

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**ORDINARY ORIGINAL CIVIL JURISDICTION****WRIT PETITION (L) NO.2921 of 2018**

Dr.Kiritkumar B.Mehta.

...Petitioner

VS

Municipal Corporation for Gr.Mumbai & Ors.

...Respondents

Mr.G.S.Godbole i/b. Drupad Patil & Shruti Tulpule, for the Petitioner.

Ms.Vandana Mahadik, for the Respondent- M.C.G.M.

**CORAM : NARESH H.PATIL ACTING C.J &
G.S.KULKARNI, J.****DATED: 3rd September,2018**

P.C.:-

1. By this petition under Article 226 of the Constitution of India, the petitioner challenges the legality of the notice dated 20 August 2018 issued by the respondent-Municipal Corporation of Greater Mumbai (for short 'municipal corporation'), whereby the petitioner is directed to vacate the structure occupied by him, situated at Lal Bahadur Shastri Marg, Bhandup (West), Mumbai-400078, used by the petitioner for his medical practice. The structure admeasures about 200 sq.ft.

2. The case of the petitioner is that he is merely the occupant of

the said structure of which the landlord is one M/s.Shantilal & Ors. who are partners of Rolex Metal Industries (India). It is stated that the said structure was taken on rent in the month of March,1962 or thereabout. The petitioner to show his occupation and rights in respect of the structure has annexed certain rent receipts which are issued after 2001 and the period thereafter. The petitioner has also relied on certain other documents which are stated to have been issued by the competent authority under the Slums Act, namely occupier's card issued in the name of the petitioner dated 30 September 1978, as also electricity bills, telephone bills etc. The petitioner has averred that in the year 2011, on the ground that the structure occupied by the petitioner was falling within the road line prescribed for the Lal Bahadur Shastri Marg, Bhandup (West), Mumbai, the municipal corporation had issued a notice dated 12 July 2011, calling upon the petitioner to submit documents showing his occupation prior to 1 January 1995. Another notice was issued by the municipal corporation in the month of November,2015 calling upon the petitioner to submit documents in regard to the structure. The petitioner responded to the said notice by its letter dated 1 December 2015 by submitting seven documents namely telephone bills, electricity bills, rent receipts, Aadhar Card, Slum photopass, slum identity card and the receipt of some amount paid to the State Government.

3. Considering the petitioner's reply and the documents the

municipal corporation by the impugned communication dated 20 August 2018 recorded that on examination of the said documents, it is revealed that the petitioner had no document showing the existence of the structure prior to the notified date of 1 April 1962, so as to enable the Corporation to grant benefit of allotment of alternate premises or for rehabilitation, as per the policy of the municipal corporation. The petitioner was, therefore, called upon to vacate the premises within seven days failing which the same would be removed by the corporation at the petitioner's cost.

4. In the above circumstances the petitioner has approached this Court inter alia challenging the said communication issued by the municipal corporation. As this Bench which is a regular Court, was not available, the alternate Bench by an order dated 27 August 2018 granted a limited protection to the petitioner to the effect that no steps shall be taken on the basis of the impugned notice dated 20 August 2018, so as to enable the petitioner to move this bench. Accordingly the matter is placed before us.

5. The learned Counsel for the petitioner in supporting the prayers as made in the petition, would submit that the impugned notice is issued without appreciating the provisions of the Municipal Corporation Act. It is submitted that the provisions under Section 297 to 301 of the Municipal Corporation Act cannot be relied by the corporation to dispossess the petitioner. It is next submitted that the petitioner has

supplied documents showing existence of the structure for last more than thirty years and occupation of the said structure. It is then submitted that no opportunity of hearing was granted to the petitioner. It is submitted that the petitioner was not called upon to submit the documents showing existence of the structure prior to 1962. It is submitted that the eviction process cannot be followed without following a due procedure and it is just and necessary to acquire the land by following the procedure laid down under the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013. In supporting these contentions, the learned Counsel for the petitioner has relied on the decision of the Supreme Court in "*Indian City Properties Ltd. & Anr. Vs. Municipal Commissioner of Gr. Bombay and Anr.*"¹, and the judgment of the Division Bench of this Court in "*Jasuben Raghavji Patel Vs. Municipal Corporation of Gr. Mumbai & Ors.*"²

