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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO.1372 OF 2016

Iqbal Hussein Sajjad Hussein & Anr ...Petitioners
vs.
State of Maharashtra & Ors. ...Respondents

Mr.Girish Godbole with Mr.Yadunath Chaudhari and
Mr.Chinmay Acharya i/b Ms Prerna R. Lalchandani for
the Petitioners/applicants
Ms Geeta Shastri, Addl.G.P for the respondent No.2-
State
Mr.A.Y.Sakhare, Senior Counsel a/w Ms K.H.Mastakar
for respondent-MMC
Ms Sudeshna Guha and Mr.Nishant Rana i/b Vidhi
Partners for respondent No.9
Mr.R.S.Apte, Senior Counsel a/w Mr.H.V.Khan for
respondent Nos.5 to 8.

CORAM : A.S.OKA, &
RIYAZ.I.CHAGLA,JJ.
DATE : FEBRUARY 26, 2018

P.C.:

1 Heard the learned counsel for the petitioners.
This petition concerns the municipal market known as
Mahatma Jyotiba Phule public market. The first
petitioner is the Chairman of the Association of
Merchants who are carrying on business in the said
market. The second respondent is the Secretary of
the said Association. The third petitioner is the
said Merchants' Association.

2 The substantive challenge in the writ petition
is to the communication issued by the Mumbai
Municipal Corporation (for short `said Corporation')

dated 7th September 2011 by which a proposal submitted by the Merchants' Association was rejected. The petitioners have sought a writ of mandamus for enforcing resolutions dated 24th March 2006 and 11th September 2007 of the Improvement Committee and the General Body respectively of the said Corporation. According to the case of the petitioner, by the said resolutions, the Improvement Committee and the General Body of the said Corporation took a decision to grant approval to the proposal of the petitioners to make redevelopment of the said market. Therefore, there is consequential prayer for issue of a letter of intent.

3 In substance, there is a challenge to the communication dated 7th September 2011. For seeking implementation of the Resolution of the year 2006 and 2007 and for challenging the communication dated 7th September 2011, the present petition was lodged on 24th April 2016. As far as the explanation for delay is concerned, the learned counsel for the petitioner invited our attention to the averments made in paragraph 5. He stated that the internal note prepared by the Municipal Officers on 9th July 2013 shows that the proposal of the petitioner was under active consideration. He relied upon the Judgment and Order dated 18th September 2014 passed by a Division Bench of this Court in Writ Petition No.1853 of 2011 and Writ Petition (L)No.2567 of 2011. He submitted that in relation to the other markets in the city, the other Associations of Merchants filed said writ petitions for challenging

the identical impugned communications issued on 20th August 2011 and 7th September 2011 in respect of the other markets. He submitted that as other Merchants' Associations in relation to other markets had challenged the said communications, the petitioners did not approach this Court immediately. He submitted that in the said writ petitions, directions were issued to consider the proposals of the petitioners therein. Hence, the petitioners were under an impression that even their case will be considered.

4 He submitted that the impugned communication dated 7th September 2011 is without authority of the law as the Assistant Commissioner (Markets) has no jurisdiction to reject the proposal of the petitioners as the proposal was supported by the resolution of the highest body namely the General Body of the Mumbai Municipal Corporation. He submitted that all the attempts to get the said resolution rescinded failed. He invited our attention to the Chamber Summons No.53 of 2018 by which an amendment is sought for incorporating a challenge to the resolution dated 29th September 2016 passed by the Improvement Committee and the resolution dated 29th November 2016 passed by the General Body of the said Corporation. He submitted that these resolutions were disclosed for the first time in the affidavit in reply filed in the year 2018. He submitted that as late as on 29th November 2016, the General Body purported to cancel its earlier resolution dated 11th September 2007. He

submitted that the resolution dated 29th November 2016 shows that the earlier resolutions and in particular resolution dated 11th September 2007 was in force till 29th November 2016. He invited our attention to the order dated 6th May 2016 by which a Division Bench of this Court directed the Mumbai Municipal Corporation to consider the offer of the petitioner.

5 The learned counsel for the petitioner submitted that apart from aforesaid factors, even the documents annexed to the petition will have to be considered for ascertaining whether there is any explanation for delay. He submitted that in any case, there is no prejudice to the Mumbai Municipal Corporation even assuming that there is an inordinate delay in approaching this Court.

