Sumedh

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 1546 OF 1996

Laxmi Gopinath Shetye,
Indian Inhabitant presently residing at Room No. 30, 1st Floor, Anant Nivas, Sane Guruji Road, Lalbaug, Mumbai 400 012. ...Petitioner

~ versus ~

1. **The Maharashtra Housing and Area Development Board,**
having its office at MHADA House, Bandra (E), Mumbai – 400 050.
2. **Sakarben Jevatbhai Gala,**
residing at Saifuddin Building, Room No. 27/28, IInd Floor, Dr. Ambedkar Road, Mumbai – 400 012. ...Respondents

Appearances

for the petitioner	**Ms Janhavi Joshi**, *i/b Manmohan Rao & Vaishali Bhikule.*
for the respondent - MHADA	**Mr PG Lad.**
For the respondent - State	**Mr LT Satelkar.**

SUMEDH NAMDEO SONAWANE

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CORAM : G.S.Patel &
Kamal Khata, JJ.

RESERVED ON : 15th February 2024.

PRONOUNCED ON : 13th March 2024

JUDGMENT *(Per Kamal Khata, J.)*:-

1. Rule. Rule made returnable forthwith. Petition is finally heard with consent of parties.

2. The Petition relates to a demolition of a shop by Maharashtra Housing and Area Development Authority (**"MHADA"**) (Respondent No 1) on 28th December 1995. The Petitioner claims the shop admeasured 82 sq.ft (**"the shop"**). The Petitioner contends that It was attached to a building known as 'Sahakar Bhavan' situated at 206, Dr Ambedkar Road, Parel, Mumbai 400 002. which building consisted of ground + 3 upper floors (**"Sahakar Bhavan"**). The building had commercial premises on the ground floor and residential premises on rest of the floors.

3. The Petitioner contends that the shop was demolished illegally without a notice for eviction of the premises under the provisions of Maharashtra Housing and Area Development Authority Act, 1966 (**"MHADA Act"**).

4. One Smt. Sakarben Jevatbhai Gala (Respondent No 2) was the owner of the said building and Radhakrishna Bhagwandas was her tenant ("tenant"). The tenant conducted the business of crockery under the name and style of "S. Deepak Crockery."

5. On 18th December 1986, the tenant under a deed of assignment, assigned the shop along with its business to the Petitioner. The Petitioner states that the shop is assessed by Bombay Municipal Corporation ("**BMC**") and has its independent electric connection. The Petitioner further states that after assignment, the Petitioner approached Respondent No 2 for transfer of tenancy in her name which was refused. The Petitioner however claims to have paid rent to Respondent No. 2 in cash, for this payment the Respondent No. 2 also issued rent receipts up to 1992 in the name of 'S. Deepak Crockery.'

6. The Petitioner then changed the business from crockery to Juice centre and obtained a Shop and Establishment Certificate from the BMC. Thus, according to the Petitioner shop was authorised and not illegal.

7. The Petitioner contends that Sahakar Bhavan and the said shop were not repaired and maintained by the landowner. Therefore, in 1992 MHADA initiated acquisition proceedings. Notices were issued to Respondent No. 2. List of all tenants/occupants was also recorded.

8. However, the Petitioner complains, that the Petitioner's name was neither recorded as a tenant nor an occupant of the shop.

9. Several communications were sent to the Respondent No 1 to include her name as an occupant of the shop, since she was not recognised as a tenant by the owner. However, neither did the

Respondent No 1 reply nor included her name in the list of occupiers of Sahakar Bhavan.

10. Apparently, Respondent No. 1 issued eviction notices to both commercial and residential tenants/occupants except the Petitioner.

11. Then on 28th December 1995 without any prior notice Respondent No 1, the Petitioner states, demolished part of the suit premises. Aggrieved by this action, a police complaint was also lodged with the senior inspector of the local namely Bhoiwada Police Station on the same date, i.e., 28th December 1995 whereby the Petitioner recorded its facts and complaint with the police authority. The Petitioner neither received a reply nor was any action taken by the police authorities. In these circumstances this Petition was filed on 31st July 1996.

