

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.1116 OF 2015

Rakesh Motichand Gupta

Through his constituted attorney

Dharmendra Motichand Gupta

: Petitioner.

Versus

State of Maharashtra and anr.

: Respondents.

Mr. Ashok T Gade i/by Mr. Anup Deshmukh for the Petitioner.

Mr. Amit Shastri, AGP for the Respondent No.1.

Ms. Sonali Sable a/w Mr. Kamlesh Ghumare and Mr. Aditya Parulekar for
the Respondent No.2.

CORAM : R. M. SAVANT &
K. K. SONAWANE, JJ.

DATE : 27th AUGUST 2018

P.C.

1 The above Writ Petition has been filed challenging the order dated 16/01/2010 passed by the High Power Committee set up under the Judgment of this Court in Tulsiwadi Navnirman Co-op Housing Society Ltd. v/s. State of Maharashtra and ors, by the said order the Appeal filed by the Petitioner being Appeal No.88 of 2009 came to be dismissed.

2 The Petitioner herein was allotted premises as and by way of permanent alternate accommodation in a Slum Scheme which was implemented for the society of the slum dwellers known as one Sundernagar Co-operative Housing Society Ltd. The plot of land on which the Slum Scheme was implemented is situated in Central Mumbai at Tulsi Pipe Road. It seems

that the possession of the said permanent alternate accommodation came to be handed over to the Petitioner in the year 2001. The Petitioner it seems thereafter moved to the United States of America and is presently residing there and the instant Writ Petition has been filed by his brother one Dharmendra Gupta who is his power of attorney.

3 In view of the large scale illegalities in the matter of possession of the permanent alternate accommodation being handed over to the third parties in the said Sundernagar Co-operative Housing Society, a survey was carried out by the Slum Rehabilitation Authority and the office of the Additional Collector on two dates i.e. on 27/06/2006 and 30/08/2006. In the said surveys it was discovered that in respect of 47 tenements, which included the tenement of the Petitioner, the occupants were some other persons than the original allottees. In the case of Petitioner the occupant was one Mrs. Trupti Jadhav who was found in occupation at the time of both the surveys. The Additional Collector issued a notice to the said 47 illegal occupants and informed them that a hearing would be offered to them on 14/07/2006 on which day they were required to remain present with original documents and their written statement. It seems that the said Mrs. Trupti Jadhav filed her written statement and claimed that she has been permitted to reside in the premises in question by the Petitioner. The Additional Collector thereafter passed an order dated 04/10/2006 recording that the occupation of the

premises by third parties indicates that the premises have been transferred which was in breach of Regulation 33(10) of the Development Control Regulations Act 1991 and Clause 1.18 thereof which mandates that during the period of 10 years there could be no transfer by sale, gift, exchange, lease or otherwise of the premises which have been allotted as an by way of permanent alternate accommodation.

4 The Petitioner aggrieved by the said order dated 04/10/2006 passed by the Additional Collector challenged the same by way of an Appeal under Section 35 of the Slum Act before the Administrator and Divisional Commissioner, Konkan Division. In the context of the challenge raised in the above Writ Petition, it is required to be noted that by Clause (c), the Petitioner has raised a ground that the Additional Collector did not give reasonable opportunity to the occupants of the building to show cause why they should not be evicted therefrom. Thereafter in Clause (d) a ground has been raised that the Additional Collector has not considered the documents on record which established that the Petitioner is very much in possession of the premises in question. The Divisional Commissioner considered the Appeal filed by the Petitioner and by his order dated 02/07/2009 dismissed the Appeal. The Divisional Commissioner has observed that the presence of the third party Smt. Jadhav in the suit premises proves that the original holder Shri Gupta who is away in America has transferred the premises to Smt. Jadhav and the same is

found to be a breach of the policy provisions of the Government. The Divisional Commissioner therefore observed that no relief can be granted to the Petitioner who was the Appellant.

5 Being aggrieved by the said order dated 02/07/2009 passed by the Divisional Commissioner, the Petitioner challenged the same by way of a Writ Petition in this Court being Writ Petition No.10240 of 2009. Since by that time the High Power Committee came to be constituted to consider the grievances in respect of the Slum Schemes, the Petitioner sought withdrawal of the said Writ Petition to approach the appropriate authority. The Petition was accordingly allowed to be withdrawn by this Court by order dated 09/12/2009.

