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IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CIVIL APPELLATE JURISDICTION****WRIT PETITION NO. 12297 OF 2015**

Ashok Kumar Dubey

.....Petitioner

V/s.

The Deputy Collector and others

.....Respondents

Mr. Anoop R. Pandey for the Petitioner

Mr. P. P. Poojari AGP for the State

CORAM : NITIN W. SAMBRE, J.**RESERVED ON : 07/06/2019****PRONOUNCED ON : 29/08/2019****P.C.**

Heard.

2 Petition claims to be owner of dwelling structure situated at Dhobi Ghat, Rajak C.H.S., Prakash Pethe Marg, Cuffe Parade, Coloba, Mumbai and dwelling structure situated at Ganesh Murti Nagar CMT No. 140, Prakash Pethe Marg, Cuffe Parade, Coloba, Mumbai.

3 Petitioner claims that he is protected occupier of the aforesaid structures as photo pass came to be issue in his favour in view of provisions of Section 3X(c) of the Maharashtra Slum Areas (Improvement, clearance and redevelopment) Act, 1971 (Hereinafter referred to as 'the Act').

4 Respondent-Deputy Collector vide order dated 07/09/2011 cancelled photo-pass issued to the petitioner in respect of dwelling structure situated at both aforesaid properties (which shall be referred to as 'suit properties' hereinafter).

5 Said order was confirmed by the Administrator and Divisional Commissioner, Konkan Division, Mumbai in Appeal No. 1374 and 1375 of 2011 vide order impugned dated 08/02/2013. Hence, this petition.

6 The contention of the learned counsel for the petitioner while questioning the orders impugned is, photo-pass for the property at Dhobi Ghat, Rajak C.H.S., Prakash Pethe Marg, Cuffe Parade,

Coloba, Mumbai was issued on 13/01/2004 and cancelled on 01/02/2008. As far as photo-pass for the property at Ganesh Murti Nagar CMT No. 140, Prakash Pethe Marg, Cuffe Parade, Coloba, Mumbai is concerned, same was issued on 23/03/2004 and cancelled on 01/02/2008.

7 It is the case of the petitioner that aforesaid photo-pass and the allotment of the aforesaid two properties was based on evidence which he produced demonstrating that he was residing at the place in the form of encroacher prior to 1995. According to him, once the allotment of photo-pass and structure in question is based on verification of the evidence, it is not open for the authority to cancel the same that too without any lawful basis. A further contention of the petitioner is, though he was prosecuted in in C.C. No. 4700030/PW/2011 for offence punishable under Section 465, 467, 468, 471 r/w 34 of the Indian Penal Code, he was honourably acquitted on 21/05/2018. According to him, the prosecution is based on charge that the petitioner has procured a forged driving licence so as to create an evidence that he was residing in the structure referred

above prior to 1995 which is formed to be basis for issuance of photo-pass and the allotment. According to him, once there is acquittal, it cannot be held that the petitioner has misused the forged driving licence for the purpose of allotment. A further contention of the petitioner is, orders impugned passed by the authorities are contrary to very scheme and policy of the State Government. It is claimed that both the orders lack convincing reasons and that being so, orders impugned are liable to be quashed and set aside. According to him, petitioner will be rendered homeless, in case if, orders impugned are sustained. It is further claimed that evidence which was produced by the petitioner in the form of electoral role of 1996 in which at serial no. 1267 wherein his name is reflected is ignored by the authority and that being so, orders impugned are liable to be quashed and set aside.

8 The learned AGP, while countering the aforesaid submissions, would urge that apart from concurrent findings recorded against the petitioner, the fact remains that both authorities are alive to the fact that petitioner has secured allotment by practicing fraud. According

to him, cancellation is based on notice issued to the petitioner and hearing granted. He would urge that the authority which has granted photo-pass is always vested with the powers to cancel the same, having noticed that the petitioner has practiced fraud while securing the allotment in his favour. As such, according to him, petition is liable to be dismissed.

9 Considered submissions.

10 On 09/01/2008, Revenue Inspector carried out field visit and submitted a report pointing out that the petitioner is running commercial activity at the premises which was allotted to him at Rajak C.H.S.

11 Allotment in favour of petitioner is based on information disclosed in Application No. 1022278 dated 27/5/2000. The Government policy contemplates that petitioner should demonstrate that before 01/01/1995, petitioner was residing/encroached the area in support of which driving licence came to be produced by the

petitioner. Said driving licence claim to have been issued by the Regional Transport Office, Tardeo which is used in support as residential proof. Based on the same, the then Deputy Collector has issued photo-pass No. 0006844 on 30/01/2004.

12 During the course of inquiry, based on the aforesaid report of the Revenue Inspector and the complaint lodged by Ex-Corporator dated 31/01/2008 it was noticed that name of the petitioner was included in voters list no. 19 at serial no. 1267 which primarily demonstrates that name of the petitioner was included in supplementary voters list in 1996 and not prior to that.