12. Mr Rao for the Petitioner submits that as per provisions of MHADA Act, the Respondent No. 1 was bound to give a notice for eviction and demolition of the said premises. Since no such notice was given to the Petitioner, he contends that the demolition was illegal and should be declared as such by this Court. Mr Rao also submitted that in view of demolition of the shop by Respondent No. 1 the Petitioner ought to receive commercial premises in the new building on the plot No. 206 as per the provisions of MHADA Act. Lastly, he submitted that pending the allotment of new premises the Petitioner was also entitled to alternate accommodation or transit rent.

13. In response to the Petition a reply has been filed by one Narendra Chavan, Executive Engineer on behalf of Respondent No. 1. It is stated the building 18A & 18B, Sahakar Bhavan was in a dilapidated condition. Therefore, a Certificate under Section 88 (3) under MHADA Act was issued on 30th April 1981 for the building No. 18B and 21st June 1983 for building No. 18A. The Government of Maharashtra gave approval for acquisition on 5th February 1992. A Special Land Acquisition Officer (“**SLAO”**) was appointed for acquisition under Section 93 (1) of the MHADA Act. A list with a description of property and occupants of both buildings were prepared and recorded in Schedule A and B. This is recorded in a notice issued by the SLAO on 22nd June 1992 as per Section 93(3)(4) of the MHADA Act. On compliance of Section 93(6) on 18th July 1994 a property was vested in MHADA. As per the list in building No. 18A there were 26 tenements comprising 23 residences and 3 non residences. The building 18B has 38 residential tenements. The building was constructed and by a letter dated 4th April 1998 the Joint Chief Officer MBR and R Board certified that the building was fit for occupation. Pertinently, since the Petitioner was neither a tenant nor an occupant of Sahakar Bhavan she was not entitled for permanent alternative accommodation or transit rent.

14. Mr Lad for the Respondent No. 1 contends, as stated in the affidavit in reply, that all the documents attached to the Petition shows the Petitioner's premises on property bearing F/S Ward No. 206-207 whereas ‘Sahakar Bhavan’ is F/S/ward No. 204-205 (1). He therefore contended that the Petitioner’s shop premises belong to another ward and does not pertain to Sahakar Bhavan. It is further stated, he submitted, that the correspondence attached to the Petition are not found in the file of Respondent No. 1 and the Petitioner has also not established the delivery of these letters on the Respondents. He submitted that in view of the aforesaid, the Petitioner was not entitled to the relief claimed in the Petition.

15. Mr Lad submitted that pursuant to the Court granting an interim order dated 14th August 1996 the Respondent No. 1 has reserved a Gala admeasuring 80 sq. ft in the new building and kept it locked since the year 1996. Since it can be evinced that the Petitioner is not entitled to the said Gala on a perusal of the documents attached to the Petition from a bare perusal of the documents attached to the Petition the Petitioner would be liable to pay compensation to Respondent No. 1. In any event, he submits, the Petition deserves to be dismissed.

16. We have heard both counsel at length and have perused the papers and proceedings on record.

17. The Petitioner has come to this court with unclean hands. She has suppressed material facts from this Court. She has tried to misguide this Court. The Petitioner relies upon Exhibits A, B and C attached to this Petition which evinced that the shop is apparently not on the plot of which Sahakar Bhavan is situated. Exhibit A which is dated 6th November 1995 is a letter to the Petitioner in regard to her letter dated 10th April 1995. It is merely an inspection extract of her shop. This document certainly does not evince or prove that the shop was in any manner a part of Sahakar Bhavan. It also does not evince that Respondent No. 2 had anything to do with her premises. What this document shows is only that Petitioner's shop was assessed and it had an area of 82.16 sq ft.

18. Then, Exhibit B (colly) are rent receipts by Respondent No. 2 in the name of Shri. Radhakrishna Bhagwandas and S Deepak Crockery. These rent receipts do not specify any number of the premises/ the Gala number of the said premises and Room number or that it is attached to or a part of Sahakar Bhavan. The Rent receipt is certainly not in the name of the Petitioner.

