

Atul

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 2965 OF 2015
WITH
NOTICE OF MOTION (L) NO. 716 OF 2017
AND
NOTICE OF MOTION (L) NO. 88 OF 2015
AND
NOTICE OF MOTION NO. 487 OF 2015
AND
CHAMBER SUMMONS (L) NO. 64 OF 2015**

Parvati Mahadev Gaikar

...Petitioner

Versus

The State of Maharashtra & Ors

...Respondents

Ms Vaijayanti Raghunath Kalekar, *for the Petitioner.*

Mr US Upadhya, *AGP for Respondents Nos. 1 & 3 – State.*

Mrs Pooja Yadav, *for Respondent No. 6-MCGM.*

Mr Devrat Singh, *with Mahesh Mishra, i/b Ravi Thankaian, for
Respondents Nos. 4 & 5.*

CORAM: G.S. PATEL, J

DATED: 24th January 2018

PC:-

1. Heard.

2. Rule was issued on 16th April 2015 but it was clarified that no interim order was passed. Then there is an order in a group of interim applications, i.e., Chamber Summons (L) No. 64 of 2015 and two Notices of Motions. On 21st July 2015 there was an order that the Chamber Summons was to be heard along with Writ Petition. The Chamber Summons is for amendment and impleadment of another party, but as we shall see, this is now almost entirely redundant.

3. The challenge in this Petition under Article 226 of the Constitution of India is to an order of 24th January 2007 of the Maharashtra Slum Area (IC & R) Tribunal passed in Appeal No. 24 of 2006. This was an order under the Maharashtra Slum Areas (Improvement, Clearance & Redevelopment) Act, 1971 (“**the Slum Act**”). The Petitioner claims to hold a pitch card or a photo-pass in respect of hut No. 19D on CTS No. 520 situated at Govind Patil Road, Village Danda, Mumbai. On 30th July 1979, several plots, viz., CTS Nos 519, 520, 914, 324, 522 and 521, were the subject of a declaration of these as a slum¹ *inter alia* on the ground that these were source of danger in terms of health, safety or convenience. This declaration was published in the Maharashtra Government Gazette on 19th July 1979. The declaration was challenged under Section 4(3) of the Slum Act in an appeal originally filed by Dhanraj Sonkoli Community Trust. Later, Rizvi Builders, a firm of developers, joined as Appellant No. 2 having by then obtained a conveyance on 18th October 1995.

¹Petition, Exhibit “A”, *pp.* 17-18.

4. The Appeal was initially accompanied by Miscellaneous Application No. 2 of 2005, a delay condonation application. This was dismissed for default. Then, on 13th December 2005, the Community Trust filed Miscellaneous Application No. 60 of 2006 — I mention this because it has some bearing on the arguments advanced by Ms Kalekar for the Petitioner — seeking restoration of the dismissed delay condonation Miscellaneous Application. It seems that the original record and proceedings of the dismissed Miscellaneous Application were not traceable. An application for reconstruction of the record was filed and numbered as Miscellaneous Application No. 63 of 2006. There was some confusion regarding registration. Miscellaneous Application No. 60 of 2005 was presented on behalf of the Community Trust by one AH Rizvi who claim to hold a Power of Attorney from the Community Trust. Later, as I have noted, he joined the Appeal itself through his firm of builders. The application for reconstruction of the record was allowed and thereafter the applications for restoration and for delay condonation were taken up and separately allowed. This is noted in the impugned order in paragraph 5 at page 27.

5. The appeal then finally came up before the Tribunal. Leaving aside the question of delay, what the Tribunal addressed itself to was whether there was compliance with the statutory provisions in regard to the making and publication of the declaration under Section 4(1) of the Slum Act. The Tribunal held that there was no response from the Competent Authority although its record was produced. The argument by the Appellants was that there was no preliminary show-cause notice nor any prior intimation to them of

inspection or survey of the property. The impugned order records the submission that the finding of no basic amenities was itself factually incorrect. Paragraph 22 of the impugned order says that as to the question of basic amenities — the underlying reason or rationale for the declaration in the first place — on the part of the Respondent authorities there was a complete absence of documents and records. There was nothing to show what steps were taken for data collection regarding basic amenities. There was no document to show that the Competent Authority had at any time carried out any inspection or survey. There was nothing on record to indicate a site inspection, much less a joint site inspection. The record did not reflect any intimation of a joint site inspection by the Competent Authority to the owner. The Appeal succeeded. The declaration was set aside by the impugned order of 24th January 2017.

