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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO.2394 OF 2017

Ghanshyam M. Maurya ...Petitioner
vs.
Municipal Corporation of
Greater Mumbai & Anr. ...Respondents

Mr.Chinmay A. Acharya for the Petitioner
Mr.Beni Prasad Chatterjee, Senior Counsel a/w Ms
K.H.Mastakar for the respondent-MMC.

CORAM : A.S.OKA, &
RIYAZ.I.CHAGLA,JJ.
DATE : MARCH 23, 2018

P.C.:

1 Heard the learned counsel for the petitioner and the learned senior counsel for the respondent Nos.1 and 2. Office noting shows that notice has been served to the respondent Nos.3 to 5. None appears for them. On 25th July 2017, notice for final disposal was issued by this Court.

2 With a view to appreciate the submissions made across the bar, it will be necessary to make a reference to the averments made in the petition. The case made out in the petition is that in the year 1998, the petitioner was allotted a premises for running a food stall of "Annadata Ahar Kendra". The petitioner is relying upon the letter of allotment dated 10th October 1998.

3 On 20th May 2017, the Assistant Commissioner,

K/W Ward of the respondent No.1-Mumbai Municipal Corporation addressed a letter to the petitioner stating that the existing Annadata Ahar Kendra of the petitioner is required to be closed down as it is affected by the road line of D.N.Nagar Link Road. It is stated that as per the order dated 15th May 2017, there is a proposal to shift the Annadata Ahar Kendra (for short "the said stall") on a land bearing CTS No.567-658 at Oshiwara on amenity reservation space. It is stated that the constructed area of the said stall will be 10 X 12 and there will be an additional space of 80 sq ft where the senior citizens, pregnant women and the students can sit and eat food. The terms and conditions on which the said stall was allotted were incorporated in the said letter. It records that the existing stall shall be shifted to the newly allotted place within a period of 7 days failing which action will be taken in accordance with section 314 of the Mumbai Municipal Corporation Act, 1888. The case made out in the petition is that the petitioner submitted a plan for construction of the said stall which was approved by the Mumbai Municipal Corporation.

4 It appears from the letter dated 1st June 2017 (Exhibit-D to the petition) that the respondent No.3 who is a member of the legislative assembly addressed a letter to the District Collector of Mumbai Suburban District. In the said letter, she stated that the land bearing CTS No.657-658 is available at Oshiwara where a building for women can

be constructed and that she was willing to contribute a sum of Rs.25,00,000/- from her funds (MLA's fund).

5 By a letter dated 3rd June 2017, the petitioner informed the respondent No.2 that in terms of the permission granted on 20th May 2017, he has constructed a new stall on the said land at Oshiwara and requested for grant of NOC for issuing a licence under section 394 of the said Act of 1888. The case made out in the petition is that by a letter dated 7th June 2017 addressed by the Advocate for the petitioner to the respondent No.2, it was informed that the petitioner has spent more than a sum of Rs.4,00,000/- for the construction of the said stall. Reference is made in the said letter to the letter dated 2nd June 2017 (Exhibit-G which is impugned in this petition). By the letter dated 2nd June 2017, the permission granted to the petitioner under the letter dated 20th May 2017 was cancelled and that the petitioner was directed to remove the stall constructed by him. In the letter of his Advocate, the petitioner specifically stated that the impugned letter dated 2nd June 2017 has been issued at the instance of the respondent No.4 who is an elected councillor of the respondent No.1. The case made out in the petition is that on 9th June 2017, the stall erected by the petitioner was demolished by the Municipal Officers. Therefore, the present petition has been filed for quashing the letter dated 2nd June 2017 and for directing re-construction of the stall.

6 There is an affidavit in reply filed by Shri Prakash S. Birje, Assistant Engineer (Maintenance), K/W Ward. He has stated that the plot on which a permission was granted to the petitioner to erect a new stall admeasures 174 sq meters and the area allotted to the petitioner was of 18.60 sq meters (approximately 200 sq.ft.). In paragraph 5, it is stated that the petitioner started construction of the stall which was not as per the approved plan and in view of the complaints received, the impugned letter dated 2nd June 2017 was issued. In paragraph 6, it is stated that the respondent No.1 has undertaken to develop the amenity plot as per the directions of the Municipal Commissioner. In paragraph 7 of the affidavit, the Assistant Engineer stated thus:

"7 I say that the space available excluding constructed SWM chowky is less than 200 sq ft due to existing security cabin inside plot/open space required between two structures. I say that therefore effective remaining space may be made available for construction of structure after shifting existing security cabin inside plot and approval of petitioner drawing w.r.t existing SWM Chowky/Compound wall/Security cabin. I say that, petitioners will be permitted thereafter to construct the Annadaata Aahar Kendra on the condition of shifting to other place whenever required by MCGM."

