

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 1377 OF 2006
WITH
CIVIL APPLICATION (ST) NO. 32798 OF 2018
IN
WRIT PETITION NO. 1377 OF 2006

Ibrahim Fakirsaheb Nalband and Ors. ... Petitioners

Versus

State of Maharashtra and Ors. ... Respondents

Mr. A.V. Anturkar, Sr. counsel a/w Mr. Sugandh Deshmukh for the petitioners.

Mr. P.G. Sawant, AGP for R. nos. 1, 2, 4 and 5 State.

CORAM : B.P. DHARMADHIKARI &
SANDEEP KASHINATH SHINDE, JJ.
DATE : AUGUST 19, 2019

P.C.:

Heard respective counsel. Perused the order dated 14/12/2018 passed by this Court.

2. The facts in brief show that 13 petitioners are holding as vendors a piece of land admeasuring less than 2000 sq. ft. They have obtained licence/permission from the Municipal Council, Mahabaleshwar way back in 1972 and thereafter, continued to pay licence fees regularly.

3. In due course of time, it became clear that the said land

was part of forest and did not vest with the Municipal Council. Petitioners then attempted to obtain permission even under Forest Act, 1980 and ultimately succeeded in it on 17/10/1997.

4. However, while permitting the petitioners, the concerned Ministry of Central Government directed an enquiry by the State Government into the initial permissions granted to the petitioners by the Municipal Council. It directed an enquiry to find out the authorities/officers responsible for this lapse. This enquiry and its completion has been made condition precedent for grant of authorization to the petitioners to carry on their business.

5. This act of Central Government making it condition precedent, formed subject matter of writ Petition No.5637 of 1999. In that writ petition, the possession of petitioners was protected. However, on 6/12/2015, while finally deciding the petition, this court observed that the right of Central Government to make that direction a condition precedent could not have been assailed by the petitioners.

6. The petitioners surrendered to that order also. The enquiry was taken up and Municipal Authorities pointed out that most of the concerned officers/authorities were either no more or had retired. Only one sanitary inspector could be found involved and he has been warned for the lapse.

7. This situation has not improved and hence, petition came to be filed for expeditious completion of the enquiry. Present application is also for the same purpose.

8. Period of 47 years has expired after the permission was initially granted to the petitioners. Anybody then in the employment would have already retired long back. It is obvious that when the Municipal Council has acted, the permission must have been given after some resolution of either standing committee or General Body or through the order of Chief Officer of that Municipal Council. In the light of this, it is difficult to say that the warning issued to the concerned sanitary inspector is inadequate.

9. According to the petitioners, practically, respondent State and its officers are finding it difficult to proceed further and therefore, could not take any decision as yet.

10. Learned AGP does not dispute the facts. However, he submits that after the orders of this court dated 14/12/2018, he is still awaiting the instructions.

11. It is within the powers of respondent nos. 1 and 2 to close the proceedings if they found that due to lapse of time, enquiry cannot proceed further. However, the fate of petitioners and their families cannot be allowed to hang in balance indefinitely.

We find that the interest of justice can be met with by directing respondent nos. 1 and 2 to finalize the action within three months from the date of communication of this order to them.

12. With these directions, we partly allow the writ petition and Civil Application and dispose of the same accordingly.

(SANDEEP KASHINATH SHINDE, J.)

(B.P. DHARMADHIKARI, J.)