

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Writ Petition NO. 1761 OF 2019

Mr. Madhukar Narayan Bhandarkar

And another

...Petitioners

Versus

The State Of Maharashtra

and others.

...Respondents

....

Mr. Shishir Joshi i/b. V.S. Legal Associates, Advocate for the Petitioners.

Mr. A.R. Metkari, AGP, for Respondent No.1-State.

Mr. Piyush Pande i/b. K & M Law Asso. For Respondents No.2 & 3.

Dr. Milind Sathe, Senior Advocate a/w. Arif Doctor, Anirudh Hariyani, Arun Siwach, Vinamra Kopariha, Prachi Vasudeo i/b. Cyril Amarchand Mangaldas, for Respondent No.4.

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CORAM : R. G. KETKAR, J.

DATE : 11th FEBRUARY, 2019

P.C.

1. Not on board. At the request of Mr. Joshi taken up in the production board.
2. Heard Mr. Shishir Joshi, learned Counsel for the petitioners, Mr. A.R. Metkari, learned AGP for respondent No.1-State, Mr. Piyush Pande, learned counsel for respondents No.2 & 3 and Dr. Milind Sathe, learned Senior Counsel for respondent No.4, at length.
3. As per the administrative order of the Hon'ble the Chief Justice the petitioners have moved this Court as regular Court presided over by Hon'ble Mr. Justice K.K. Tated is not available for judicial work.

4. This Petition takes exception to (1) the order dated 4.8.2018 (Exhibit-Q, pages-104 to 106); (2) the order dated 3.11.2018 (Exhibit-U, pages-140 to 142); and (3) the order dated 16.1.2019 (in fact it is 24 hours' notice (Exhibit-T, pages-138 to 139) passed by the Executive Engineer, D-3 Division of the Mumbai Building Repairs and Reconstruction Board (for short, 'Board'), Mumbai.

5. The subject matter of the petition is redevelopment of the property bearing C.S. No.1552 of Girgaon Division, J.K. Building Nos.1 to 10, Harishchandra Goregaonkar Road, Mumbai and in particular building No.8. The impugned orders are also passed by the Authorities who are having their offices within the jurisdiction of Original Side of this Court. In view thereof, the petitioners have to institute proceedings on the Original Side of this Court and not on the Appellate Side.

6. Mr. Joshi requested that he may be permitted to convert this Writ Petition to Original Side and in the meantime he pressed for ad-interim relief in terms of prayer clause (b).

7. On the other hand, Dr. Sathe submitted that the petition was heard on 22.1.2019. In paragraph-3, it was observed that as the learned Counsel for the petitioners has made incorrect statement before this Court, the Court did not find any reason to grant any ad-interim relief at that stage and directed the petitioners to remove all office objections on or before 31.1.2019 failing which petition was to stand dismissed without

further reference to the Court. He submitted that as the petitioners are denied ad-interim relief, this Court may simply permit conversion of Writ Petition from Appellate Side to Original Side with liberty to the petitioners to apply for ad-interim relief before the learned Judge taking up Original Side matters. He further submitted that petitioner No.2 has voluntarily surrendered the possession of room No.51 to respondent No.4 and has also shifted to alternate transit accommodation. As petitioner No.2 has voluntarily surrendered the possession of room No.51, he is not entitled to any ad-interim relief. Mr. Joshi disputes said position and submits that petitioner No.2 has not surrendered the possession of room No.51 to respondent No.4.

8. Mr. Pande submitted that the petitioners made incorrect statement to the effect that they were not present at the time of hearing of the matter on 14.8.2018 and 16.10.2018. In fact, on both the occasions the petitioners were present. He further submitted that the petitioners contend that they were not served with the order dated 3.11.2018, however, said order was pasted at the door of the petitioners.

9. As indicated earlier, the petitioners should have instituted proceedings on the Original Side of this Court. In view thereof, the Petition is transferred to the Original Side of this Court. Insofar as the ad-interim order is concerned, insofar as petitioner No.1 is concerned, a perusal of letter dated 1.2.2019 addressed by the Executive Engineer, D-3

Division of the Board to petitioner No.1 *prima facie* shows that possession of room No.125, second floor of building No.8 is not taken from petitioner No.1. Said letter is taken on record and marked 'X' for identification.

10. Insofar as the contention of Dr. Sathe that petitioner No.2 has voluntarily surrendered the possession of room No.51 in building No.8 to respondent No.4 is concerned, same is disputed by Mr. Joshi. Dr. Sathe has also not produced any possession receipt or panchnama indicating surrender of possession of said room by petitioner No.2. Dr. Sathe relied upon the order dated 22.1.2019, by which ad-interim relief was refused. It may be noted here that the order dated 1.2.2019 passed by the Executive Engineer, D-3 Division of the Board was not before the Court at the time of passing the order on 22.1.2019. Even otherwise at that stage, namely, as on 22.1.2019, this Court did not find it appropriate to grant ad-interim relief. Respondent No.4 has not produced any document to substantiate surrender of room No.51 by petitioner No.2. Whether the petitioners have made incorrect statement or not can be examined when the petition is heard for admission. In view thereof, subject to the petitioners neither creating third party interest nor parting with the possession of their respective rooms, there shall be ad-interim order in terms of prayer clause (b) till 25.2.2019. Leave to amend is granted. Amendment shall be carried out within one week from today and amended slip shall be made over to other side within the same period. Re-verification is dispensed with. The petitioners shall move the Court immediately after amending the petition.

(R. G. KETKAR, J.)