

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

WRIT PETITION (L) NO. 1879 OF 2019

Sardar Pasha Inamdar	}	
s/o. Mohammed Inamdar	}	Petitioner
versus		
State of Maharashtra and Ors.	}	Respondents

Mr.Omprakash Pandey for the petitioner.

Mr.Sukanta Karmakar-AGP for State.

Mr.Jayant Bardeskar with Ms.Rupali
Adhate for the Municipal Corporation.

Mr.Naresh Malwankar-Sub Engineer
(Maintenance) L Ward present.

**CORAM :- S. C. DHARMADHIKARI &
G. S. PATEL, JJ.
DATED :- JUNE 25, 2019**

P.C. :-

1. By this petition under Article 226 of the Constitution of India, the petitioner challenges the order declaring him as ineligible for permanent alternate accommodation.

2. It was stated in the morning session that there is extreme urgency for this court on 23rd February, 2018, passed an order in three writ petitions. A copy of that order is to be found at pages 55 and 56 of the paper book. By that order, the petitioners were permitted to pursue their appeals before the authority and the appeals were already filed on the day when this order was passed.

The appeals were to be decided and until the appeals are decided, the structures of the petitioners in those petitions were not to be demolished.

3. The petitioner says that he is Indian citizen residing at the address mentioned in the cause title. At the same time, he says that from the structure occupied by him, which he describes as shop admeasuring 10X15 feet situated at Uday Nagar Fish Market, Opposite Post Office, near Shagun Hotel, Tansa Pipeline, Saki Vihar Road, Sakinaka, Kurla, Mumbai 400 072, he is carrying on business of selling fish under the name and style as “Sardar Fish Supply”. He says that pursuant to various policies of the Government as also the Municipal Corporation, the petitioner is protected, inasmuch as, presently, he can be said to be a project affected person. The project is Tansa Water Pipeline Project. It is stated that the petitioner purchased the shop from one Francis D’Souza on 7th October, 1991 and started his business activities therefrom. The petitioner also has the proof of payment of electricity charges to the Bombay Suburban Electric Supply Limited (BSES) for the electric supply connected to this premises.

4. The argument of Mr.Pandey appearing for the petitioner is that as many as 7 documents were produced so as to prove the eligibility, but each of these documents have been brushed aside

and the impugned order, copy of which is at page 59 of the paper book, has been passed.

5. The 7 documents produced are a Notice, Gumasta Licence, Electricity Bill, Shop Census Form, Telephone Bill, Bank Account and Licence.

6. Pertinently, the petitioner is aware that the requirement is to prove the existence of the structure as also occupation of the same. The cut-off date is 1st January, 2000. The petitioner may claim that the structure was in existence before this cut-off date and he was carrying on business therefrom, but the authorities think otherwise. They have concurrently held that the petitioner has miserably failed to prove the existence of the shop premises and the occupation thereof prior to the cut-off date.

7. For instance, we may refer to a proof of occupation of the premises. One Francis D'Souza made an affidavit on a stamp paper of Rs.5/- and Mr.Francis D'Souza says that he was residing at Sakinaka, Macchi Market, Uday Nagar, Saki-Vihar Road, Sakinaka, Bombay 400 072. He says that he is in use, occupation and exclusive possession of a room admeasuring 10X15 feet and he gives the address. This is styled as a residential room and he says that he has been residing therein along with his family, paying the outgoing, taxes to the concerned authorities from time

to time. He has taken a loan of Rs.10,000/- from Sardar Mohd. Inamdar for the purposes of renovation and repair of the room, but he is not interested in residing therein any longer. He has, therefore, transferred the premises to the petitioner, as claimed by the petitioner. The affidavit has no description, other than what we have noted above, of the immovable property/ premises. There are no boundaries and there are no details, which are ordinarily found in a document, which transfers right, title and interest in an immovable property. Far from that, the petitioner says that he is carrying on business from the premises, whereas, Mr.Francis D'Souza was all the while residing therein.

8. The petitioner, in the writ petition, also makes contradictory statements. In the cause title, the petitioner's name is shown as Sardar Pasha Inamdar s/o. Mohammed Inamdar carrying on business and residing in Room No.6. In para 1 of the petition, it is said that the petitioner is carrying on business of selling fish in the name and style as "Sardar Fish Supply" from shop admeasuring 10'X15'. Now, this shop is not the one which is described in the cause title as the address of residence of the petitioner. The petitioner's name is Sardar Pasha Inamdar. The affidavit with Mr.Francis D'Souza describes the person acquiring the alleged title as Sardar Mohd. Inamdar. No relationship with this gentleman has been referred in the entire

petition, but the claim is that the petitioner acquired the shop from Francis D'Souza. So much for this affidavit, styled as a document of title. Even with regard to the electricity bill, it is stated that the date of the bill is 12th October, 2000. The billing month is September, 2000 and the due date is 1st November, 2000. The name of the person called upon to pay the amount is Sardar Inamdar Passa. The petitioner claims that this is his name, but the address there is Uday Nagar Fish Market, opposite Post Office Powai Vihar Road, Kurla, Mumbai 72. If there is a fish market from which the business has been carried on, then, the affidavit and this electricity bill receipt do not match or concur with each other. The affidavit describes the premises as residential room. The petitioner is trying to say that this residential room is the place from where he is carrying on business. We do not see what is the significance of the word "Uday Nagar Fish Market". Either the fish market is the place of business or of residence, but we are left to guess. The Municipal authorities, therefore, rightly do not accept the contents of any of these documents and from inception. The Shops and Establishment Licence will not carry the case of the petitioner any further for that is dated 1st March, 2006.

9. To our mind, therefore, none of the seven documents inspire confidence. The petitioner has been rightly called upon to handover vacant and peaceful possession of the premises so that they can be demolished. These are public projects and we do not think that a water supply pipeline be allowed to be encroached upon in this manner preventing carrying out of any maintenance and repair works. To our mind, therefore, larger public interest demands that the petitioner is removed. The petitioner does not dispute that fact, but desires that the benefit of a package of rehabilitation to be extended to him. Even that cannot be extended for the simple reason that the petitioner fails to prove his eligibility or entitlement for such a package. The findings of fact, therefore, do not suffer from perversity or error of law apparent on the face of the record warranting our interference in writ jurisdiction.

10. For the aforesaid reasons, the writ petition is dismissed. There would be no order as to costs.

(G.S.PATEL, J.)

(S.C.DHARMADHIKARI, J.)