6 It will be necessary to make a reference to paragraph 5 of the petition which is the only paragraph which, according to the petitioners, contains some explanation for the delay. It reads thus:

"5 In the premises aforesaid, the petitioners are approaching this Hon'ble Court invoking its extraordinary jurisdiction under Article 226 of the Constitution. The petitioners submit that although a communication dated 7.9.2011 was addressed to the petitioners, the same was pending challenge before this Hon'ble Court since 25 identical communications were based on a common decision taken by the Municipal Authorities. The same was pending from 2011 till 2014 and the petitioners expected the Municipal Authorities to abide by the

decision of this Hon'ble Court which was rendered on 18.9.2014. In any case, in the case of the petitioners the Respondent-Municipal Corporation itself has prepared a note on 9.7.2013 that the petitioners' application for issuance of Letter of Intent was under process. The petitioners have made several representations from 2011, the last being on 24.4.2015. The petitioners in the circumstances, submit that the Municipal Authorities are continuing to act arbitrarily and therefore, the petitioners are now constrained to approach this Hon'ble Court having left with no other alternative."

7 As noted earlier, for challenging the communication dated 7th September 2011, the present petition was filed on 26th April 2016. The first explanation which can be seen from paragraph 5 for the delay is that identical communications issued in respect of other markets were subject matter of challenge in this Court from the year 2011 and the said petitions were disposed of on 18th September 2014 in which a direction was issued to consider the proposals of the petitioners therein. In fact, this ground is completely against the petitioners. The petitioners were all along aware that in respect of other markets, the concerned Merchants' Associations have challenged the orders of rejection of their respective proposals for redevelopment of respective markets. Other associations had taken recourse to the remedy. The writ petitions were decided on 17th September 2014. Even within a reasonable time from the date of the said decision, the petitioners did not approach this Court. The petitioners claim that they made several representations from 2011 and the

last one being on 24th April 2015. Nothing prevented the petitioners who represent an Association of the traders carrying on business in prime locality of the city to approach this Court for challenging the communication dated 7th September 2011. Repeated representations made by the petitioner cannot be a valid explanation for the delay.

8 Other contention is that a right was created in favour of the petitioners by the resolutions passed by the Improvement Committee and General Body on 24th March 2006 and 11th September 2007 respectively. Even on 7th September 2011, when the petitioners were served with the impugned order, the petitioners were aware about the resolutions. The said resolutions were revoked subsequently in 2016. There is no explanation for the long delay. The petitioners were fully aware that as on 7th September 2011 that notwithstanding the resolutions of 2006 and 2007, their proposals have been rejected. When the similarly placed Associations in respect of other markets immediately approached this Court in the year 2011, the petitioners did not approach the writ Court. This petition is lodged in April 2016 for challenging the communication dated 7th September 2011. There is an inordinate delay in filing this petition which is not explained. In fact, the petition proceeds on the footing that there is no delay as there is a specific averment made in paragraph 10 that there is no delay in filing this petition.

9 Writ petition was extensively amended in October 2017 for incorporating a challenge to the tender process initiated by the Mumbai Municipal Corporation in the year 2016 in respect of re-development of the municipal market. Even at that stage, the petitioners have not come out with any explanation for the delay. Even in Chamber Summons no.53 of 2018 wherein amendment is sought, the petitioners have not come out with the explanation for gross delay of more than five years in approaching the writ Court especially when similar Associations came to the Writ Court way back in the year 2011 for similar relief in respect of other Municipal Markets.

10 In this petition we are concerned with the issue of redevelopment of a Municipal market. It is admitted by the petitioners that there is no vested rights in them to develop the municipal market.

11 Therefore, we find that there is absolutely no explanation for delay of more than three years in filing this writ petition.

12 Hence, we decline to entertain this petition only on the ground of gross and unexplained delay to approach this Court. Writ petition is rejected.

13 At this stage, the learned counsel for the petitioners seeks continuation of ad-interim relief. The said prayer is opposed by the learned counsel appearing for the Municipal Corporation. As the ad-

interim relief is operating till today, the same is extended for a period of six weeks from the date on which this Judgment and order is uploaded. Pending Chamber Summons does not survive and the same is disposed of.

(RIYAZ.I.CHAGLA,J.)

(A.S.OKA,J.)