IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

921 WRIT PETITION NO. 2421 OF 2023

TABASSUM HUSSAIN JAMADAR
VERSUS
AURANGABAD MUNICIPAL CORPORATION TRHOUGH ITS COMMISSIONER AND OTHERS
...
Advocate for Petitioner : Mr. Palodkar Devdatt P.
Advocate for Respondent Nos. 1 & 2 : Mr. Bhandari Anand P.
Advocate for Respondent No. 3 : Mr. A.V. Tapse Patil
h/f. Mr. Suryawanshi Prashant D.
...

CORAM : SHAILESH P. BRAHME, J.

Reserved on : 12 APRIL 2024
Pronounced on : 19 APRIL 2024

FINAL ORDER :

Heard both sides finally at the admission stage with the consent of the parties.

2. Petitioner is aggrieved by rejection of her application at Exhibit 85 seeking witness summons for production of three documents. Petitioner is original plaintiff who is prosecuting RCS No. 57 of 2021 for declaration and injunction before Civil Judge Senior Division (Corporation Court), Aurangabad.

3. Petitioner claims that she was allotted disputed open space of 52.05 square meter by passing resolution and she was

handed over possession by executing lease deed. Duration of lease was extended for thirty years. Respondent no. 1 – Corporation issued a communication dated 14.12.2021 for vacating the open space. That is a cause for filing suit.

4. The respondents are contesting the suit with plea that possession is illegal. The claim of petitioner is denied by the Corporation. She is trespasser and illegally conducting business. The Corporation has also filed Special Civil Suit No. 06 of 2019 for declaration and possession against petitioner.

5. Learned counsel for the petitioner submits that application exhibit 85 was filed for witness summons which was rejected by learned Trial Judge by impugned order dated 08.02.2023, arbitrarily. It is being submitted that the petitioner made all the attempts to secure the documents but the respondents did not respond. He would submit that respondent no. 1 – Corporation is the custodian of all the documents in question and should have supplied the documents. Learned counsel would point out notice at exhibit 55, application seeking certified copies of the documents made on 10.11.2022 and application exhibit 56 and order thereon passed on 16.12.2022. He would submit that unless

the documents are produced on record, it would not be possible to proceed with the matter.

6. Per contra, learned counsel Mr. A.P. Bhandari appearing for respondent nos. 1 and 2 and learned counsel Mr. A.V. Tapse holding for Mr. P.D. Suryawanshi appearing for respondent no. 3 submit that having suffered order dated 16.12.2022 below exhibit 56, petitioner is estopped from making application at exhibit 85. Petitioner did not challenge order passed below exhibit 56. It is further submitted that petitioner has other remedies available to seek the documents and the officer of the respondent no. 1 – Corporation cannot be summoned for that purpose. It is further submitted that it would be the matter of trial to consider consequences of not production of the documents on record.

7. I have considered submissions of both the sides. It reveals from record that petitioner resorted to notice at exhibit 55 under Order XII Rule 8 of Code of Civil Procedure for production of documents from respondents. Petitioner appears to have made application seeking copies of the documents from the Estate Officer on 10.11.2022. A separate application at exhibit 56 was filed by the petitioner on 15.11.2022 for witness summons for

production of documents. It was rejected on 16.12.2022 which has not been challenged further.

8. In this backdrop, application exhibit 85 came to be filed on 08.02.2023 seeking witness summons to produce documents namely resolution no. 1319 of 18.02.2020, order dated 01.01.1986, below exhibit 26 and sanction lay out of Alankar Graha Nirman Sahakari Sanstha.

9. Petitioner called upon the respondent no. 1 – Corporation to produce certain documents vide notice at exhibit 55. She further submitted application to the Estate Officer of Corporation for issuing certified copies of thirteen documents. If those documents were not issued, then recourse could have been taken under Right to Information Act, to secure the documents. However, no further endeavour has been made to solicit copies of the documents.

10. Another attempt was made by the petitioner vide application at exhibit 56 for calling upon Estate Officer along with documents which were applied for vide application dated 10.11.2022. That was contested by the respondents. By reasoned

order it was rejected on 16.12.2022. The order of rejection has not been challenged by the petitioner. Learned counsel Mr. A.P. Bhandari is right in submitting that application exhibit 85 is a successive application which is not entertainable.

11. I am of the considered view that petitioner did not prosecute the remedies for securing documents under Right to Information Act. She did not challenge order passed below exhibit 56. It appears that application exhibit 58 was filed for production of documents which was allowed by order dated 25.11.2022. It is not made clear as to which documents were permitted to be produced. It further reveals that petitioner adduced oral evidence. Therefore, I do not find that petitioner was unable to proceed with the matter or is unable to adduce further evidence.

12. When application exhibit 85 was being considered, petitioner and her counsel were absent. It would open to the petitioner to request the court for drawing adverse inference for not providing documents on record. I do not find any perversity or patent illegality in the impugned order. No case is made out to warrant interference in the impugned order. I do not find any violation of principles of natural justice.

13. Already the proceeding are expedited by the District Court and supposed to be disposed of by 25.02.2023.

14. Hence, writ petition is dismissed.

[SHAILESH P. BRAHME, J.]

Thakur-Chauhan/-