

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

WRIT PETITION (L) NO.3377 OF 2019

Shanta Gorakh Suryavanshi and Ors. ... Petitioners
versus
The State of Maharashtra and Ors. ... Respondents

Mr.Raman K. Kamble for the Petitioners.

Mr.Abhay L. Patki- Additional
Government Pleader for Respondent
Nos.1, 4 and 5 (State).

Mr.Akshay Shinde for Respondent No.3.

CORAM :- S. C. DHARMADHIKARI &
R.I.CHAGLA, JJ.

DATE :- JANUARY 9, 2020

P.C. :-

1. We have heard the advocate for the petitioners. He states that Mr.Harshal Mirashi-the arguing advocate is not attending the Court today. Therefore, the matter be placed on some other date.

2. We are not inclined to accept this request for adjournment for the simple reason that the petitioners claim to be the project affected or slum dwellers. The project is of larger public interest. An affidavit is filed by the respondents, in which, it is stated that these very petitioners are approaching firstly a Civil Court and later on, this Court. The Civil Court has not protected these

petitioners against eviction. Further, another suit was filed in the City Civil Court on the same cause of action, but there a statement is made that the present petition is pending.

3. That suit is Suit No.2816 of 2019. The argument of the State is that even this Suit is not maintainable given the fact that there was earlier suit filed way back in the year 1998 styled as a City Civil Court Suit of 1998. In that suit, the learned Judge of the City Civil Court passed an order on 6th November, 1998 holding that the plaintiff therein has no case or right to occupy the suit land. All that the City Civil Court expected was a consideration of request of allotment of permanent alternate accommodation.

4. It is evident from this affidavit tendered today in reply that there is no absolute right to squat or remain upon the public property or Government land. In the event, the same is an encroachment, then, the Collector can cause a summary removal thereof by taking recourse to Section 50 of the Maharashtra Land Revenue Code, 1966. In the event, the parties like the petitioners, feel that their case be sympathetically considered or equitable relief be granted, they are expected to prove their eligibility by producing the documentary evidence evidencing their occupation and possession of the subject area prior to the cut-off date. None of the petitioners state anything about this aspect of the matter.

Further, a public project is being implemented at the site where the structures of the petitioners are located. A gas pipeline passes beneath these structures. The other pipeline is of the Petroleum Company. In such circumstances, it would be hazardous, unsafe and risky for the petitioners to occupy the structures, which are above such pipelines. To avoid any untoward incident and to enable proper and complete expansion of the existing road/highway that the competent authorities are seeking to remove the petitioners and demolish their structures.

5. We do not think that the petition discloses any cause of action, much less, a pre-established and pre-existing legal right in favour of the petitioners and a corresponding legal duty as far as the respondents are concerned. It is not the case of the petitioners that the respondents have refused to consider the request of the petitioners for grant of permanent alternate accommodation. All that the respondents are expecting is the petitioners should establish and prove the factum of the physical possession and occupation before the cut-off date. That can be proved and established by producing relevant documentary evidence.

6. In such circumstances, we do not see any prejudice to the petitioners, particularly when they have no right to bring such an

action against the State. The writ petition is entirely misconceived and stands dismissed. There will be no order as to costs.

(R.I.CHAGLA, J.)

(S.C.DHARMADHIKARI, J.)