

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.18871 OF 2024

Mohammed Ali s/o Shaukatali Khan **...Petitioner**

V/s.

The Estate Officer and Anr. **...Respondents**

WITH
WRIT PETITION NO.18872 OF 2024

Kamruddin Abbasali Khan s/o
Abbasali Murad Ali Khan **...Petitioner**

V/s.

The Estate Officer and Anr. **...Respondents**

WITH
WRIT PETITION NO.18873 OF 2024

Abrar Ahmed Mubarak Hussein
Siddiqui **...Petitioner**

V/s.

The Estate Officer and Anr. **...Respondents**

Mr. Atul Damle, Senior Advocate i/b. *Mr. Vimlesh Singta and Mr. Amit Jaiswar for the Petitioner.*

Mr. Vaibhav Joglekar, Senior Advocate with *Mr. Anupam Surve, Mr. S.A. Bhalwal, Mr. Rohan Jadhav, Ms. Usha Singh and Mr. Sabir Merchant i/b. M/s. Vyas and Bhalwal for Respondent No.2.*

CORAM: SANDEEP V. MARNE, J.

Dated: 4 April 2025.

P.C.:

1) Petitioners have petitioned this Court under Article 227 of the Constitution of India for setting up a challenge to the judgments and orders dated 11 October 2024 passed by the Principal Judge, City Civil Court, Mumbai, dismissing their Appeals and confirming the orders passed by the Estate Officer under the provisions of Section 3 of Public Premises (Eviction of Unauthorised Occupants) Act, 1971.

2) I have heard Mr. Damle, the learned senior advocate appearing for the Petitioners and Mr. Joglekar, the learned senior advocate appearing for Respondent No.2 and have considered the submissions canvassed by them. I have gone through the findings recorded by the learned Principal Judge and by the Estate Officer in their respective orders. I have also gone through the relevant records of the case filed alongwith the Petitions as well as with the compilation of documents.

3) It appears that after receipt of show cause notice dated 22 February 2022 alleging encroachment on some portion of land in the ownership of the second Respondent bearing CTS No.189, Village Wadhawali, Petitioners came out with a case that they

are owners of adjoining land bearing CTS Nos. 506 A/3/1, 506 A/3/2A and CTS 506 A/3/2B and that they have not encroached upon any portion of land of second Respondent bearing CTS No.189. In the light of the above factual dispute sought to be created by the Petitioners, it appears that the Estate Officer conducted site inspection in presence of each of the Petitioners on 20 April 2022. In that site inspection, the Estate Officer recorded existence of weather sheds of various sizes put up by each of the Petitioners on land bearing CTS No.189 as well as presence of various construction material. All the three Petitioners signed the inspection reports dated 20 April 2022. If Petitioners were emphatic that they had not encroached upon any portion of the land bearing CTS No.189, they ought to have objected to the contents of inspection reports dated 20 April 2022 by either refusing to sign the same or by putting an endorsement thereon that they did not agree with the findings in the site inspection reports.

4) In my view therefore, existence of structures of Petitioners on land of the second Respondent bearing CTS No.189 got clearly established in factual enquiry conducted by the Estate Officer.

5) As a matter of fact, the second Respondent was armed with a better document in the form of measurement map prepared by the City Survey Office reflecting existence of tin sheds on some portion of land bearing CTS No.189. However, for

some unfathomable reasons, the second Respondent chose not to rely upon such vital piece of evidence during the enquiry before the Estate Officer. However, in appeals preferred before the learned Principal Judge, City Civil Court, the second Respondent did rely upon the map prepared by the City Survey Office. The learned Principal Judge, City Civil Court, however, proceeded to ignore the same on the ground that same was never relied upon before the Estate Officer. The map clearly shows presence of structures on some portion of land bearing CTS No.189. It appears that Petitioners have constructed structures/sheds/shops in front of land bearing CTS Nos. 506 A/3/1, 506 A/3/2A and CTS 506 A/3/2B but their structures jut out of the boundaries of CTS Nos. 506 A/3/1, 506 A/3/2A and CTS 506 A/3/2B and protrude into land bearing CTS No.189, which is in the ownership of the second Respondent. However, even if the city survey map is to be totally ignored on account of second Respondent choosing not to rely upon the same before the Estate Officer, the site inspection conducted by Estate Officer on 20 April 2022, which is not disputed by the Petitioners, clearly establishes the factum of existence of some part of structures on land bearing CTS No.189.

