

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

CHITRA
SANJAY
SONAWANE

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WRIT PETITION NO.4048 OF 2021

Kherani Sand Supplying Co. & Ors.] Petitioners.

Vs.

The Port Inspector & Ors.] Respondents.

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Advocate Mr.K.S. Dewal a/w Roshan S. Tanna for petitioners.

Advocate Mr. Mohan Rajput a/w Adv. Poonam Gupta i/b M/s Kshitija

Wadatka & Associates for respondent nos.1 and 2.

...

**CORAM : K.K. TATED &
PRITHVIRAJ K. CHAVAN, JJ.**

DATE : 30th AUGUST, 2021.

P.C.

1. Heard learned Counsel for parties.

2. By this petition under Article 226 of the Constitution of India, petitioner is seeking declaration that respondent, without following due process of law, demolished petitioner's temporary structure situated at subject plot of land on 26.07.2021. Petitioner is also seeking direction against respondents to maintain status-quo as on today in respect of subject plot of land situated at Ulwe-Belapur Port.

3. It is the contention of the petitioner that the office of Port Officer, Mora Group of Ports, by their letter dated 25.09.1990 permitted the petitioner to use 7 mtr. X 13 mtr. area at Ulwe Belapur Port to store sand. He submits that thereafter from time to time, respondents renewed the said permission. He submits that respondents without following due process of law, removed the said structure. Hence, earlier petitioner filed Writ Petition No.1623/2020 before this Court for following reliefs.

“a) A writ of mandamus or any other writ, order or direction be issued directing the respondent no.1 to reconstruct the petitioners’ structures.

b) That in the alternative, the petitioners be permitted to reconstruct the said structures at the cost and expense of the respondent no.1.

c) That the Respondent no.1 be ordered and directed to compensate the petitioners to the tune of Rs.15 lakhs for the damage and loss caused to the petitioners by the action of the respondents in demolishing the petitioners’ structure without notice.

d) That a writ of mandamus or any other appropriate writ, order or direction be issued ordering and directing respondent no.1 not to dispossess the petitioners from the land allotted to the petitioners by respondent no.2 under Exhibits A, B, C and D viz. The land at Ulwa Rati Bunder, village Targhar, Taluka-Panvel, District Raigad.

e) That pending the hearing and final disposal Hence, the following order is passed: the petition, the respondent no.1 be restrained by an order and injunction of this Hon’ble Court from dispossessing the petitioners from the plots in question viz. The plots allotted to the petitioners by respondent no.2 being Exh. A, B, C and D and from taking any further action to prevent the petitioners from carrying out their business at

the said plot.

f) That ad-interim relief in terms of prayer (e) be granted.

g) That the costs of the petition be provided for.

h) Such other and further reliefs be granted as the Court may deem fit to grant.”

4. Learned Counsel for the petitioner submits that said petition was dismissed by this Court by order dated 19.04.2000 on the ground that period of license has been expired and land was required by CIDCO. Since, then, till today, respondent failed to take any action for taking physical possession of land. He submits that in the meanwhile, they received the letter from respondents for renewal of their license and pursuant to said letter, petitioner applied for same on 29.11.2014 but till today same is not decided. He submits that although application is pending and inspite of that respondent tried to disturb possession in respect of the said plot of land. Hence, the petitioner filed present petition.

5. Learned Counsel for the petitioner submits that by present petition, they are seeking declaration that respondent without following due process of law removed their structure on 26.7.2021. Following are the prayers in the present petition.

“a. This Hon’ble Court be pleased to hold and order that the demolition exercise carried out by the respondents of the petitioners’ temporary structures situated on the subject plots on 26.7.2021 was/is illegal, high handed, in contravention of due process of law as well as principle of natural justice.

b. This Hon’ble Court be pleased to issue a Writ of Mandamus and/or any other writ/order/direction in the nature of Mandamus, thereby directing the respondents to restore status-quo ante in respect of the subject plots by reconstructing the structures that have been illegally and high handedly demolished on 26.7.2021, or in the alternative, this Hon’ble Court be pleased to permit the petitioners to restore status quo ante in respect of the subject plots by reconstructing the structures illegally and high handedly demolished on 26.7.2021.

c. This Hon’ble Court be further pleased to issue a Writ of Mandamus and /or any other writ/order/direction in the nature of Mandamus, thereby directing the respondent nos.2 and 2 to consider/hear/decide the petitioners’ applications dtd. 29.11.2014 (Exhibit ‘T’ hereto) in accordance with law, and pending disposal fo the petitioners’ applications, the respondents be restrained from dispossessing the petitioners and/or interfering with their lawful use, occupation and possession over the subject plots and/or their articles and structures situated on the subject plots.

d. Pending hearing and final disposal of the present writ petition, this Hon’ble Court be pleased to restrain the respondents from carrying out any further demolition on the subject plots and/or from dispossessing the petitioners and/or interfering with their lawful use, occupation and possession over the subject plots and/or from taking any coercive steps against the petitioners and/or their articles and structures situated on the subject plots, without following due process of law.

e. Ad-interim relief in terms of prayer clause (d) may kindly be granted.

f. Any other just and equitable reliefs necessary in the

interest of justice, may also be granted.

g. Costs of the present writ petition may kindly be provided for.”

6. Learned Counsel for the petitioner submits that pending hearing and final disposal, this Hon’ble Court be pleased to direct the parties to maintain the status-quo in respect of subject plot of land and not to take any coercive action against the petitioner. He submits that if protection is not granted, respondent may evict the petitioner.

7. It is to be noted that bare reading of prayer in the present matter and earlier writ petition no.1623/2000 shows that the petitioner made incorrect statement in the present petition that respondent illegally demolished petitioner’s structure on 26.7.2021. Same prayer was made by the petitioner in earlier writ petition no.1623/2000 also. On this ground only, petition is required to be dismissed with costs.

8. Hence, following order is passed.

:ORDER:

- a) Writ petition is dismissed.
- b) Petitioner to pay cost of Rs.10,000/- to the respondent no.3 within one month from today.

[PRITHVIRAJ K. CHAVAN, J.]

[K. K. TATED, J.]