19. Thereafter, Exhibit C is an indenture of sale and assignment dated 18th December 1986 between one Deepak S Maker as assignor and Smt. Laxmi Gopinath Shetye as the assignee. By this deed, the business carried on by Deepak Maker has been assigned to the Petitioner namely Laxmi Gopinath Shetye. This document does not show that the tenancy was transferred or agreed to be transferred in favour of the Petitioner. The rent receipts also evince that Respondent No. 2 had not acknowledged the Petitioner. The last document relied upon by the Petitioner is a shop and establishment registration certificate. It is neither a document of title nor establishes the legality of the shop. The Petitioner has in fact admitted that the Respondent No. 2 did not transfer the tenancy in the name of the Petitioner hence the Petitioner is not a recognized tenant.

20. The Petitioner has failed to take steps to declare herself as a tenant for more than a decade from 18th December 1986 till the demolition of the premises on 28th December 1995.

21. We are not satisfied with the case of the Petitioner. The Petitioner has failed to show that firstly whether the structure was authorised and then that she was a tenant of the structure assuming the shop was attached to the building as claimed. Neither the placement of the shop is averred nor a sketch plan of its position has been attached in the petition. Merely stating that the structure was attached to Sahakar Bhavan is certainly vague and insufficient specially when there is more than one part to a building namely building 18 A and 18 B as mentioned in MHADA's Reply.

22. It is an admitted position that Sahakar Bhavan was a cessed building. It is not the case of the Petitioner that she was in the building either building 18A or 18B. Merely stating that she paid rent to Respondent No. 2 in cash would not establish her rights as a tenant. The Petitioner would necessarily have to prove that her structure was legal and she had a valid tenancy to be entitled to any relief in this Petition. The mere obtaining of a shop and establishment certificate or having a separate electric meter or producing documents to show the property was assessed by the BMC does not prove that the structure was legal. Any correspondence exchanged with any officer of MHADA does not and cannot prove that the structure was legal or establish tenancy.

23. A Single Bench of this Court in the case of *Sidharam M Yanagandul & Anr v State of Maharashtra and Anr* held that the mere fact that the structure which is erected unauthorisedly without the permission of the Planning Authority is subsequently assessed to Property Tax by the Municipal Corporation would not change the unauthorised character of the structure nor would it make the structure authorised from the date of assessment whilst referring to a Division Bench Judgement of this Court and confirmed by the Supreme Court. We concur with the view of Single Judge. The relevant paragraphs are as under:

> **"7.** The letter of the municipal corporation dated 2nd June, 1979 gives the description of the structures assessed for property tax for the year 1978-1979. Structure No. 4 is the shop No. 3 wherein appellant is running the Santosh Bar. Rateable value of the shop is shown of Rs. 40/-. Rateable value of the suit shed (structure No. 4-A) is shown as Rs. 33.30/-. Relying upon this letter counsel for the appellant submitted that the fact that the suit shed was assessed to property tax would show that the suit shed was an authorised structure constructed after obtaining appropriate permission and in event the assessment of it for property tax would amount to regularisation of an unauthorised construction. I am unable to agree. **In my view, any structure, whether authorised or unauthorised, constructed on a property within the limits of a municipal corporation can be assessed to municipal taxes. Mere fact that a structure which is errected without the permission of the Planning Authority and unauthorisedly is subsequently assessed to the property tax by the municipal corporation would not change the unauthorised character of the structure nor would make the structure authorised from the date of assessment.** Of course, the fact that the structure is assessed to property tax for a long time may be a relevant circumstance while considering the evidence on whether the structure is authorised or unauthorised especially when sanctioned plans are not available because of long passage of time. The weight to be attached, to such evidence would

depend upon the facts and circumstances of each case. However once it is proved that the structure is unauthorised, the mere fact that the structure is assessed to property tax would not have the effect of deemed regularisation or structure being treated as authorised.