6 The Petitioner has thereafter approached the High Power Committee constituted for the purposes of hearing grievances in respect of Slum Schemes. The High Power Committee as the order discloses recorded the case of the Petitioner as can be seen from paragraph 2 of the said order passed by the High Power Committee. In the said paragraph 2 the case of the Petitioner is noted by the High Power Committee that he requested one of his near friend and her family i.e. Mrs. Trupti Jadhav to reside in the said premises as she was also in need of accommodation in Dadar area and since 2006 Mrs. Trupti Jadhav was residing there. It is also recorded by the High Power

Committee that it was the case of the Petitioner that he has not created any third party rights, title or interest in respect of Flat No.719 as alleged by the Competent Authority. The High Power Committee recorded the finding that the occupation of the said Mrs. Trupti Jadhav of the premises in question at the time of survey by the Slum Rehabilitation Authority and the Additional Collector clearly shows that the Petitioner has transferred the said premises in favour of Mrs. Trupti Jadhav which is contrary to Regulation 33(10), clause 1.18 thereof. The High Power Committee accordingly dismissed the Appeal filed by the Petitioner.

7 The learned counsel for the Petitioner Shri Ashok Gade would seek to reiterate the case of the Petitioner viz. that an opportunity was not granted to the Petitioner to demonstrate that there was no transfer by sale, gift, exchange, lease or otherwise of the tenement in question so as to fall foul of the statutory mandate. It was the submission of the learned counsel for the Petitioner that the High Power Committee has also not taken into consideration the case of the Petitioner though it has recorded the same in paragraph 2 of the impugned order.

8 Per contra, the learned AGP Shri Amit Shastri and the learned counsel for the SRA Ms. Sonali Sable would support the orders passed by the Additional Collector, Divisional Commissioner and the High Power Committee.

The learned counsel would submit that the Petitioner having been given full opportunity by both the authorities below as well as the High Power Committee cannot now assail the order on the ground of breach of the principles of natural justice.

9 Having heard the learned counsel for the parties, we have considered the rival contentions. The question that arises is whether the orders have been passed by the authorities below in breach of the principles of natural justice. In so far as the first authority is concerned i.e. the Additional Collector as indicated above, the said authority had issued a show cause notice pursuant to which Mrs. Trupti Jadhav had appeared before the Additional Collector and filed her written statement which has been taken into consideration by the Additional Collector and thereafter an order of eviction has been passed against the Petitioner as well as the said Mrs. Trupti Jadhav who according to the Additional Collector is an illegal occupant. Thereafter the Divisional Commissioner, Konkan Division in an Appeal filed under Section 35 has also given opportunity to the Petitioner considered the findings recorded by the Additional Collector and did not deem it appropriate to interfere with the said findings of the Additional Collector. The matter thereafter reached the High Power Committee. The High Power Committee has also considered the case of the Petitioner as also the findings recorded by the Competent Authority as well as the Divisional Commissioner and thereafter reached a conclusion that there

is a breach of the statutory regime that is applicable to the tenement which has been allotted as a permanent alternate accommodation and to which an embargo of 10 years applies. In our view therefore adequate opportunity was given to the Petitioner.

10 We are unable to accept the contention of the learned counsel for the Petitioner that in the absence of any contra material produced by the authorities, the said Mrs. Trupti Jadhav cannot be termed as an illegal occupant. In a matter as this, it is very difficult to bring contra material on record especially having regard to the fact that the parties may enter into a transaction in a manner so as not to fall foul directly with the statutory regime. The fact however remains that at the time of both the surveys it was Mrs. Trupti Jadhav who was found in occupation of the premises in question. The said fact also applies to 46 other tenements which have been listed by the Additional Collector in the chart which has been annexed to his order dated 04/10/2016. It is required to be borne in mind that the tenements allotted as and by way of permanent alternate accommodation under the Slum Rehabilitation Scheme are meant for rehabilitation of the slum dwellers and hence the rationale of putting an embargo of 10 years for the transfer of the premises by sale, gift, exchange, lease or otherwise. In the light of the aforesaid the orders passed by the authorities below and the High Power Committee cannot be faulted with.

11 In our view, therefore, no case for exercise of the writ jurisdiction of this Court is made out. The above Writ Petition is accordingly dismissed.

[K. K. SONAWANE, J]

[R.M.SAVANT, J]

Laxmikant
Gopal
Chandan

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by Laxmikant
Gopal Chandan
Date: 2018.08.29
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