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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO.1832 OF 2002

Hind Seva Parishad ...Petitioner
vs.
State of Maharashtra & Anr. ...Respondents

None for the Petitioner
Ms Geeta Shastri, Addl.G.P for the respondent-State

CORAM : A.S.OKA, &
SANDEEP K. SHINDE,JJ.
DATE : NOVEMBER 29, 2018

ORAL JUDGMENT: (A.S.OKA, J.)

1 None appears for the petitioner. The learned Additional Government Pleader has no instructions about the status of the property as of today. We have perused the petition. The case made out in this petition under Article 226 of the Constitution of India is that the petitioner which is a society registered under the Societies' Registration Act, 1860 is an allottee of the Government land more particularly described in paragraph 3 of the petition. The petitioner is relying upon the allotment made by the Collector in respect of the subject land. The petitioner is relying upon the agreements, the copies of which have been annexed to the petition as Exhibits A and B.

2 The allegation in the petition is that the
respondent Nos.3 to 6 had encroached upon the said

land and had carried out the construction of illegal structures. The allegation is that the State Government and the Mumbai Municipal Corporation had demolished the said structures. In a civil Suit filed by the respondent Nos.3 to 6, the learned Judge of the City Civil Court directed the respondent Nos.1 and 2 [State of Maharashtra and the Deputy Collector (ENC)] to reconstruct the structures of the respondent Nos.3 to 6. The Court granted liberty to the respondent No.1-State of Maharashtra to demolish the structures after following due process of law. It appears that show cause notices under section 50 of the Maharashtra Land Revenue Code, 1966 (for short "the said Code") were issued by the Tahsildar (ENC) to the respondent Nos.3 to 6. On the basis of the said show cause notices, the Tahsildar (ENC) exercised power under sub-section (3) of section 50 of the said Code and directed removal of encroachments made by the respondent Nos.3 to 6. An appeal was preferred by the respondent Nos.3 to 6 before the Deputy Collector, Andheri. By the order dated 12th December 1995, the Deputy Collector interfered and set aside the order of eviction of the Tahsildar. Being aggrieved by the said order, an Appeal was preferred by the present petitioners before the Deputy Collector (Appeals). By the Judgment and Order dated 23rd September 1998, the order dated 12th December 1995 passed by the Deputy Collector was set aside and the order of Tahsildar dated 15th September 1995 directing eviction was confirmed. It appears

that an Appeal was preferred by the respondent Nos.3 to 6 before the Additional Commissioner, Konkan Division for challenging the order dated 23rd September 1998 passed by the Deputy Collector (Appeals). The Additional Commissioner, Konkan Division by a Judgment and Order dated 23th April 1999 confirmed the order of the Tahsildar and the order of the Deputy Collector (Appeals). The Additional Commissioner held that the subject land vests in the State of Maharashtra and that the present petitioner is the allottee of the said land for the purposes of school and play ground. It was held that the survey carried out establishes that the respondent Nos.3 to 6 have carried out encroachments on the said land and therefore, the Tahsildar rightly directed the removal of the said encroachments.

3 Essentially, this petition under Article 226 of the Constitution of India is for implementation of the order of Tahsildar which is confirmed by the Additional Commissioner by the aforesaid Judgment and Order.

4 In paragraph 13 of the petition, it is averred that the Principal Secretary of the Housing Ministry of the respondent No.1-State of Maharashtra ordered demolition of illegal structures and accordingly, the demolition was fixed on 3rd November 2001. Paragraph 14 contains an allegation that on that day, though the Government Officers were present for

taking action of demolition, actual action was not taken apparently because they received telephonic instructions from a Hon'ble Minister. In this petition, a Writ of Mandamus is prayed for taking action of removal of encroachments.

5 On behalf of the respondent Nos.1 and 2, an affidavit in reply has been filed by Shri Madhukar Govind Pashte, Tahsildar (ENC-Removal) on 11th September 2002. In the affidavit, it is denied that there was any intervention by any Hon'ble Minister. However, it was contended that the structures may be protected as the same were in existence from 1990 and therefore, guidance was sought from the Government by the Deputy Collector (Encroachment & Removal) by a letter dated 19th March 2002 on the question whether the subject structures could be demolished. It is stated that the guidance is awaited and the demolition will be undertaken as soon as the guidance is received. It appears from the affidavit dated 13th July 2017 filed on behalf of the petitioner by Shri Rakeshkumar Yaghyanarayan Dube in support of the Notice of Motion No.474 of 2017 that the action of demolition has not been taken.

6 Thus, from the averments made in the petition and the documents annexed to the petition, it appears that action of removal of encroachments in terms of the order of Tahsildar has not been taken.

7 The respondent No.5 has filed an affidavit dated 12th August 2002 in which she claimed that she is entitled to alternate accommodation as per the policy of the State Government.

8 The learned Additional Government Pleader has not received any instructions.

9 Since in this petition, we are concerned with the Government land which was allotted to the petitioner, the Collector of Mumbai Suburban District will have to look into the grievances of the petitioner about the non implementation of the order passed by the Tahsildar (Encroachment) on 15th September 1995. If the said order which was confirmed by the Additional Commissioner is still in force, the Collector will have to ascertain in what manner that order can be implemented. If by virtue of any policy of the State Government, the encroachers are entitled to an allotment of alternate accommodation, the Collector will have to take necessary steps.

10 Hence, we dispose of this petition by passing the following order:

(I) We direct the office of the Government Pleader, High Court, Original Side, Mumbai to forward a copy of this Judgment and Order to the Collector of Mumbai Suburban District;

(II) The Collector shall issue a notice to the

petitioner and the respondent Nos.3 to 6 and will ascertain whether the order dated 15th September 1995 passed by the Tahsildar (Enc), a copy of which is annexed as Exhibit-C still continues to operate;

(III) If the Collector finds that the said order continues to operate, he shall take all possible steps for implementation of the said order. If for implementation of the said order, under any of the policies of the State Government, the encroachers are required to be rehabilitated, the Collector shall take steps to do so in accordance with law;

(IV) It will be also open for the Collector to examine whether the allotment of the subject land in favour of the petitioner is still valid;

(V) With the above directions, we dispose of the petition. Rule is accordingly disposed of.

(SANDEEP K. SHINDE,J.)

(A.S.OKA,J.)