

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR
WRIT PETITION NO. 1796 OF 2022

Ashok s/o Kodamal Khemani & Ors. -- Petitioner/s

Vs.

State of Maharashtra & Ors. -- Respondent/s

Mr. P.V. Navlani, Advocate for the Petitioners.

Mr. A.A. Madiwale, A.G.P. for Respondent Nos. 1, 2, 4 and 5.

**CORAM : NITIN JAMDAR &
ANIL L. PANSARE, JJ.**

DATE : 4 APRIL 2022.

P.C. :

Heard learned Counsel for the parties.

2. The Petitioners have challenged the notices dated 8 June 2020, 26 June 2020 and 25 March 2022, and have sought an interim stay of the said notices.

3. By the impugned notices, the Petitioners have been called upon to remove themselves from the property specified in the impugned notices on the ground that they have committed encroachment on the government property on road. A reference is also made to the Bombay Highways Act, 1955. These notices have been issued since June 2020, and when the final notice dated 25 March 2022 was issued, the Petitioners are seeking to challenge the same.

4. Since, the notices are based on an assertion that the Petitioners are occupying the government land, and that too on the road, the first question that would arise is about the legal right of the Petitioners to occupy the property and resist the impugned notices.

5. As regards the legal right to allotment of a government property, it is structured by statutory provisions as it is not within the absolute discretion of any government authority to grant public lands by doling out largessees. Learned Counsel for the Petitioners accepts the position that there is no such specific order granting allotment of the property in question to the Petitioners, except few ones of temporary occupation out of indulgence. Learned Counsel contends that, however, the Petitioners have been permitted since long time to be on the property, and their representations have gone un-answered. The Petitioners have also contended that the Petitioners should be given an alternate land or at least a hearing. The Petitioners have also sought to make a reference to the Petitioners' forefathers being refugees persons from Sind after the Partition.

6. As regards being migrants from Sind is concerned, a specific legislation – The Displaced Persons (Compensation And Rehabilitation) Act, 1954 was enacted to take care of this situation, where evacuee properties were specifically allotted. There is no such allotment in favour of the Petitioners. Therefore, in the

absence of any legal right, the Petitioners cannot resist the notices, which called upon them to vacate or remove their encroachment, so as to issue a writ to prevent the public authorities from proceeding to do their public duty.

7. As regards the contention of the Petitioners that the Petitioners should be given an alternate land or that representations be considered, is a matter for the authorities to consider within the framework of law. There cannot be a direction that unless the Petitioners are given alternate accommodation, they should not be removed from the place as no such right flows from any statutory enactment.

8. Learned Counsel for the Petitioners relied on the decision of the Hon'ble Supreme Court in the case of *Olga Tellis and others Vs. Bombay Municipal Corporation and others*¹ to contend that hearing be given. This was a case of hawkers on the pavements; and in respect of their removal affecting their only source of livelihood and their extreme economic backwardness. The Petitioners in the present case are conducting their shops for several years, and they cannot place themselves in the class with which the Hon'ble Supreme Court was concerned. Furthermore, the Petitioners have given responses to the notices issued earlier and it is not that suddenly an action is taken. The Petitioners, who were granted indulgence to occupy the government property for years, could have by now invested in the property of their own.

1 AIR 1986 SC 180

They cannot continue as encroachers on the public land and demand that they should be given alternate accommodation when no such legal right is shown to us.

9. We also note that one of the shopkeepers, similarly situated as the Petitioners, had filed a Civil Suit bearing No. 7/2022 in the Court of the Civil Judge Senior Division, Khamgaon and had sought injunction, which has been refused by the learned Civil Judge by order dated 31 January 2022. Learned Civil Judge has also observed that there is no such legal right, and the possession given to the plaintiff therein was only out of humanitarian ground.

10. As regards the representations and the request of alternate accommodation is concerned, it is up to the authorities to consider the same as per law, which the learned Counsel for the Petitioners states that they will pursue with the appropriate authority.

11. As regards the time of seven days given to the Petitioners to remove their structures, considering the fact that the Petitioners are conducting their business, the Respondent – Authorities will consider giving them a reasonable time to vacate.

12. The Writ Petition is accordingly rejected.

[ANIL L. PANSARE, J.]

[NITIN JAMDAR, J.]