13 The petitioner suffered cancellation of photo-pass No. 0006844 vide order dated 01/02/2008 passed by respondent no. 1 which claim to have been subject matter of challenge in Appeal under section 35 of the Act. Said Appeal was dismissed on 31/07/2009 against which the petitioner approached this Court in Writ Petition No. 10828 and 10829 of 2009. Said petitions came to be disposed of this Court vide order dated 12/07/2011 by directing respondent no.

1 to consider the representation which is permitted to be preferred by the petitioner afresh. Needless to clarify that orders which were impugned in this said petition were not disturbed by this Court and still governs the field.

14 As a consequence of aforesaid liberty granted to the petitioner, a fresh representation preferred by the petitioner came to be rejected by respondent no. 1 vide impugned order dated 07/09/2011 whereby both photo-pass issued in favour of the petitioner being photo-pass no. 01COOAA005828 against hutment at Ganesh Murti Nagar, Cuffe Parade, Colaba Slum and photo-pass no. 01COOAA006844 in relation to Rajak CHS, Cuffe Parade, Colaba Slum were cancelled.

15 Said order was questioned in Appeals being Appeal no. 1374 & 1375 of 2011 which came to be dismissed in exercise of power under Section 35 of the Act vide order dated 08/02/2013.

16 In the aforesaid background, if the claim of the petitioner to be considered, it is worth to note that State Government declared a

policy vide Resolution dated 11/07/2001 dealing with issuance of photo-pass to slum dwellers like the petitioner. If the slum dweller is residing in the slum existing prior to 01/01/1995, the said slum dweller was entitled to photo pass provided his name appears in voters list as on 01/01/1995 at the address where concerned slum dweller is residing continuously. Said slum dwellers whose names are not found in the voters list of 01/01/1995, however, documents like electricity bill, telephone bill, tax receipt etc. if reflects, continues to stay of such slum dwellers prior to 01/01/1995, are required to be considered as an evidence for the purpose of grant of photo-pass.

17 The claim is photo-pass was issued on 31/01/2004 and cancelled on 01/02/2008 in regard to slum at Rajak CHS and as far as hut at Ganesh Murti Nagar is concerned, which was issued on 23/03/2004 and cancelled on 01/02/2008. Order of cancellation which are already upheld by this Court in Writ Petition No. 10828 and 10829 of 2009 are based on reason that the petitioner has failed to demonstrate that he was occupying the slum in question prior to

01/01/1995. Petitioner appears to have produced driving licence which was found to be bogus document resulting into his prosecution in a criminal case before the Court of Metropolitan Magistrate in C.C. No. 4700030/PW/2011 for an offence punishable under Sections 65, 467, 468, 471 r/w 34 of the Indian Penal Code. Though the petitioner is acquitted in the said case on 21/05/2018, acquittal is not on merit but for want of sufficient evidence. The fact remains that even in the present proceedings, said forged driving licence is sought to be relied upon for the purpose of establishing the fact that he was occupying the hutment prior to 01/01/1995.

18 The acquittal of the petitioner in the prosecution referred above by itself will not be considered as sufficient to restore the photo-pass in favour of the petitioner as acquittal of the petitioner is based on oral and documentary evidence, however, cancellation of photo-pass is based on altogether different evidential parameters which are to be considered and satisfied.

19 In view of the fact that licence is forged one, same cannot be

formed to be a basis for considering the claim of the petitioner as that of lawful occupant of premises against photo-pass.

20 Apart from above, other documents viz. electricity bill, telephone bill, bank pass-book and the voters list extract has not substantiated the contention of the petitioner that he was encroacher as on 01/01/1995 or prior to that.

21 Petitioner has given a categorical admission in the petition that in the structure in question, he is carrying out commercial activity. Apart from above, the fact remains that respondent no. 1 in the order impugned has noted that Shop and Establishment licence justifies that the petitioner is carrying out commercial activity.

22 As regards cancellation of both photo-passes is concerned, nature of evidence relied upon is same as the petitioner claim to have succeeded to photo-pass issued in favour of his deceased wife against structure question.

23 The authorities have gone on record in observing that the structure which was occupied by the petitioner was already demolished on 30/12/2009 as is reflected in the order of respondent no. 1 which is impugned herein and offence being crime no. 9 of 2019 is registered.

24 In the aforesaid background, having regard to concurrent finding of facts recorded by both the authorities and the fact that in the earlier round of litigation in Writ Petition Nos. 10828 and 10829 of 2009, this Court has not disturbed the earlier orders being order dated 01/02/2008 and 31/07/2009 passed by respondent no. 1 and thereafter by the Appellate Authority respectively, in my opinion, no case for interference is made out.

25 Petition lacks merit, stands dismissed.

[NITIN W. SAMBRE, J.]