

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

CIVIL WRIT PETITION NO.13962 OF 2016

Usuf Ali Nasavul Shaikh

..Petitioner

V/s.

State of Maharashtra & Anr.

.. Respondents

Mr.A.R. Pandey a/w Mr.V.R. Dubey for Petitioner.

Mr.P.P. Pujari, AGP for Respondent-State.

CORAM : A. S. GADKARI, J.

DATE : 19th AUGUST 2019

P.C.

1. By the present Petition under Articles 226 and 227 of the Constitution of India, the petitioner has impugned the order dated 09th April 2013 passed in Appeal No. Slum/493/2012 passed by the Administrator and Divisional Commissioner, Konkan Division, Mumbai under Section 35 of the Maharashtra Slum Areas (Improvement, Clearance and Development) Act, 1971, thereby confirming the order dated 02nd June 2012 passed by the Deputy Collector (Encroachment) and Competent Authority, Colaba Division, Mumbai (i.e. the Respondent No.2) herein.

2. Heard learned counsel for the petitioner and the learned AGP. Perused the record annexed to the petition.

3. The petitioner claimed his eligibility for hut No.10 (admeasuring 8ft x 10ft) at Mahatma Jyotiba Phule Nagar Slum, Captain Prakash Pethe Marg, Colaba, Mumbai. The Respondent No.2, after hearing the petitioner and taking into consideration the relevant documents came to the conclusion that, the hut of the petitioner was not entitled to be protected by its impugned order dated 02nd June 2012. The appeal No.493 of 2012 preferred by the petitioner before the Divisional Commissioner, Konkan Division, has been turned down by the impugned order dated 09th April 2013.

4. Learned counsel for the petitioner submitted that, the petitioner has purchased the said hut from one Mr.Manik Balapa Dhotre for a consideration of Rs.12,000/-. He further submitted that, the said transaction is recorded on a Stamp Paper of Rs.10/- on 23rd March 1994 and 7 persons have signed it as witnesses to the said transaction. He further submitted that, in pursuance of purchase of the said hut, the concerned authority has issued Ration Card to the petitioner, establishing his right over the said hut. He submitted that, both the authorities below have not taken into consideration the said important aspect while passing impugned orders. He therefore, prayed that, the said impugned orders may be set aside by allowing the present petition.

5. A perusal of the record would indicate that, the alleged

sale transaction of hut No.10 is on a stamp paper of Rs.10/-. The sale of said immovable property was not registered as per the provisions of the Transfer of Property Act. The record further indicates that, the petitioner had purchased hut No.10 from Mr.Manik Balapa Dhotre however, the number of said hut is conspicuously silent on the Ration Card issued in favour of the petitioner. It is further to be noted here that, photo copy of the duplicate ration card has been annexed to the present petition. It further appears that, a different hut number is mentioned on the said Ration Card. The record further indicates that the petitioner has clearly failed in producing admissible evidence as prescribed by the Government of Maharashtra, by its various Resolutions while claiming protection to the said hut and therefore, both the authorities have rejected his claim in that behalf.

6. After perusing the impugned orders this Court is of the considered view that, both the authorities below have not committed any error, either in law or on facts. There is no merit in the petition and is accordingly dismissed.

(A.S. GADKARI, J.)