8. Reference may be made to the decision of this Court in (*Tata Hydro Electric Power Supply Co. Ltd.* v. *The Municipal Commissioner of Greater Bombay*)[2], reported in A.I.R. 1979 BOMBAY 10. **In that case the question involved was whether the municipal corporation was entitled to assess for property tax the structures which were unauthorisedly errected on the land.** Relying upon the earlier decision of the Supreme Court in (*National Grindlays Bank Ltd.* v. *Municipal Corporation for Greater Bombay*)[3], reported in (1969) 1 SCC 541 : A.I.R. 1969 S.C. 1048 and of this Court in (*Ramji Keshavji* v. *The Municipal Commissioner of Greater Bombay*)[4], reported in (1954) 56 Bom. L.R. 1132 **and after considering the definition of the word "premises" contained in section 3(gg) of the Bombay Municipal Corporation Act this Court held that the municipal corporation was entitled to levy property tax not only in respect of the land but also on structures, whether authorised or unauthorised. It was specifically held that even when a trespasser on the land errects a structure, the municipal corporation would be entitled to take that into consideration in fixing rateable value of the property. In other words, municipal corporation is entitled to fix rateable value and impose the property tax even in respect of an unauthorised structure.** If so, **mere fact that rateable value in respect of a structure has been fixed would not, by itself, prove that the structure was authorised nor would it amount to regularisation of the structure.** This is because municipal corporation is authorised to fix rateable value of not only for the authorised structures but also in respect of unauthorised structures errected on the land. **In my view, therefore the letter dated 2nd June, 1979 showing that the suit shed was assessed to property tax, would not, by itself prove that the suit shed was an authorised structure.**

[Emphasis added]

24. In our view, the Petitioner has attempted to mislead the Court and gain unlawful advantage by stating that the shop was attached to the building, whilst not particularising which of the buildings 18A or 18B, and that based on the shop and establishment certificate, assessment paid and electricity bills attempted to make us believe that the shop was authorised. Thus, entitled to an authorised premises. This in our view would be encouraging wrongdoers and illegal occupants to benefit from their wrongdoings. Neither do these documents prove any title or entitlement of the Petitioner in law. On this ground alone the Petition deserves to be dismissed. The Supreme Court in *SP Chengalvaraya Naidu v Jagannath & Ors*[1] has held that a litigant who approaches the Court is bound to produce all the documents executed by him which are relevant to the litigation. If he withholds a vital document or suppresses material information in order to gain advantage over the other side then he would be guilty of playing a fraud on the Court as well as the opposite party. Such a party is not entitled to any relief. Above all, a Court must have a complete and candid disclosure of all material particulars. A failure to disclose material particulars is indistinguishable from an attempt to mislead the Court. This is now well settled in our jurisprudence. [2]

1 (1994) 1 SCC 1

2 See:

i *Hari Narain v Badri Das,* (1964) 2 SCR 203;

ii *Rajabhai Abdul Rehman Munshi v Vasudev Dhanjibhai Mody,*

25. In view of the aforesaid, we find no merit in this Petition. The Petition is dismissed with no orders as to costs.

26. There is an Application for stay and a continuance of previous ad-interim relief as also a prayer that liberty may be granted to file a civil proceeding. We decline the application for stay or a continuance of any previous protective order. The Petitioner is entitled to adopt such civil remedy as is available in law.

(Kamal Khata, J) **(G. S. Patel, J)**

(1964) 3 SCR 481;

iii *Gowrishankar & Anr v Joshi Amba Family Trust & Ors,* (1996) 3 SCC 210;

iv *Ashok Leyland Ltd v State of Tamil Nadu & Anr,* (2004) 3 SCC 1, paragraph 116;

v *AV Papayya Sastry & Ors v Government of AP & Ors,* (2007) 4 SCC 221;

vi *Dalip Singh v State of UP,* (2010) 2 SCC 114;

vii *Oswal Fats & Oils Ltd v Additional Commissioner (Administration) & Ors,* (2010) 4 SCC 728;

viii *A Shanmugam v Ariya Kshatriya Rajakula Vamsathu, etc,* (2012) 6 SCC 430;

ix *Maria Margarida Sequeira Fernandes & Ors v Erasmo Jack De Sequeira,* (2012) 5 SCC 370;

x *Sciemed Overseas Inc v BOC India Ltd,* (2016) 3 SCC 70;

xi *Dnyandeo Sabaji Naik & Anr v Pradnya Prakash Khadekar & Ors,* (2017) 5 SCC 496.