



Shephali

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION (L) NO. 3572 OF 2023
WITH
INTERIM APPLICATION (L) NO. 17001 OF 2023
IN
WRIT PETITION (L) NO. 3572 OF 2023

Ekta Welfare Society ...Petitioner
Versus
State of Maharashtra & Ors ...Respondents

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Mr Hafeezur Rehman, i/b AA Siddique, for the Applicant.
Mr Himanshu Takke, AGP, for State/Respondent No.1.
Mr Ashutosh R Gole, for Respondents Nos. 2 to 5.
Ms Shilpa Redkar, for MCGM.

CORAM G.S. Patel &
Neela Gokhale, JJ.
DATED: 27th June 2023

PC:-

1. We are constrained to observe that our protective order of 23rd June 2023 was obtained on a complete misrepresentation and suppression. The Petition itself proceeds on a material misrepresentation about the facts.

2. In this very Petition, we passed a detailed order on 8th February 2023. We noted that the decision of the Supreme Court regarding the eviction of persons on Railway lands. We inter alia directed the authorities to follow the protocol and directions as set out by the Supreme Court. We sought more information about a rehabilitation policy and then restricted demolition until the next date if they were in contravention of the orders of the Supreme Court. The matter was then mentioned before us few days ago and we were told by a praecipe of 23rd June 2023 that there was now a fresh eviction notice issued by the MCGM threatening eviction all over again. We passed an order on 23rd June 2023 and said that the MCGM eviction notice was prima facie contrary to our 8th February 2023 order. Indeed it was, but what we are not told at that time and which has now emerged from the Affidavit in Reply filed by the Union of India and to which our attention was not drawn on 23rd June 2023, is that these very Petitioners have already filed a Suit in the City Civil Court at Dindoshi. This is LC Suit No. 183 of 2021. There is no mention in this Petition of the Suit. The 7th Defendant to that Suit is SPARC, a NGO (Society for Promotion of Area Resources Centre). It has been steadily working over many decades with oustees and a structured programme for relocation and rehousing. Paragraph 30 of this Plaint makes wild allegations against everybody from municipal officials to corporators and even the NGO in question. The suggestion seems to be that it is these illegal trespassers on Railway line who can do no wrong but everybody else is, in the words of the Plaint, 'hand in glove'. But the point is that the Suit of 2021 ought to have been mentioned in the Writ Petition itself. It ought to have been mentioned that there was no ad-interim relief obtained in the City Civil Court Suit. This has been

suppressed by the Petitioners (we do not blame their Advocates). We do not agree that when it comes to persons who claim that they are poor etc that there is a different standard for candour and that the requirement of a complete disclosure of all material factors does not apply to such persons or that it is confined to other entities. We see no reason why a party who comes to Court with such a suppression should be entitled to any protective orders.

3. Even on the Petitioners' own showing in the Complaint, a survey had been carried out. Indeed, the complaint indicates that there has been more than one survey but every time there is a survey there were more encroachments and then after one removal, the cycle started all over again. We have already noted that there are proceedings under the Public Premises Act.

4. These complaints by the Petitioners/Plaintiffs have been going on since 2020 and therefore to say now in 2023 that all of these notices have been suddenly issued with no prior warning and no survey is patently and demonstrably untrue.

5. We see no reason why we should continue to entertain this Petition.

6. On 8th February 2023, we were told that demolition has been carried out on 7th February 2023. Not seven days later, illegal construction and encroachment started afresh. There is little purpose in saying that the demolition was partial or that the fresh encroachments are not by the Petitioners. There was a survey.

There was advance notice. The entire representation in the Petition is deliberately misleading.

7. There is also no possibility of anyone saying that the society was unaware of the Suit. Not only is the plaint in the name of the society but the same person who verified the Plaint has verified the present Writ Petition. His son is present in Court today and we do not see how he can claim ignorance.

8. We are not concerned whether the structures that came up on 14th February 2023 do or do not belong to the Petitioners. The reason is simple. If the Petitioners did not put up the structures, then they have nothing to fear, and demolition is not directed against them. On the other hand, if there was a demolition on 7th February 2023 and the Petitioners come back to Court complaining about the demolition, it means that the Petitioners have indeed put up structures after the demolition.

9. We are supposed to permit and turn a blind eye to constant encroachment on public lands and properties. This has to stop. As we have said recently in another order, there is no fundamental right to trespass or to squat. Once a procedure mandated by law has been followed, eviction of trespassers and encroachers cannot be indefinitely delayed.

10. The claim to being poor only means that we will not make an order of costs. But the non-disclosure of relevant and material facts is unpardonable and cannot be excused. It must have consequences.

11. All previous orders are vacated. The Petition stands dismissed.

12. The pending Interim Application is infructuous and disposed of accordingly.

13. The authorities are at liberty to proceed at once in accordance with law.

14. We are not inclined to grant an extension of time for even minute because these Petitioners have quite literally tried to pull a fast one on this Court. If they want an extension of time to vacate, that is an application they must make to the Railways or the MCGM and it is for the Railways or the MCGM to decide whether to accept or not accept that application. We refuse to grant any such extension. Enough is enough.

(Neela Gokhale, J)

(G. S. Patel, J)