

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 13430 OF 2018

Mr. Nitin Babanrao Nakhate and ors.Petitioners
versus
The State of Maharashtra and ors.Respondents

Mr. Uday P. Warunjikar along with Mr. Siddesh Pilankar, advocates for the petitioners.

Mrs. M. P. Thakur, AGP for the State.

Mr. Rohit Sakhadeo, advocate for the respondent Nos.2 and 3.

**CORAM : RANJIT MORE &
REVATI MOHITE DERE, JJ.**

DATE : 29th NOVEMBER, 2018.

P. C. :

Heard learned counsel and learned AGP appearing for the respective parties.

2. The petitioners have approached this Court for the following reliefs :

a) This Honourable Court be pleased to call for the record and proceeding of the communication dated 23.10.2018 and 30.10.2018 issued by the PCMC and the steps for demolition of the house of the present petitioner on 17.11.2018 and after going through the same and satisfying about the legality, validity and propriety, be pleased to quash and set aside the same by directing not to demolish the house of the present petitioner without due process of law.

b) Be pleased to direct the respondent No.3 to comply with the direction issued by this Honourable High Court in

Writ Petition No.10075/2018 dated 6.9.2018 and be pleased to direct to decide the representation dated 18.9.2018.

3. Earlier also, the petitioners had approached this Court by filing writ petition No.10075 of 2018 apprehending their eviction from their structures standing on survey Nos.25 and 28 in Village Rahatane for the purpose of implementation of Ring Road Railway Project. The said petition was disposed of by the Division Bench on 6th September, 2018, by passing the following order :

"1. The learned counsel for the petitioners submits that they may be evicted by respondent nos.2 and 3 from the subject structures for the purposes of implementation of the Ring Road Railway Project. The learned counsel further submits that some sub-contractor had approached the petitioner intimating them to vacate the subject structures. Therefore, the petitioners are seeking directions to the respondents to follow due process of law if the respondents intends to demolish / acquire subject land and the structures constructed and occupied by the petitioners.

2. The learned counsel appearing for the respondent no.2 submits that under the project, part of the area falls under the jurisdiction of respondent no.2 and part under the jurisdiction of respondent no.3 and, therefore, petitioners need to file a comprehensive individual representation indicating that they are possessing respective structure / area so that individual cases can be scrutinized. The said representation shall be submitted to the respondent no.2 and to the Chief Executive Officer of respondent no. 3 separately within two weeks from today. On receipt of the said individual representations, we direct the respondent no.2 and the Chief

Executive Officer of respondent no.3 to look into the grievances of the petitioners and take necessary steps in accordance with law within six weeks thereafter. In case the authorities find that it is necessary to hear the parties in person by deputing officer concerned, they are at liberty to do so. The Commissioner of the Corporation is entitled to delegate this exercise to an officer working under him.

3. With the aforesaid observations and directions, petition is disposed of.

4. All concerned to act on an authenticated copy of this order."

4. The petitioners have again approached this Court contending that some sub-contractors intimidated them to vacate their structures.

5. Mr. Warunjikar, learned counsel for the petitioners, invited our attention to the document at Exhibit -J, page 168 and submitted that the petitioners representation as directed under order dated 6th September, 2018, is decided without giving them an opportunity of hearing.

6. We have gone through the document at Exhibit-J, page 168. The same is a communication addressed to the petitioner No.1 and others by the Executive Engineer, BRTS Department of the respondent No.2. The communication is in tabular form. The issues raised by the petitioners are considered and, reply is given accordingly. The communication further gives an opportunity to the petitioners to file separate individual representation.

7. In terms of the above communication, the petitioners have not filed separate individual representations. Earlier also, this was not done, despite the directions of the Division Bench in order dated 6th September, 2018, in writ petition No.10075 of 2018.

8. Mr. Sakhadeo, learned counsel for the respondent Nos.2 and 3 stated that the respondent No.3 issued notice dated 17th November, 2018, asking the petitioners to remain present on 28th November, 2018, for hearing. Despite this notice being communicated to the petitioners, nobody approached the respondent No.3 on the date of hearing. Mr. Warunjikar, learned counsel for the petitioner, however, disputed the statement.

9. Mr. Sakhadeo submitted that the petitioners have alleged that their structures are standing on survey Nos.25 and 28 in Village – Rahatane. He submitted that survey No.25 falls within the jurisdiction of the respondent No.3-Pradhikaran and so far as survey No.28 is concerned, it falls within the jurisdiction of the respondent No.2-Corporation. He also submitted that it is not known whether these structures are authorised or not and there is nothing on record to show the location and whether they are assessed to property tax. He submitted that once this information is given to the respondent Nos.2 and 3, then they will be in position to say whether the said structures are

affected or not and what action will be taken. Mr. Sakhadeo fairly stated that the petitioners can make individual comprehensive representation along with supporting documents to the respondent Nos. 2 and 3 as already communicated to them. He further submitted that these representation could be decided after granting an opportunity of hearing, if necessary.

10. Mr. Warunjikar, learned counsel for the petitioners, makes a statement that individual comprehensive representations would be made to the respondent No.3 along with all supporting documents.

11. In the above circumstances, we dispose of this petition by passing the following order :

I) The petitioners are at liberty to individually file comprehensive representation before the respondent Nos.2 and 3 regarding their grievance within a period of three weeks from today.

II) In the event, such individual comprehensive representations are made by the petitioners within the aforesaid period, the respondent Nos.2 and 3 shall decide the same independently on its own merits and if necessary, by according an opportunity of hearing to them.

III) Needless to mention that the respondent Nos.2 and 3 shall follow due process of law while taking any action against the petitioners.

[REVATI MOHITE DERE, J.]

[RANJIT MORE, J.]