

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 7144 OF 2022

Sharad Sadashiv Gadhve

..... Petitioner

VERSUS

The State of Maharashtra & Ors.

..... Respondents

Mr. Sachin S.Tigde for the Petitioner.

Mr.Karan S.Thorat, A.G.P. for the Respondent no.1.

Mr.N.R.Bubna for the Respondent nos. 2 and 3.

**CORAM: R. D. DHANUKA AND
M.G.SEWLIKAR, JJ.**

DATE : 22nd JUNE, 2022

P.C:-

By this petition filed under Article 226 of the Constitution of India, the petitioner prays for writ of mandamus against the respondent nos. 2 and 3 not to demolish existing 47 rehabilitation commercial shops lying and situated at 2.5% of additional amenity plot of revenue village Panchpakhadi, Thane in lieu of an emergency notice dated 27th May, 2022 issued by the Superintendent of Estate Department of Thane Municipal Corporation.

2. It is the case of the petitioner that in the year 2005 Shri Dagadu

Shinde through a notarized Power of Attorney vested the rights, title and possession of the rehabilitation commercial shop no.43 in favour of the petitioner's father late Mr.Sadashiv Sahadev Gadhve. The father of the petitioner expired on 16th November, 2013. The petitioner claims right in the said shop no.43 under the said power of attorney in favour of his father and upon demise of the father.

3. This matter appeared before this Court on 17th June, 2022 when the learned counsel for the petitioner made a statement that none of the 47 occupants in the rehabilitation commercial shops have been shifted till date. No allotment of the permanent alternate accommodation has been provided to any of them. This statement made by the learned counsel for the petitioner were strongly refuted by the learned counsel for the respondent nos. 2 and 3. In view of this rival contentions, this Court directed the Registry of this Court to appoint a Court Commissioner to visit the property described in prayer clause (a) of the petition on 20th June, 2022 and to submit the report as to how many occupants have not vacated the building in question and as to what portion of the building had been already demolished by the respondent no.2 Municipal Corporation. Pursuant to the said order passed by this

Court, the Court Commissioner has submitted a report dated 21st June, 2022.

4. A perusal of the said report indicates that one shop is already vacated and in other shop, process of shifting has been noticed at the time of inspection. All 47 shops are found to be vacant. In some of the shops waste material is dumped. No business activity has been noticed in the suit premises.

5. In paragraph (3) of the said notice, it is stated that demolition of all the shops are not carried out. Most of the shops are without having front shutters but adjoining wall of shops and RCC are found to be intact. It is submitted by the learned Court Commissioner that all shops are vacant.

6. Learned counsel for the petitioner on instructions states that only the petitioner and Mr.Mahesh Vare are in possession of the shop nos. 43 and 21 respectively.

7. Mr.Bubna, learned counsel for the respondent nos. 2 and 3

handed over copy of the allotment letter in favour of 45 persons and states that one person has been issued the letter of allotment twice and another person is not traceable. He states that except the petitioner, all other occupants of various shops are already shifted to the alternate accommodation provided by the respondent no.2. The documents tendered by the learned counsel are taken on record.

8. Learned counsel for the petitioner tenders affidavit of the petitioner and would submit that there are eight illegal occupants in the permanent alternate accommodation offered by the respondent no.2. We cannot entertain this plea at the instance of the petitioner.

9. The building is reserved as an amenity plot by the Municipal Corporation and is required to be demolished at the earliest. Since all the occupants have already vacated as per the report of the Court Commissioner and even if we consider the statement made by the learned counsel for the petitioner that there are two occupants, since other 45 occupants have already shifted, we cannot permit these two occupants to occupy the tenements now. Both these occupants are accordingly directed to remove themselves with their family and

belongings within one week from today without fail and shall handover the vacant possession to the respondent no.2 Corporation.

10. If these two occupants do not handover vacant possession of the tenaments allegedly occupied by them, the respondent no.2 Corporation would be at liberty to take forcible possession and if necessary with the assistance of police.

11. At this stage, we do not propose to decide the issue whether the said Gala no.43 could have been transferred in favour of the father of the petitioner on the basis of the notarized power of attorney or not. This issue can be decided in appropriate proceedings.

12. Writ petition is totally devoid of merit. The learned counsel for the petitioner on instruction has made misleading statements before this Court about the number of occupants and also about the letter of allotment allegedly not having been issued in favour of the 47 persons.

13. Writ petition is dismissed.

14. The learned Court Commissioner appointed by this Court is

present in Court and does not press for any payment of remuneration. We appreciate the efforts taken by the learned Court Commissioner in submitting report expeditiously and within the time prescribed.

15. The petitioner is warned not to file such frivolous petition in future. With these directions, we do not propose to impose any cost upon the petitioner.

[M.G.SEWLIKAR, J.]

[R. D. DHANUKA, J.]