
(2004) 01 BOM CK 0010

In the Bombay High Court

Case No : Writ Petition No. 1062 of 2002

Smt. Rizwana Nizamuddin Shaikh

APPELLANT

Vs

Additional Collector (Encroachment) and Others

RESPONDENT

Date of Decision : 21-01-2004

Acts Referred:

Maharashtra Land Revenue Code, 1966 — Section 53

Citation : (2004) 2 ALLMR 683 : (2004) 106 BOMLR 22

Hon'ble Judges : R.M.S. Khandeparkar, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

R.M.S. Khandeparkar, J.—Heard Perused the records. The petitioner is challenging the order dated 22.3.2002 passed by the Additional Collector (Encroachment/Demolition), Western Suburbs on the ground that the same is contrary to the materials on record and therefore liable to be set aside.

2. It is the case of the petitioner that since the respondents threatened to carry out demolition of the structure in question, the petitioner approached the City Civil Court and by order dated 15.6.1995 the said Court directed the respondents not to demolish the said structure without due process of law. Thereupon a notice u/s 53 of the Maharashtra Land Revenue Code was issued to the petitioner and the petitioner along with her reply dated 30.10.1995 produced certain documents in support of her defence. After hearing the petitioner, the Tahsildar (Encroachment), Borivali, passed the order dated 31.1.1996 holding that the petitioner had encroached upon Government land by constructing a hut admeasuring 30 x 22 sq. ft. in C.S. No. 263/7 at Malad, Charkop Naka, Taluka Borivali, Mumbai Suburban District and therefore ordered the demolition of the said structure. The petitioner sought to challenge the said direction by way of Writ Petition No. 3042 of 2001 and the Division Bench of this Court by order dated 29.1.2002 directed the Additional Collector (Encroachment) to consider the documentary evidence produced by the petitioner afresh, and pass a reasoned

order. Accordingly, the petitioner made further submissions on 11.2.2002 to the Additional Collector (Encroachment) and after hearing the petitioner, the Additional Collector (Encroachment) passed the impugned order, rejecting the claim of the petitioner. Hence, the present petition.

3. It is the case of the petitioner that the petitioner has been occupying the said structure since 1983 and her name was shown in the voters' list for Legislative Assembly Constituency No. 44. The petitioner has also sought to produce ration cards, election identity card, and birth certificates of the son and daughter of the petitioner. According to the learned Advocate for the petitioner, perusal of the said documents would disclose that the petitioner had been occupying the said structure even prior to the datum line i.e. 1.1.1995 and therefore the petitioner is entitled for protection in terms of the Government policy in relation to the said structure and the Additional Collector having failed to appreciate the same, and having not analysed the documents in proper perspective, has clearly acted arbitrarily while rejecting the claim of the petitioner. The learned Advocate appearing for the respondent-State, on the other hand, has submitted that most of the documents produced on record relate to the period after 1.1.1995 and whatever documents relating to the period prior to 1.1.1995 were produced by the petitioner, the same disclose the place of residence of the petitioner to be different from the suit structure.

4. Undisputedly, the Additional Collector (Encroachment) was dealing with the matter pursuant to the remand of the case with specific direction to consider the documentary evidence produced by the petitioner afresh. Being so, what is basically to be ascertained is whether the Additional Collector (Encroachment) while passing the impugned order has applied his mind in relation to analysis of the documents produced by the petitioner.

5. Perusal of the impugned order discloses that, as rightly submitted by the learned Advocate for the respondent-State, most of the documents which were produced relate to the period subsequent to the datum line i.e. 1.1.1995. The Additional Collector has not given much importance to those documents and rightly so, as none of those documents could disclose that the petitioner was occupying the premises prior to 1.1.1995. As regards the documents which related to the period prior to 1.1.1995, one of them is the extract of the voters' list from the Constituency No. 44 of the year 1989. Undisputedly, the said list though stated to be relating to 1989, it is the case of the petitioner herself that the petitioner's name therein was wrongly shown as Nizamuddin Rizwana and even her address was wrongly shown as G-142, Babarekar Nagar, Gate No. 2 near Industrial Estate. It is her further case that the same was sought to be corrected pursuant to her application and the address therein was also corrected. However, the fact remains that such correction was done pursuant to the application filed by the petitioner on 3.9.1999 i.e. much after the datum line. In other words, the document, as it stood prior to 1.1.1995, did not disclose the occupation of the petitioner in the suit structure and therefore could be of no

help to establish the claim of the petitioner in relation to the suit structure.

