

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.518 OF 2024

Santosh Raghunath Salunke Petitioner

V/s.

The Principal Secretary Hsg. Dept. Respondents
The Government Pleader & Ors.

Mr.Sandeep Bane a/w Mr.Sandeep Yadav, for the Petitioner.

Mr.Y.D. Patil, AGP, for Respondent No.1 -State.

Ms.Madhavi Ayyapan i/b Talekar & Associates, for Respondent
Nos.2 to 4.

Mr.Amogh Singh a/w Mr.Akash Gupta i/b Jeet Gandhi, for
Respondent No.5.

CORAM : R.M. JOSHI, J.

DATE : 5th AUGUST 2024

P.C:-

. By consent of both sides heard finally at the stage of
admission.

2. This Petition is exception to the order dated 15th
September 2002 passed by second Appellate Authority-MHADA
i.e. Principal Secretary Housing Department, Mantralya in
Second appeal No.15 of 2021 by which order passed by Vice
President/CEO (MHADA) dated 14th June 2021, stood

confirmed.

3. It is the contention of the Petitioner that, he having a shop in the premises bearing Shop No.70, Building No.43 to 67, Chawl No.4, Manaji Rajuji Chawl and the premises exist since the time of existence of the said Chawl and that his predecessor was the tenant in respect of the said premises. He has also placed reliance upon the agreement of transfer of the tenancy by the erstwhile tenant infavour of Petitioner. It is his submission that the property tax has been paid since 1976-1977 which is reflected from the tax receipt issued in the year 1983. It is his further submission that at the said premises shop act license has been issued by the Municipal Corporation. It is further claimed that the rent receipts are issued by the landlord, so also by the developer, Respondent No.5.

4. The learned counsel for the Petitioner submits that merely for the reason that the name of the Petitioner is not reflected in the inspection abstract, his claim cannot be rejected by the Competent Authority. It is his submission by relying upon the Government Resolution dated 16th August 2010 that in case a

tenant or occupant of the premises has documentary evidence indicating his existence in the premises prior to 1996, then only for the reason of his name being absent in the inspection abstract, his claim cannot be rejected. In order to substantiate his submission he has placed reliance on the documents filed with the Petition.

5. The learned counsel for the Respondent-MHADA has opposed the said contention by pointing out very same government resolution which no doubt states about the fact that if the tenants/occupants of the premises produces the evidence indicating his presences in the suit premises prior to the 1996, for sole reason his name is not included in the inspection abstract, his claim cannot be rejected. However, relying upon Clause-IV of the said Government Resolution it is stated that even in such case the existences of the authorisation of structure needs to be considered by the concerned authority.

6. It is pertinent to note that, before Authorities below, at no point of time any dispute was made by the Petitioner with regard to the finding that the suit shop bearing No.70 ground

floor of building No.43/67 in Chawal No.4 is beyond the building line of Chawl No.4. Order dated 13th June 2019 passed by the Chief Officer in the NDR Board, Mumbai specifically holds so. In spite of such order being passed, no objection of whatsoever nature has been raised by the Petitioner with regard to the fact that the shop No.70 is beyond the building line.

7. The counsel for the Petitioner at this stage, has sought a fresh survey being carried out to ascertain said fact. As no issue was raised by Petitioner with regard to the fact that his shop is not an authorized structure for seeing beyond building line, in this Petition the same cannot be considered for the first time. In absence of any objections being raised with regard to the finding that the suit shop is beyond building line, now it cannot be permitted to the Petitioner to make any grievance about the same. In both proceedings i.e. First Appeal as well as the Second Appeal preferred also no reference is made about such grievance.

8. Perusal of the order passed by the First Appellate Authority as well as Second Appellate Authority it is clear that the observations are made with regard to the failure on the part of

the Petitioner to show that the authorisation of structure in question. This Court on the basis of the material placed on record does not find any perversity in the said findings in order to cause any interference therein in the exercise of the writ jurisdiction. As a result of this, no case is made out by the Petitioner for causing interference in the impugned order. Hence Petition stands dismissed.

9. All pending Interim and Civil Applications are disposed of.

(R.M. JOSHI, J.)