

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.6826 OF 2013

Sudhir Dattatray Kavade	...	Petitioner
versus		
The Pune Municipal Corporation and Anr.	...	Respondents

Mr.Abhijeet Kandarkar for the Petitioner.

Mr.R.M.Pethe for Respondent No.1.

CORAM :- S. C. DHARMADHIKARI &
G.S.PATEL, JJ.

DATE :- OCTOBER 14, 2019

P.C. :-

1. The petitioner is present in person.
2. Mr.Kandarkar submits that he is still interested in proceeding with the petition.
3. This writ petition has been filed in December, 2012.
4. The grievance is that the second respondent, who is not alive, misled the Municipal Corporation in obtaining an occupation certificate. That occupation certificate is dated 29th November, 2011. The petitioner prays that steps be taken to quash and set it aside.

5. The petitioner has purchased a flat and according to him, initially that was not handed over so he filed a complaint under the Consumer Protection Act, 1986. Despite succeeding in that complaint, possession was not given and, therefore, he was constrained and compelled to initiate execution proceedings. During the pendency of the execution application, the original respondent No.2 handed over possession of flat to the petitioner.

6. Thereafter the execution application was dismissed. The petitioner was aggrieved by disposal of that execution application in this manner and, therefore, preferred a revision application before the Revisional Authority, namely, the Consumer Disputes Redressal Commission, Maharashtra State, Mumbai (**“State Commission”**, for short). The revision application was allowed on 17th September, 2008. The said Court held that there is no question of closing the execution proceedings when beyond physical possession, nothing has been handed over. That would mean the necessary and relevant legal documents such as occupation certification and completion certificate. They were to be handed over by the competent authority. However, for that to be handed over, the second respondent should complete the necessary procedural formalities. The petitioner was still not satisfied and invoked Section 27(1) of the Consumer Protection

Act, 1986. Now the petition, according to the counsel, would survive because though this Municipal Corporation issued an occupancy certificate, it was revealed that without paying the taxes, the certificate was obtained. The petitioner now alleges fraud on the part of the second respondent in obtaining such occupation certificate. The petitioner has then pursued the execution proceeding so as to obtain the relevant documents. According to him, they would reveal that unless the municipal taxes are paid, the occupancy certificate could not have been issued. There are certain taxes due in respect of the flat and the petitioner says that so long as receipts evidencing payment of such taxes are produced, there could not have been an occupancy certificate.

7. This is a very strange stand for the petitioner has obtained the physical possession of the flat, the immovable property is being enjoyed by him, he is in possession of the flat and the premises on the strength of a completion and occupancy certificate, but he alleges that they have been procured by fraud. If that is so, the petitioner will have to suffer the consequences of such fraud being alleged and if that is established and proved by him, then, it may very well be that the petitioner is guilty of colluding and conniving with the respondents to this petition.

One who obtains all the gains and benefits for himself cannot turn around and allege fraud and if there is a fraud and underlying every act, then, the petitioner cannot escape the consequences.

8. Surely, this writ petition is not the remedy to obtain any relief of the nature sought by the petitioner, including setting aside of the occupation certificate. The writ petition is, therefore, entirely misconceived and it is dismissed. No costs.

(G.S.PATEL, J.)

(S.C.DHARMADHIKARI, J.)