6. The second document which related to the period prior to 1.1.1995 was the election identity card dated 21.11.1994. Undisputedly the said election identity card discloses the address to be "G-142 Babarekar Nagar, Gat No. 2 Near Ind Kandivali (W)" which is totally different from that of the suit structure. The third document which related prior to the datum line was the birth certificate of the son of the petitioner Ahmadali. He was stated to have been born on 6.3.1989 and the registration of birth was done on 14.3.1989. On the face of it, the said document discloses the address of residence of the petitioner to be "Bhabrekar Nagar Charkop Zopadpatti Near Saibaba Mandir Kandivali Bombay 67". Undisputedly, the said address does not relate to the suit structure.

7. Strenuous attempt was made on behalf of the petitioner to contend across the bar that analysis of the ration cards would prove the occupation of the petitioner in the suit structure prior to 1.1.1995. In that regard the present ration card as well as the old ration card was also produced for my perusal in the course of the hearing. Affidavit was filed explaining the reason for the petitioner being in possession of more than one ration card. The explanation, however, is thoroughly unsatisfactory. It was the case of the petitioner before the Additional Collector in her statement dated 11.2.2002 that her ration card No. 0645443, dated 28.4.2000 was issued against the old ration card No, 878821, dated 23.5.1996 which was in turn issued as renewal of the earlier ration card No. 67755, dated 6.9.1983. In the affidavit filed on 21.1.2004 the petitioner has claimed that in the year 2000 she was having ration card No. 0645443 and it was issued in place of the earlier ration card No. 878821, dated 23.5.1996. The order of the Tahsildar dated 3.1.1996 refers to the ration card No. 0428329, dated 9.10.1995. It is claimed that the same was a temporary ration card valid for the period from 9.10.1995 to 21.12.1995 and was extended till June, 1996. The claim regarding the ration card No. 0428329 to be a temporary ration card is sought to be substantiated by referring to an endorsement in the said ration card to the effect "9.10.95 to 31.12.95" and further date of 3.6.96 below the initial of the issuing authority. In the course of the arguments, it was also sought to be contended on behalf of the petitioner that though the ration card No. 67755 discloses the date 6.9.83, it was in fact issued subsequent to 1.1.1995 and after the ration card No. 878821.

8. At the outset, contention contrary to the materials on record as well as against the statement on oath by the petitioner cannot be entertained. It was the statement of the petitioner herself before the Additional Collector that the present ration card bears the No. 0645443 and it is dated 28.4.2000 and prior to that the old one was bearing No. 878821. dated 23.5.1996 and prior to that No. 67755. dated 6.9.1983. Undisputedly, the copy of the ration card No. 67755 discloses the collection of ration even in the month of January of the year 1997 under the said ration card. The ration card No. 0428329 nowhere discloses that it is a temporary ration card for the period 9.10.1995 to 31.12.1995. The

endorsement to the effect "9.10.95 to 31.12.95" spoken of is to be found in relation to the period where the disbursement of ration is to be recorded and it does not relate to the period for which the ration card is to be held to be valid. In fact, there is no column in the ration card which can be stated to be referring to the period for which it is to be valid, nor it is the case of the petitioner that the rules provide for issuance of any such ration card for a specific period or that there was any occasion for the petitioner to obtain any such ration card for a temporary period. Besides it was the case of the petitioner herself before the Additional Collector that she was the holder of a regular ration card right from 1983 onwards, initially bearing No. 67755, renewed in the year 1996 having No. 878821 and further renewed in the year 2000 with the No. 0645443. From the records it is apparent that the petitioner had been in possession of more than one ration card. How the petitioner was able to procure more than one ration card may be a question to be gone into by the concerned authorities, however, the same is not relevant for decision in the matter in hand, though the fact remains that the petitioner has been in possession of more than one ration card. Those ration cards nowhere disclose collection of ration by the petitioner prior to 1.1.1995. Being so, the ration cards are also of no help to the petitioner.

9. In fact, the Additional Collector after taking into consideration all the above facts and considering the fact that none of those documents disclose the occupation of the petitioner in the suit structure prior to 1.1.1995 had rejected the claim of the petitioner. The above analysis would reveal that the appreciation of the above documents by the Additional Collector cannot be found fault with, nor the findings arrived at by the Additional Collector based on such appreciation can be held to be either contrary to the materials on record or perverse in any manner.

10. There being no illegality committed by the Additional Collector while dismissing the claim of the petitioner, there is no case made out for interference in the impugned order in writ jurisdiction. Hence the petition fails and is hereby dismissed. The rule is discharged with no order as to costs.

11. The learned Advocate for the petitioner, at this stage, requests for continuation of the interim order for the next six weeks. Considering the materials on record and the decision arrived at, I do not find any justification for continuation of such interim order for further period and the request for continuation of the interim relief is rejected.

12. All concerned to act on the ordinary copy of this order duly authenticated by the Associate/P.S. of this Court as a true copy.