

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION (ST) NO. 32521 OF 2017

Sandra D'souza and Ors.

... Petitioners

V/s.

The State of Maharashtra and Ors.

... Respondent

Mr. Ravi Gadakar i/by Johnson John for Petitioners.

Mr. S.L.Babar, AGP for Respondent Nos. 1, 2 and 4.

Mr. Abhinav Chandrachud a/w Vinod P. Sangvikar for Respondent No. 5.

CORAM : UJJAL BHUYAN, J.

DATE : DECEMBER 06, 2019.

P.C.:-

1. Heard Mr. Ravi Gadakar, learned counsel for the Petitioners and Dr. Abhinav Chandrachud, learned counsel for Respondent No. 5. Also heard Mr. S.L. Babar, learned AGP for Respondent Nos. 1, 2 and 4.

2. This Petition under Article 227 of the Constitution of India, is shown to have been filed by four Petitioners. Prayer made is for quashing of Order dated 11th September 2017, passed by the Additional Collector (Encroachment/Eviction) in Reference No. 1447/14-15 as well as directions of the High Power Committee dated 30th October 2014.

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3. It appears that during the proceedings held on 15th April 2019, learned Counsel appearing for the Petitioners prayed for withdrawal of the Writ Petition. However, learned counsel for Respondent No. 5 pointed out that Petitioner No. 4 was not a resident in India; he had not given instructions to file the present Writ Petition on his behalf. Nonetheless, his name was incorporated in the list of Petitioners and in support thereof a thumb impression stated to be of him was embossed on the vakalatnama. It was submitted that Petitioner No. 4 had lodged a complaint before Bandra Police Station on 23rd May 2009. In the said complaint he had put his signature. If Petitioner No. 4 could sign on his complaint before police, there was no question of him putting thumb impression on the vakalatnama. Therefore it was alleged that the thumb impression stated to be of Petitioner No. 4 was a forged one.

4. This Court vide Order dated 15th April 2019, prima facie came to the conclusion that the Writ Petition on behalf of Petitioner No. 4 was either filed without his instructions or by forging his thumb impression on vakalatnama. Therefore, prayer of learned counsel for the Petitioners to withdraw the Writ Petition was rejected. Petitioner Nos. 1 to 3 were directed to file their response to the allegations made on behalf of Respondent No. 5, more specifically as to how there was thumb impression of Petitioner No. 4 on the vakalatnama when he had put his signature

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in the police complaint thereby indicating that he was not an illiterate person, capable of signing documents.

5. Following aforesaid Order dated 15th April 2019, Petitioner No. 1 filed affidavit on 24th June 2019. It is stated that while drafting the Writ Petition, all the four persons whose names appeared in the impugned Order dated 11th September 2017 were made Petitioners but the Petition was signed by only three of the Petitioners i.e. Petitioner Nos. 1,2 and 3. No signature or thumb impression of the fourth Petitioner was taken. It is stated that Petitioner Nos. 1, 2 and 3 were unable to fathom as to how a thumb impression was affixed to the vakalatnama and that they had no answer to this. Nonetheless, Petitioner Nos. 1, 2 and 3 have tendered their apology for the inconvenience caused to the Court, requesting the Court to take a lenient view and to permit Petitioner Nos. 1, 2 and 3 to withdraw the Writ Petition.

6. Respondent No. 5 filed an affidavit on 7th August 2019, in response to the affidavit of Petitioner No.1. In the affidavit it is pointed out that Petitioner No.1 could not explain as to how there was thumb impression on behalf of Petitioner No. 4 on the vakalatnama and whose thumb impression it was if it was not of Petitioner No. 4.

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7. After hearing the matter at some length, Court is of the view that there is no proper explanation regarding the thumb impression on the vakalatnama filed by the Petitioners stating the same to be that of Petitioner No. 4.

8. Learned Counsel for Respondent No. 5 has drawn the attention of the Court to various provisions of the Indian Penal Code to contend that Petitioners are guilty of making false statement before the Court thereby attracting provisions of Sections 191, 193, 205 and such other provisions of the Penal Code. That apart, it is also a case of criminal contempt committed by the Petitioners in as much as it is an attempt to interfere with the due course of a judicial proceeding.

9. After hearing learned Counsel for the Parties and on due consideration Court is of the view that Petitioners have not only not approached the Court with clean hands but their conduct appears to be contumacious as well, besides attracting relevant provisions of the Indian Penal Code.

10. It is trite that a person seeking equitable relief from the Court, must approach the Court with clean hands. If the Court finds that such a person has not approached the Court with clean hands and has taken resort to means which are highly questionable, not only would he be dis-entitled to any relief from

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the Court but would also be liable to face such other action as is contemplated in law, more particularly under the Indian Penal Code.

11. In view of above Writ Petition is dismissed with cost of Rs. 10,000/- to be deposited by Petitioner Nos. 1, 2 and 3 with the Maharashtra State Legal Services Authority within four weeks. Besides, Registry to take necessary steps for lodging of complaint under the Code of Criminal Procedure as well as under the Indian Penal Code.

(UJJAL BHUYAN, J.)

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