6. Ms Kalekar argues that the Tribunal ought to have had regard to a letter addressed to the Registrar by the Deputy Collector (Encroachments Removal) on 31st July 2006 in Miscellaneous Application No. 60 of 2005 (the one to restore the delay condonation application), because this is, according to her, evidences the lack of the necessary facilities and itself justifies the declaration. Her submission is that the Tribunal wholly overlooked this document. Had it considered the Deputy Collector's letter, it would not, and could not, have held either that there was no substantiating record, or that, on the ground, there was not the lack of basic amenities.

7. On the face of it, this submission cannot be accepted. The letter is a mere statement unsupported by any documents or records

of the kind noted in the impugned order. The letter does not reference any file, record or noting, intimation of survey. It says only that there was a survey after notice, but it gives no cross-references, dates or other particulars. A letter like this by any authority is no substitute for proper record keeping by the Government authorities. Inspection, the situation on the ground, notes etc are matters that must be established and borne out by the record. They are not to be assumed to exist merely because this or that authority finds it convenient to say so.

8. This is the limited challenge in the Writ Petition. The sole Petitioner seeks a reinstatement of the slum declaration. I cannot possibly grant the relief sought in prayer clause (a) because it is not shown to me how, without getting into the disputed questions of fact, there can be said to be a facial material irregularity, perversity or illegality in the impugned order. To succeed, the Petitioner must show that there is in fact a survey and record of it, and that there is a demonstrable record of notices to the owner, and a notice of joint inspection, all of which is on record. Nothing short of this will do. An invitation to draw an inference from some other communication addressed by an Authority in a Miscellaneous Application is not sufficient.

9. The reinstatement of the slum declaration writ petition is only the ostensible intent of the writ petition. The true purpose appears to be quite different. There is another and more disturbing aspect to the Petition. Nowhere in the Petition does the Petitioner mentioned at all that her hut is apparently the subject matter of a claim by one Janki Rajaram Yadav, since deceased, and now her

heirs. This person said that the Petitioner was a trespasser and filed a civil suit for possession. She obtained a decree. A First Appeal failed. A revision failed. A Special Leave Petition was dismissed. I cannot possibly in the guise of passing any order in this Writ Petition grant the Petitioner any relief that would affect those civil proceedings. Yet, in effect, by seeking protection through her pitch holder card, this is what the Petitioner wants.

10. I have searched in the record in the Chamber Summons and Affidavit in Support for any explanation for the omission of all mention of this claim and decree in the Petition. I find no explanation at all. In the Chamber Summons, the Petitioner seeks to implead Janki Yadav's heir Vasanti Arvind Yadav and then seeks to add by way of amendment that the execution is in respect of a totally different structure. This is sought to be supported by an order of the executing Court directing or appointing a commissioner for local investigation. The fact that the executing Court has ordered a commissioner for recording investigation is not evidence that two structures are different. The Petitioner has contested those proceedings and has done so unsuccessfully all the way to the Supreme Court. She must face the execution proceedings on merits and cannot seek to undermine them in the guise of obtaining an order in this Writ Petition.

11. There is, also, as I have noted, the complete and glaring omission of all mention of this civil proceedings in the Writ Petition. Even the Chamber Summons does not venture to explain the omission. All who come to Court, irrespective of where they live, must come with clear hands, and certainly she who seeks equity

must do equity. I notice that the Chamber Summons has been served and there is a Reply from Vasanti Yadav, the heir of the plaintiff in those civil proceedings. It is specifically stated that all issues in this Writ Petition have been decided and there is a specific statement that the only purpose of this Writ Petition is to delay execution. If today it is the Petitioner's case that those civil proceedings relate to a separate structure then that should have found some disclosure and explanation in the Petition itself. There is no such mention. In proposed paragraph 15(f) and in subsequent paragraphs the Petitioner claims that she has filed another Suit No. 2989 of 2015 before the City Civil Court at Dindoshi saying that the decree against her is fraudulent and that the Plaintiff in that Suit is colluding with Rizvi Builders but she claims that that suit pertains to a different property. There are no particulars given of this so-called different property in the proposed amendment at all. Indeed this is destroyed by proposed paragraph 15(l) where submissions are made to restrain Janki Yadav from taking any steps against the Petitioner in respect of this very hut No. 19D. If Janki Yadav was prosecuting a case against the Petitioner in respect of a different hut there was no need for seeking such a restraint order.

12. It is in these circumstances that I believe that there is no option but to dismiss the Writ Petition, and I proceed to do so. Consequently, the Chamber Summons and all Notices of Motion are also dismissed. No costs.

(G. S. PATEL, J)