



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

INTERIM APPLICATION NO. 10249 OF 2024
IN
WRIT PETITION NO. 9387 OF 2024
WITH
WRIT PETITION NO. 9387 OF 2024

Joseph Albert Fernandes & Ors.

... Applicants/
Petitioners

Versus

Union of India & Ors.

... Respondents

Mr. Pravin Tembhekar for the applicants/petitioners.

Ms. T.J. Kapre, AGP for the State.

Mr. Yuvraj Narvankar, Mr. Suraj Gurav, Ms. Jayashri Mone i/b. Mr. Aditya Gurav for respondent nos. 5 to 7.

Mr. B.K. Jain, respondent no. 8 present.

CORAM: G. S. KULKARNI &
ADVAIT M. SETHNA, JJ.
Date : 13 January, 2025

PC:

1. We have heard learned counsel for the petitioners on the Writ Petition as also on the Interim Application filed by them.

2. This petition is filed praying for the following reliefs:

“(a) Quash and set aside the impugned order passed by the Settlement Commissioner for the State of Maharashtra dated 25.05.2009 and to direct the Settlement Commissioner to hand over the property to the Government;

(b) Quash and set aside the notices issued for eviction to the petitioners

by the Managing Officer and competent authority dated 15.01.2024.

(c) To issue the writ of mandamus or any other appropriate writ, order of direction to the Settlement Commissioner to provide the permanent accommodation to the petitioners on the same property where they are staying from the year 1934 and 1958.”

3. It does not appear to be in dispute that the petitioners at all material times were aware that they were occupying their respective tenements without any authority in law. Despite this after a long lapse of time after the order of Settlement Commissioner dated 25 May, 2009, which is almost 15 years, the petitioners have approached this Court by the present proceedings to assail the said order. There is not a whisper of explanation much less any justification on the gross and inordinate delay in filing of the petition. In fact the petitioners were pursuing other proceedings, which we discuss hereunder.

4. At the outset, we may observe that the present petition as also the Interim Application is an abuse of process of law. This is inasmuch as Writ Petition No. 8709 of 2023 was filed by persons who were similarly situated as the petitioners herein. In such writ petition, the present petitioners moved Interim Application No. 963 of 2024 seeking protection against their eviction. By judgment and order dated 3 April, 2024 passed by a co-ordinate Bench of this Court on a batch of Interim Applications, which included the said Interim application filed by the petitioner, the said Interim Application was rejected by

the Court. Further, the order passed by this Court was assailed before the Supreme Court in SLP(C) Diary No. 17522 of 2024, which came to be rejected by the Supreme Court by an order dated 22 April, 2022. It thus stands concluded that the petitioners would not have any legal right in respect of the tenements in question situated on the land, which was admittedly an evacuee property, as the petitioners were claiming to be sub-tenants/licensees of one Mr. Mohan Borade. Once in the long drawn proceedings the right of the landlord Mr. Mohan Borade itself was not recognized by this Court, which was not only in the proceedings of Writ Petition No. 8709 of 2023 but also in substantive proceedings filed by Mr. Mohan Borade before this Court, namely, in Second Appeal Nos. 435 of 1989 and 448 of 1989, the petitioners cannot assert any higher rights than that of Mr. Mohan Borade, their alleged landlord. In any event, the petitioners had filed Interim Application No. 963 of 2024 in Writ Petition No. 8709 of 2023 as noted above, which came to be rejected by the co-ordinate Bench of this Court, of which one of us (G.S. Kulkarni, J.) was a member. In dismissing the petitioners Interim Application by the order dated 3 April, 2024, the Court has made the following observations in paragraph 17 while dealing with the Interim Application filed by the petitioners:

“17. This Application was filed on 18 January, 2024. It is the case of the

applicants that they are having residential premises within the said Bund Garden Property. It is submitted that, by virtue of the interim orders passed by this Court in Writ Petition No. 8709 of 2023, the respondents will proceed to evict the applicants, and, therefore, the applicants have filed the interim application to get themselves impleaded as parties to the Writ Petition.”

5. In rejecting the Interim Application, the Court observed that the petitioners were not in a position to demonstrate a remotest legal right qua the property in question. It was also observed that some of the applicants have miserably failed to obtain orders, in the civil suit filed by them and hence, having already espoused their legal remedy by asserting their contentions in the civil suit and having failed to obtain any reliefs, they cannot claim any substantive right in the proceedings of the said writ petition.

6. The present proceedings is merely another round/a second bite at the cherry, inasmuch as, when it has stood conclusively established that the petitioners have no independent legal right and eviction of the petitioners is being resorted to in pursuance of the orders passed by this Court, the present petition was sought to be filed. In paragraph 8 of the petition, it is categorically averred that the petitioners were paying rent to Mr. Mohan Borade and the petitioners are still paying electricity bills. All such alleged rights the petitioners purport to assert are admittedly through Mr. Mohan Borade, who has himself failed before all the forums and has no legal rights, which is also

considered by this Court in the order dated 30 November, 2023 and 3 April, 2024 passed on Interim Application No. 963 of 2024 filed by the petitioners.

7. Learned counsel for the petitioners has contended that the petitioners would nonetheless have legal right to continue to occupy the tenement, as they are in possession of the tenements for a long period of time. It is, therefore, submitted that under the policy of the State Government, the petitioners ought to be rehabilitated by the State Government, hence an injunction be granted against the State Government restraining it from evicting the petitioners. However, in raising such contention, the petitioners are not in a position to demonstrate that they were allotted any premises by the State Government or the State Government had recognized them to be tenants of the State so that under any beneficial policy of the State Government, they can claim alternate premises. In fact no such policy of alternate premises to be offered by the State Government is placed on record.

8. As the petitioners were inducted by Mr. Mohan Borade, as clear from the averments as made in the writ petition, who have lost all proceedings in respect of the property in question, which is held to be an evacuee property.

9. In this view of the matter, we are not inclined to interfere in the petition. It is thoroughly misconceived. The Writ Petition is accordingly dismissed.

However, we refrain from imposing any cost.

10. Disposed of in the above terms.

11. At this stage, learned counsel for the petitioners submits that some time be granted to the petitioners to vacate. In the facts and circumstances of the case and moreso considering the fact that the petitioners have already litigated and were unsuccessful, no protection whatsoever can be granted to the petitioners, as the petitioners had sufficient notice that they would be required to vacate their tenements. We are thus not inclined to extend any time for the petitioners to vacate their tenements. The Eviction Officer is accordingly directed to take appropriate action as per law.

(ADVAIT M. SETHNA, J.)

(G. S. KULKARNI, J.)