

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

WRIT PETITION NO. 2609 OF 2017

Mr.Bansidhar Zebarsingh alias
Narsingh Dubey.

... Petitioner.

V/s.

The Municipal Corporation of Greater
Mumbai and others.

... Respondents.

Mr.Abhijit Singh with Ms.Priyanka Lokhande i/b. Mr.A.R.Mishra
for the petitioner.

Ms.Geeta Joglekar for the respondent- MMC.

CORAM : A.S.OKA AND RIYAZ I. CHAGLA, JJ.

DATE : 14th August 2018.

P.C.:

The grievance made by this petition under Article 226 of the Constitution of India is that the petitioner's tea-stall was demolished by the first respondent- Municipal Corporation on 12th May 2017 without following due process of law. Based on the documents placed on record, this Court recorded a *prima facie* finding in one of the earlier orders that i.e. the order dated 28th March 2018 that the stall of the petitioner appears to have been demolished without following due process of law. The first respondent has filed an affidavit of Shri Umesh Chandrashekhar Bodkhe, Assistant Engineer (Maintenance), K/West Ward. In paragraph-4 of the affidavit, he has stated that after demolition of the stall on 12th May 2017, the petitioner reconstructed the same which was again demolished on 7th October 2017. It is further stated that the petitioner again reconstructed the said structure without permission and it was again demolished on 27th October 2017. The petitioner has filed a rejoinder in which there is a

vague and evasive denial of what is stated in paragraph-4 of the affidavit-in-reply. Today, the learned counsel appearing for the petitioner contends that the petitioner being a handicapped person did not visit the stall and, therefore, is unable to take any stand as regards averments made in paragraph-4 of the affidavit-in-reply.

2. There is no reason to disbelieve the stand taken in paragraph-4 of the affidavit-in-reply which indicates that during the pendency of this petition in which relief of reconstruction is sought, the petitioner without permission of the first respondent- Municipal Corporation and without permission of this Court, on two occasions, reconstructed the subject stall which was demolished by the first respondent.

3. The writ jurisdiction under Article 226 of the Constitution of India is always a discretionary and equitable. Considering the aforesaid conduct of the petitioner, this is not a fit case where the petitioner should be allowed to invoke the jurisdiction of this Court under Article 226 of the Constitution. Accordingly, writ petition is rejected.

4. As it is stated that the petitioner is a handicapped person, if there is any scheme available for the benefit of handicapped persons, under the said scheme, the petitioner can always make an application to the appropriate authority for grant of a stall or a pitch for construction of a stall. If such application is made, the same shall be decided in accordance with law.

(RIYAZ I. CHAGLA, J.)

(A.S.OKA, J.)