6. On the other hand, the learned Counsel for the Corporation has opposed the petition. It is submitted that the petitioner is not the owner of the premises. It is submitted that none of the documents as submitted by the petitioner in response to the notice issued by the Corporation show that the structure can be said to be an authorised one, as on 1 April 1962 being the notified date, as per the policy of the Municipal Corporation. It is submitted that the petitioner has not submitted any

1 (2005)6 SCC 417

2 Writ Petition no.3082 of 2014, Order dt.18/7/2018

document like an approved or sanctioned plan of the structure or any building permission etc. as would be submitted by a legitimate occupant or the owner to show that the structure can be said to be legal. It is submitted that the petitioner is neither the owner nor could the petitioner produce any material to justify the legality of the structure. It is submitted that thus, the submission as made on behalf of the petitioner, that the petitioner be granted compensation by acquiring the land and the said structure, also cannot be accepted. It is further submitted that the petition involves disputed questions of fact and the petitioner is not entitled for any relief in this proceedings.

7. We have heard the learned Counsel for the parties. At the outset, we may observe that it is not the petitioner's case that he is the owner of the structure including the land. It is not in dispute that the structure is obstructing the widening of an important arterial road namely Lal Bahadur Shastri Marg. In order to undertake the said work of road widening, the petitioner *inter alia* in the year 2015 was called upon by the municipal corporation to submit documents. The petitioner submitted certain documents which did not in any manner indicate that the structure occupied by the petitioner was authorised and having an approval or sanction of the municipal corporation. The petitioner has failed to show any document in regard to the structure prior to the datum line (1 April 1962). It is not the petitioner's case that the owner has come forward to

say that the structure is authorised in the record of the municipal corporation. If this be the situation, we fail to understand as to on what basis the petitioner can claim any right to occupy the illegal structure which admittedly is impeding a vital road widening.

8. As the petitioner admittedly is not the owner of the land and the structure in question, we are afraid as to how the provisions under Section 299 of the Bombay Municipal Corporation Act which pertain to "*Acquisition of open land or of land occupied by platforms, etc. within the regular line of a street*" can be pressed into service by the petitioner. The decision of the Supreme Court in the case "*Indian City Properties Ltd.*" (supra) would also not assist the petitioner as in the said case the appellant was the owner of the plot of land which had a bungalow, an outhouse and other structures such as pump room, servants quarters etc. Even the decision of the Division Bench in the case "*Jasuben Raghavji Patel*" (supra) would not assist the petitioner inasmuch as in the said case also there was a clear admission on the part of the municipal corporation as observed in paragraph 6 of the judgment of the ownership of the land under reference, as standing in the name of the petitioner. The Court in the facts of the case observed that monetary compensation can be offered to the petitioner on the basis of the ready reckoner rate. Also in paragraph 15 the Court recorded a statement on behalf of the municipal corporation that compensation will be payable to the petitioner under Section 301 of the

said Act. Having perused the said decision of the Division Bench, in the facts of the present case, it is wholly inapplicable.

9. If the argument as being asserted by the petitioner is accepted, it would be impossible to the Municipal Corporation to remove any unauthorised or illegal structure impeding the road widening. Structures which have no sanctity in law, cannot be protected. We cannot certainly exercise any original fact finding jurisdiction so as to ascertain such claim and much less the claim as asserted by the petitioner. We may observe that if the land or the structure in question if at all has a legitimate owner, he can certainly establish his rights qua the land and the structure before appropriate forum. Also if the petitioner has any rights under a slum scheme, it is for him to approach the appropriate authority for benefits under such a scheme.

10. In any event, from the documents as placed on record by the petitioner, we are not satisfied that in this proceeding we can grant any relief to the petitioner. Resultantly, the petition fails. It is summarily dismissed. No costs.

11. At this stage the learned Counsel for the petitioner seeks continuation of the ad-interim relief granted earlier. We continue the ad-interim relief, for a period of three weeks from today.

Prashant
Vilas Rane

Digitally signed by
Prashant Vilas Rane
Date: 2018.09.05
10:12:51 +0530

(G.S.KULKARNI, J)

(ACTING CHIEF JUSTICE)