7 We have heard the learned counsel for the petitioner and the learned senior counsel for the respondent Nos.1 and 2. The learned senior counsel for the respondent Nos.1 and 2 stated that on the plot subject matter of the letter dated 20th May 2017, sufficient space is not available as a security cabin is required to be constructed along with a gate. He has stated that the petitioner continues to run the original Annadata Ahar Kendra in his original stall. Thirdly, he submitted that the respondent No.1 is willing to offer another place to the petitioner.

8 We have given careful consideration to the submissions. The letter dated 20th May 2017 (Exhibit-C) makes it clear that an area of 120 sq ft plus 80 sq ft was agreed to be allotted to the petitioner out of the land bearing CTS Nos.657 and 658 at Oshiwara. It also records that as the existing stall of the Annadata Ahar Kendra which was run by the petitioner is required to be shifted, this allotment was made. Perusal of the impugned letter dated 2nd June 2017 (Exhibit-G) shows that no reasons whatsoever have been assigned as to why the permission dated 20th May 2017 has been cancelled. The said letter calls upon the petitioner to remove or demolish the stall. Therefore, when the said letter was issued, the respondent No.2 was aware that the stall was already constructed. It was not alleged that the stall was illegally constructed by the petitioner. It is also

not alleged in the letter that the petitioner continued to retain the original stall at D.N.Nagar link road. As stated earlier, in fact, no reasons have been assigned for the cancellation of the permission granted earlier.

9 In the affidavit of Shri Prakash S. Birje, he has made an allegation that the petitioner has carried out illegal construction. Secondly, it is stated that as per the order of the Municipal Commissioner, the plot is required to be developed for some other purpose. In paragraph 7, it is stated that a smaller plot can be allotted to the petitioner on the same plot, area of which will be less than 200 sq ft. The impugned letter dated 2nd June 2017 records that a new space will be allotted to the petitioner. Thus, the stand taken in paragraph 7 of the affidavit is contrary to what is stated in the letter dated 2nd June 2017. The allegation in the affidavit that the petitioner carried out illegal construction clearly appears to be an afterthought.

10 There is another aspect of the matter. On 1st June 2017, the respondent No.3 who is a Member of the Legislative Assembly (MLA) informed the Ward Officer of the concerned ward for grant of NOC to enable her to construct a women's centre on the same plot. There is a specific allegation in the petition regarding the role played by the said MLA and though the notice of this petition was served to the said MLA, she has chosen not to appear.

11 Going by the letter of allotment dated 20th May 2017, it is an accepted position that the petitioner was entitled to an allotment of a plot. The allotment was cancelled by the impugned communication. There cannot be any dispute that the rights of the petitioner are affected by the cancellation of the letter of allotment dated 20th May 2017 especially when acting upon the said letter dated 20th May 2017 a stall was already constructed. The letter dated 2nd June 2017 is issued in gross breach of the principles of natural justice. Moreover, the letter contains no reasons. An attempt is made to supply reasons by filing an affidavit in reply which is not permissible in law. The petitioner has been deprived of his livelihood by illegal demolition of the newly constructed stall.

12 Therefore, the impugned communication will have to be set aside and the respondent Nos.1 and 2 will have to be directed to re-construct the stall at the same place at their cost.

13 The learned senior counsel for the respondent Nos.1 and 2 submits that the petitioner has committed contempt by continuing the business in the original stall. Firstly, this contention is not raised in the reply filed by the Assistant Engineer. Secondly, that is not the case made out in the impugned communication. Even if, the Municipal Corporation wants to take action of demolition of

the stall constructed by the petitioner as per the permissions granted under the letter dated 20th May 2017, the same will have to be done in accordance with law only after the stall is re-constructed.

14 In fact, this is a fit case where the respondent Nos.1 and 2 should be saddled with exemplary costs. As we are directing re-construction of the stall of the petitioner at the cost of the respondent No.1, we are not passing any order as to costs.

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

(I) We direct the respondent Nos.1 and 2 to restore the status quo ante by re-constructing the stall of the petitioner which was demolished on 9th June 2017. The re-construction of the stall shall be completed within a period of one month from the date on which this Judgment and order is uploaded and that the petitioner will be placed in possession of the said stall within the said period ;

(II) We make it clear that after the stall is re-constructed, it will be open for the respondent Nos.1 and 2 to take action of cancellation of the permission dated 20th May 2017. We, however, make it clear that the cancellation of permission shall not be made without following the principles of natural justice;

(III) If the Mumbai Municipal Corporation decides to cancel the permission, an order to that effect

shall be communicated to the petitioner. In such eventuality, the order of cancellation shall not be acted upon for a period of four weeks from the date on which the said order is served to the petitioner;

(IV) We make it clear that we have made no adjudication on the issue whether the petitioner has committed any breaches;

(V) Writ petition is disposed of on above terms. Pending Notice of Motion does not survive and the same is disposed of.

(RIYAZ.I.CHAGLA,J.)

(A.S.OKA,J.)