

Sonali

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 300 OF 2021

Anil Suresh Alkunte

...Petitioner

Versus

State of Maharashtra & Ors

...Respondents

Mr Pawan Pandey *i/b Claydermand & Company, for the Petitioner.*

Mr Vijay D Patil, *for the Respondent Nos 2 to 4.*

Mr RB Singhvi *i/b Lex Services for the Respondent No.6.*

Mr Kedar Dighe, *AGP with Mr SB Gore, AGP, for the Respondent-State.*

CORAM G.S. Patel &
Madhav J. Jamdar, JJ.
DATED: 24th November 2021

PC:-

1. The Petitioners is a member of the 7th Respondent-Society. It is undisputed that he received possession of the unit allotted to him. According to him, there are serious illegalities, even amounting to fraud, by the 6th Respondent-Builder in regard to 15 rehab buildings. The specific allegation is that in rehab building No 9-D, 94 of 177 units were illicitly sold to third parties by the developer. Some were allotted to occupants who had received previous allotments in other buildings.

2. The Jt Registrar of Cooperative Societies filed a report on which the 2nd Respondent, the CEO of SRA seems to have made an endorsement on 27th August 2020, that the units should be sealed and if any seal was broken, an FIR should be filed. This is supposed to have been a direction to the 5th Respondent, the Deputy Collector (Encroachments).

3. The Deputy Collector expressed his inability to act on these directions, saying, and in our view quite correctly, that there is no provision under the Slum Act by which units could be sealed in this fashion.

4. Prima facie we are satisfied that the CEO of SRA did not have the power, authority or jurisdiction to issue any such direction.

5. The complaint of the Petitioner against the Deputy Collector (Encroachments) refusal to act is not a complaint that we can look into or on which we can issue any writ in exercise of discretionary jurisdiction under Article 226 of the Constitution of India.

6. In any case, disputed questions of fact on allegations of fraud cannot be examined in our writ jurisdiction.

7. While rejecting the Petition, however, we leave open the right of the Petitioner to pursue such other remedies as may be available to the Petitioner in law.

8. There will be no order as to costs.

9. We clarify that we have expressed no opinion on the contentions of the Petitioner in regard to the alleged fraud.

10. All concerned will act on production of a digitally signed copy of this order.

(Madhav J. Jamdar, J)

(G. S. Patel, J)