

Sharayu Khot.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 646 OF 2021

Shri. Kumar Bhimrao Narute

...Petitioner

Versus

The Additional Collector,
(Encroachment/Demolition) Cum
Competent Authority & Anr.

...Respondents

Mr. Atul Damle, Senior Advocate a/w Mr. Sachin Keru Hande,
for the Petitioner.

Mr. A.P. Vanarase, AGP, for the Respondent-State.

CORAM : K.K. TATED &
R.I. CHAGLA, JJ.

DATE : 23 February 2021

ORDER :

1. Heard learned Senior Counsel Mr. Damle for the
Petitioner and learned AGP Mr. Vanarase for the Respondents.

2. Rule. Rule returnable forthwith.

3. By this Petition under Articles 226 and 227 of the

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Constitution of India, the Petitioner is seeking to set aside the Show Cause Notice dated 10th February 2021 issued by the Respondent for demolition of structure.

4. It is the case of the Petitioner that the Petitioner is in possession of the structure at Mankhurd, Mankhurd-Ghatkopar Link Road, T Junction, Mandala, Mumbai - 43 on Government land.

5. Learned Senior Counsel for the Petitioner submits that the Deputy Collector (Encroachment/Demolition) Chembur -2 has passed the order dated 8th September 2020 for declaring that the structure constructed by the Petitioner on Government land is unauthorised and the same is required to be demolished. The learned Senior Counsel appearing for the Petitioner submits that as soon as the said order was passed, they immediately preferred the appeal under Section 35 of the Maharashtra Slum Areas Act (Improvement, Clearance and Redevelopment) Act, 1971 before the Additional Collector (Encroachment/Demolition) cum Competent Authority, Mumbai District Suburban Mumbai. He submits that the

hearing of the said appeal is concluded on 1st February 2021. They already filed their written submissions also. Till today the order is not passed by the Appellate Authority. In the meanwhile, the Respondents issued Show Cause Notice dated 10th February 2021 for demolition of the said structure. He submits that as soon as the notice dated 10th February 2021 was issued by the Respondent Authority, they immediately filed the Civil Application on 16th February 2021 before the Additional Collector (Encroachment/Demolition) cum Competent Authority, Mumbai for stay of the said notice. He submits that the said Application is also pending for hearing on its own merits. He submits that in the interest of justice, pending the hearing and final disposal of the Appeal, this Hon'ble Court be pleased to restrain the Respondents from demolition of the suit structure as per notice dated 10th February 2021 (Exh.J pg. 50 of the Petition). He submits that if the stay is not granted, irreparable loss and injury will be caused to the Petitioner.

6. On the other hand, the learned AGP appearing on behalf of the Respondent-State vehemently opposes the present

Writ Petition. He submits that the appeal is pending before the Appellate Authority. The Petitioner should move before same Authority for interim reliefs and therefore, there is no question of entertaining the present Writ Petition.

7. It is to be noted that hearing is already completed in Appeal on 1st February 2021 and the same is pending for orders. In the meanwhile, the Respondent-Authority issued notice dated 10th February 2021 for demolition.

8. Considering the fact that the hearing in the Appeal is completed and same is pending for orders, we are of the opinion that till the decision of the said Appeal, the Respondent cannot take any action for demolition of the suit structure. Hence, the following order:-

- (i) Respondent No. 2 are restrained from taking any action for demolition in respect of the suit structure on the basis of the notice dated 10th February 2021, till the Appeal preferred by the Petitioner under Section 35 of the Maharashtra Slum

Areas Act (Improvement, Clearance and Redevelopment) Act, 1971 is decided on its own merits and the order is communicated to the Petitioner.

(ii) No order as to costs.

[R.I. CHAGLA J.]

[K.K. TATED, J.]