No.3 came to the conclusion that the petitioner did not produce any permission for carrying out extension to the existing structure as also he did not produce any permission for erection of steel ladder. The petitioner was called upon to demolish the structure above 14 feet height as also the construction of gallery admeasuring 3'x2' feet, failing which action will be taken against the petitioner.

5. Aggrieved by the notice dated 7th December, 2017 and order dated 16th December, 2017 of respondent No.3, the petitioner instituted appeal before respondent No.2 on 18th December, 2017. By order dated 12th June, 2018, respondent No.2 dismissed the appeal and upheld the order dated 16th December, 2017. Aggrieved by this order, the petitioner instituted Appeal No.169 of 2018 before respondent No.1. By order dated 28th September, 2018, respondent No.1 dismissed the appeal. Aggrieved by this order, the petitioner has instituted the present Petition.

6. In support of this Petition, Mr. Vyas strenuously contended that the petitioner has not carried out unauthorized extension as alleged by the respondents. He submitted that the said structure is very old and construction is carried out in the year 1987. In other words, the structure is protected as it is made prior to 1st January, 1995. The respondents were not justified in proceeding on the premise that extension made by the petitioner is unauthorized. He, therefore, submitted that Petition requires consideration.

7. On the other hand, Mr. Patil and Ms. Mane supported the impugned orders. Ms. Mane submitted that in so far as height of the hutment is concerned, Government has taken a policy decision permitting height in respect of residential hut up to 14 feet and non residential up to 10 feet. In the present case, the petitioner has extended height of hut from 14' to 19' by constructing first floor admeasuring 10'x9' and 3'x2' gallery without obtaining requisite permission from the Competent Authority. She submitted that site inspection was carried out and during the site inspection, it was noticed that height of the structure is more than permissible 14' height. Height of the petitioner's structure is 19'. It was also found that the petitioner has also fixed the ladder for access to the first floor without obtaining permission of the Competent Authority. She submitted that no case is made out for interfering

with the impugned order.

8. I have considered rival submissions advanced by learned Counsel for the parties. I have also perused the material on record. Mr. Vyas submitted that no site inspection was carried out before issuing show cause notice. He further submitted that the structure was in existence prior to 1st January, 1995 and thereafter, no extension is carried out to the existing structure. It is not possible to accept this submission. It has come on record that the Government has taken a policy decision permitting height up to 14 feet in respect of residential hut. During the course of site inspection, it was revealed that the petitioner has increased height of the structure beyond permissible limit to 14'. Height of the petitioner's structure is 19'. Structure is admeasuring 10'x9'. In addition to this structure, gallery of 3'x2' is constructed. It was also revealed that the petitioner has also fixed a ladder for access to the first floor without obtaining permission from the Competent Authority. After considering the material on record, the Authorities below have concurrently held that the petitioner has carried out unauthorized construction. The petitioner has not produced any permission on record. For the reasons recorded in the impugned orders, I do not find any good reason to take a different view. The petitioner was not in a position to demonstrate that the findings recorded by the Authorities below are perverse being based upon no material on record or they are contrary to the material on record.

9. Mr. Vyas relied on the order dated 19th November, 2013 passed by this Court (Coram: Anoop V. Mohta, J.) in **Mustaq A. Shah Vs. Municipal Corporation of Greater Mumbai, Appeal from Order [Stamp] No.31205 of 2013**. A perusal of that decision shows that the respondent without assigning any reason to the reply filed and without hearing the appellant decided the issue against the appellant therein on the ground that explanation is

unsatisfactory. In my opinion, the said decision is not applicable as it is not the grievance of the petitioner that no notice was issued to him, no reply was permitted to be filed by the respondents and that he was not heard.

10. Mr. Vyas relied on paragraph 9 of that decision. In paragraph 9, the learned Single Judge observed that the occupier when challenges such notice, the respondent/Corporation without filing any reply, based on such decision/notice make their submission and the Court also accepting the same refused to grant any ad-interim relief basically on a foundation that the plaintiff failed to prove that the structure in existence is prior to 1st January, 1995. In my opinion, that is not a case here. Hence, reliance placed on the order dated 19th November, 2013 does not advance case of the petitioner. In the light of the aforesaid discussion, the Petition fails and the same is dismissed. Order accordingly.

[R.G. KETKAR, J.]