

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

**WRIT PETITION NO.790 OF 2021
WITH
INTERIM APPLICATION NO.90 OF 2019**

Ali Sayyed Jishan Ali Iqbal ..Petitioner
Versus
The State of Maharashtra & Ors. ..Respondents

Mr. Vivek K. Gupta, for the Petitioner.
Mr. Hemant Haryan, AGP a/w Mrs. Uma Palsuledesai, AGP
for Respondent Nos.1 & 3.
Mr. Jagdish G. Aradwad (Reddy) a/w Abhijit Patil, for
Respondent No.2/AGRC.
Mr. Nitesh Acharya a/w Mahesh Karule i/by Yogesh
Deshpande, for Respondent No.9.

CORAM : NITIN W. SAMBRE, J.

DATE : 20th JULY, 2022

P.C.

1. In Writ Petition (L) No.2514 of 2019, prayer of the
petitioner was as under :-

“a. That a writ of certiorari, writ of mandamus or any
other appropriate writ, order or direction be
issued calling for the records and after examining
the legality and proprieties of the notice dated
14th August, 2019 issued by respondent no.4 and
order dated 28th June, 2017 and 30th May, 2019
passed by respondent no.2, be quashed and set
aside, being bad in law, not maintainable in the
eye of law.

b. That pending the hearing and final disposal of the

petition, notice dated 14th August, 2019 issued by respondent no.3, and order dated 30th May, 2019 passed by respondent no.2, be stayed.

- c. That ad-interim relief in terms of prayer clause (b) be granted.
- d. That the cost of this writ petition be provided for.
- e. Such other and further reliefs as this Hon'ble court may deem fit to grant."

2. In the present petition, prayer of the petitioner is as under :-

"a. That a writ of certiorari, writ of mandamus or any other appropriate writ, order or direction be issued calling for the records and proceeding of respondent no.2 and after verifying the same be ordered and directed respondent no.2 to dispose off petitioner's application no.220 of 2019 in time bound schedule.

aa) it be declared that the order dated 7th January, 2020 passed by the Respondent No. 2 in Application No. 220 of 2020 is null, void and illegal and same be quashed and set aside, consequently it be declared that the order dated 30th May, 2019 passed by The Respondent No. 2 in Application No. 3 of 2019 is null, void and illegal and same may be set aside;

or

In the alternate this Hon'ble Court may be pleased to restore the Application No. 220 of 2020 to the file of the Respondent No.2 and Respondent No.2 may be directed to give the

Petitioner a fair opportunity to be heard in the application in the interest of justice;

- ab) it be declared that the notice dated 8th July, 2020 issued by the Respondent No. 4 in pursuance of the order dated 7th January, 2020 is null, void and illegal and same be quashed and set aside, further it be declared that the notice dated 14th August, 2020 issued by the Respondent No. 4 in pursuance of the order dated 30th May, 2019 is null, void and illegal and same be quashed and set aside,
- ac) it be declared that order dated 28th June, 2017 passed by the Respondent No. 2 (HPC) in Application No. 18 of 2016 is null, void and illegal and same be quashed and set aside:
- ad) that during the pendency of the Writ Petition Respondents may be directed to not to act upon the notice dated 8th July, 2020 and/or execution of the notice dated 8th July, 2020 be stayed;
- ad) ad interim reliefs in terms of prayer clause (aa), (ab), (ac), and (ad);
- b. That a writ of certiorari, writ of mandamus or any other appropriate writ, order or direction be issued calling for the records and proceeding of respondent no.2 and after verifying the same the respondents be restrained from taking possession of petitioner's hut situated at Room No 1, Anna Rita Ki Chawl, Opp Muslim Jamat Khana, Jawahar Nagar, Khar East, Mumbai-400055 till disposal of application no. 220 of 2019 by respondent no.2.
- c. That pending the hearing and final disposal of

above mentioned writ petition, notice dated 14th August, 2019 issued by respondent no. 4 be stayed.

- d. That ad interim relief in terms of prayer clause (c) be granted.
- e. That the cost of this writ petition be provided for.
- f. Such other and further reliefs as this Hon'ble court may deem fit to grant."

3. The order impugned in the present petition was subject mater of challenge in Writ Petition (L) No.2514 of 2019.

4. The said petition was argued before division bench on 29th August, 2019, wherein since the Court was not inclined to grant relief or show indulgence, the said petition was dismissed as withdrawn.

5. As no liberty was granted to the petitioner to pursue the present petition, in my opinion, counsel for the respondent No.9 and other respondents are justified in claiming that the present petition is not maintainable.

6. The Apex Court in the matter of **Sarguja Transport Service Vs. State Transport Appellate Tribunal M.P., Gwalior & Ors.** reported in **(1987) 1 SCC SCC 5**, in paragraph 9 has observed thus :-

"9. The point for consideration is whether a petitioner after with-drawing a writ petition filed by him in the High Court under Article 226 of the Constitution of India without the permission to institute a fresh petition can file a fresh writ petition in the High Court under that article. On this point the decision in *Daryao* case is of no assistance. But we are of the view that the principle underlying Rule 1 of Order XXIII of the Code should be extended in interests of administration of justice to cases of withdrawal of writ petition also, not on the ground of *res judicata* but on the ground of public policy as explained above. It would also discourage the litigant from indulging in bench-hunting tactics. In any event there is no justifiable reason in such a case to permit a petitioner to invoke the extraordinary jurisdiction of the High Court under Article 226 of the Constitution once again. While the withdrawal of a writ petition filed in a High Court without permission to file a fresh writ petition may not bar other remedies like a suit or a petition under Article 32 of the Constitution of India since such withdrawal does not amount to *res judicata*, the remedy under Article 226 of the Constitution of India should be deemed to have been abandoned by the petitioner in respect of the cause of action relied on in the writ petition when he withdraws it without such permission. In the instant case the High Court was right in holding that a fresh writ petition was not maintainable before it in respect of the same subject-matter since the earlier writ petition had been withdrawn without permission to file a fresh petition. We, however, make it clear that whatever we have stated in this order may not be considered as being applicable to a writ petition involving the personal liberty of an individual in which the petitioner prays for the issue of a writ in the nature of *habeas corpus* or seeks to enforce the fundamental right guaranteed under Article 21 of

the constitution since such a case stands on a different footing altogether. We, however leave this question open.”

7. In view of law by the Apex Court as above in the matter of *Sarguja Transport Service (cited supra)*, the petition stands dismissed.

8. In view of disposal of main petition, interim application does not survive and same accordingly stands disposed of.

[NITIN W. SAMBRE, J.]