6) Mr. Damle has strenuously submitted before me that no factual enquiry is conducted by the Estate Officer or by the learned Principal Judge about the defence adopted by Petitioners about their structures being confined only in their respective lands bearing CTS Nos. 506 A/3/1, 506 A/3/2A and CTS 506

A/3/2B. He would submit that if the second Respondent is relying on the city survey map for prejudicing the mind of this Court, the proper course of action is to grant opportunity to the Petitioners to react to the same by remanding the proceedings before the Estate Officer.

7) In my view however, there is no warrant for remanding of proceedings considering the fact that Petitioners did not dispute the site inspection reports dated 20 April 2022 prepared by the Estate Officer. If city survey map was the only document for proving existence of structures of Petitioners on land bearing CTS No.189, what Mr. Damle contends would have been correct. However there is concrete evidence of Petitioners' structures protruding in land at CST No. 189 in the form of site inspection reports. There is no answer on the part of Petitioners to the findings recorded in the site inspection reports dated 20 April 2022.

8) So far as reflection of signatures of Petitioners on the site inspection reports is concerned, Mr. Damle has attempted to salvage the situation by contending that mere signing the reports, does not *ipso facto* mean that they have agreed to the findings recorded therein. I am unable to agree. The site inspection was conducted specially with a view to examine as to whether any portion of structures of Petitioners was protruding in the land bearing CTS No.189. The Estate Officer has conducted factual enquiry by measuring the structures and has

arrived at a finding that some parts of the structures of the Petitioners juts out in land bearing CTS No.189, The inspection was conducted in presence of Petitioners and they signed the said reports. This would obviously mean that they did not dispute contents of the said reports. If Petitioners were to disagree with the said findings they would have recorded their protests. Even after 20 April 2022, Petitioners did not raise any objection to the contents of the said site inspection reports by writing separate letters.

9) Petitioners have invoked jurisdiction of this Court under Article 227 of the Constitution of India, which is corrective in nature. It is well established principle of law that jurisdiction under Article 227 need not be exercised to correct every error of law or fact, so long as the ultimate conclusion is acceptable. Reference in this regard can be made to ***Garment Craft V/s. Prakash Chand Goel***¹ in which it is held in paragraph 15 as under:-

15. Having heard the counsel for the parties, we are clearly of the view that the impugned order is contrary to law and cannot be sustained for several reasons, but primarily for deviation from the limited jurisdiction exercised by the High Court under Article 227 of the Constitution of India. The High Court exercising supervisory jurisdiction does not act as a court of first appeal to reappreciate, reweigh the evidence or facts upon which the determination under challenge is based. Supervisory jurisdiction is not to correct every error of fact or even a legal flaw when the final finding is justified or can be supported. The High Court is not to substitute its own decision on facts and conclusion, for that of the inferior court or tribunal. The jurisdiction exercised is in the nature of correctional jurisdiction to set right grave dereliction of duty or flagrant abuse, violation of fundamental principles of law or justice. The power under Article 227

¹ (2022) 4 SCC 181

is exercised sparingly in appropriate cases, like when there is no evidence at all to justify, or the finding is so perverse that no reasonable person can possibly come to such a conclusion that the court or tribunal has come to. It is axiomatic that such discretionary relief must be exercised to ensure there is no miscarriage of justice.

10) This Court is convinced that the Petitioners have encroached upon the land of the second Respondent. the City Survey Map would have merely strengthened the existence of Petitioners' structures on the land of second Respondent. Therefore the proceedings need not be remanded for grant of opportunity to the Petitioners to react to the said Map. By ignoring the said Map also, existence of encroachment can be inferred. the Considering the facts and circumstances where Petitioners are found to have encroached upon some portion of land bearing CTS No.189, I am not inclined to entertain the present Petitions. Petitions are accordingly **rejected**.

11) Needless to observe that the action for demolition and taking back possession shall be restricted by the second Respondent only in respect of that part of the structures, which protrude land bearing CTS No.189 and no portion of structures on land bearing CTS Nos. 506 A/3/1, 506 A/3/2A and CTS 506 A/3/2B shall be demolished by second Respondent.

[SANDEEP V. MARNE, J.]