

MAHARASHTRA STATE HUMAN RIGHTS COMMISSION
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SHRC/VGM/09/2009/ 2657
Date: 22-September 2009

Case No. -1460/16/2005-06/

Name of the Complainant : Gulam Waris Shaikh
C/o. Janata Seva Mandal
Shankar Dairy Farm
Lakshmi baug, Sion
Mumbai - 400 022

Vs.

The Sr. Police Inspector
Dharavi Police Station
Mumbai.

The Commissioner
Brihan Mumbai Municipal Corporation

Date : 15th September, 2009.

Coram : **Justice V G Munshi, Member**

ORDER

Read the allegations made in the complaint and the Report received from Sr. Police Inspector, Police Station Dharavi. Read the case papers.

2. The important facts of the case of the complainant, lie within a small compass and may be briefly stated as order.

The complainant resides on the given address and worked as Editor of Weekly Hindi News Paper. He is a Social Worker and he is active member of his party. According to him, the Officers and Officials of Mahanagar Palika are always engaged in committing corruption in Dharavi area. The complainant made several complainants about such corruption to number of Authorities. He also made complaint about illegal construction work going on in that area, under the protection, given by these Mahanagar Palika Officials. Because of such complaints, the builders and other persons were naturally displeased with the complainant. They often given threats to the complainant to cause harm to his person and life, if the complainant did not stop such activities. When



the Complainant approached Police, the Police did not take any action in this matter, and on the other hand they joined hands with other side. They threaten the complainant to implicate him falsely in a M.P.D.A case or in Externment case. In the last they did file false criminal cases against the complainant, in order to pressurize him. According to him, the Police falsely implicated him in Criminal cases and made his life miserable. Therefore, he moved the Commission for necessary action in this matter.

3. The Respondent Sr. Police Inspector, Police Station Dharavi by filing his Report denied and disputed the allegations made in the complaint. According to them the complainant did file present complaint with malafide intention and motive and to obstruct the Police from doing investigation in Criminal cases, which were filed against the complainant, and which are now pending in Court. In the last according to the Respondent, that they have taken proper action in this matter.

4. Therefore it is necessary to view the case in the light of facts and circumstances brought on record and also in the light of legal position.

(i) In this case the complainant demanded action against Officials of Mahanagar Palika and also against Police Officers and Officials of Police Station, Dharavi. The earlier Bench (Coram – Justice A.D. Mane, Acting Chairperson) that on 21-02-2006 did pass order / direction in Case No. 1460/16/2005-06 and it is reproduced as under

“The complaint be transmitted to Municipal Commissioner, Brihan Mumbai Municipal Corporation Mumbai, for disposal at his end in accordance with the law with further direction to submit the action taken report to the Commission”.

Thus, the earlier Bench directed action against the officials of Mahanagar Palika. In that case, it was incumbent upon the Commissioner Brihan Mumbai Municipal Corporation, to do the needful, accordingly, in obedience to those directions. It appears that the Commissioner Brihan Mumbai Municipal Corporation, Mumbai neither taken any action in this matter of illegal construction etc and nor did file any action taken Report. The Commission expresses great displeasure about this in-action on the part of Mahanagar Palika. Again copy of this order be sent to Commissioner B.M.C., Mumbai for information and necessary action according to law.



R/R,HRG-RECOMM

As the Bench did not take any action, against Police Officials, present Case No. 1460/16/2005-06 continued even thereafter, against these Respondents. On this back ground we have to view the present case.

(ii) On the basis of the complaint lodged in Police Station, Dharavi by one Smt. Dharmavati Deviprasad Goud, offence at Cr. No. 75/2006 under Sections 342,504,506,354 of I.P.C. was registered against the complainant on the ground that he tried to outrage the modesty of this Women. Similarly on the basis of complaint lodged by Arunachalam Swaminathan in Police Station, Dharavi offence at Cr. No. 17/2005 under Sections 384 read with Sec. 34 was registered against the complainant. It was alleged by the complainant that, he was falsely implicated in these cases by the builder after joining hands with Police. All these aspects, that Police filed false cases etc. are to be considered and decided by the Court, where these cases are pending, awaiting trial, view of clause 8 (h) of the Maharashtra State Human Rights Commission (Procedure) Regulations, 2001 r/w Sec. 10 of the Protection of Human Rights Act, 1993. If the complainant feels aggrieved, because of registration of these Criminal cases, then he had to challenge all these things before competent Court and not before Commission. In other words, in such circumstances, the Commission can not go so deep into merits of the case and record finding or order on its merits, when Criminal Proceedings are pending.

The question arises in this matter is whether Commission has jurisdiction to entertain, deal and decide such issue. Section 12 of the Protection of Human Rights Act, 1993 deals with functions and powers of the Commission. The relevant portion of Sec. 12 (a) (i) of the Act of 1993 is reproduced as under.

Sec. 12 (a) (i)

"The Commission shall perform all or any of the following functions namely (a) inquire suo motu or on a petition presented to it by a victim or any person on his behalf into complaint of (i) violation of human rights or abatement thereof...."

Therefore, the complainant has to make out a case of violation of human rights, in view of the meaning assigned to the definition of "human rights" given under Sec. 2 (1) (d) with Sec.12 (a) (i) of the Act of 1993.



R/R,HRG-RECOMM

The Division Bench of High Court Bombay in

A I R 2006 Bombay 44,

(State of Maharashtra Vs Sou Shobha Vitthal Kolte)

held that,

“Once a petitioner comes before Commission complaining of violation of human rights based on the right created under a statute and the statute itself provides a mechanism for redressal by way of appeal, revision or otherwise, the Commission ordinarily should not entertain a complaint and direct the parties to pursue their remedy under the statute.”

In view of the principle laid down in the decision referred to above, the complainant has to pursue proper remedy. The Commission cannot entertain such matter.

(iii) In was alleged that, the Responding Police Officials, since beginning threaten the complainant, to implicate him falsely in M.P.D.A. case or in Externment Proceedings. Accordingly the Respondent started, taken and completed chapter proceeding against the complainant without following due procedure of law. According to the complainant **firstly**, these two criminal case, cannot form basis for initiating externment proceedings against him. **Secondly**, no proper, prescribed procedure was followed and **lastly**, these proceedings were taken completely against the principles of natural justice and also in contravention to the prescribed procedure. There cannot be any difference of opinion on the point that, the legality, propriety or correctness of these externment proceedings cannot be challenged before Commission, because proper remedy is available elsewhere. Had it been the fact that, the complainant was aggrieved by such show-cause notice, order etc. in that case it was incumbent upon him to avail proper remedy available under law. Moreover, the report mentions that the order of externment (period from 22.01.2007 to 22.01.2008) became infructious because the said order could not be served upon the complaint before the expiration of said period. Thus, at present no such externment proceedings, are pending or to be taken against the complaint. The apprehension of complainant, about false implication in externment proceeding, has now become baseless. At the same time it is incumbent upon the Respondent Police to follow the rules and law at the time of taking such proceeding strictly and proper opportunity of hearing, needs to be given to the person before any such order is passed. It is




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necessary to mention that, such externment order should be issued in rare case and where the circumstances of the case demand such action, because it affects rights of individual. In the present case the complainant raised a question, as to whether really there was need to take such externment proceedings against the complainant. The circumstances of the present case show that, really there was no need to take such action against the complainant and to keep him always under the tension or always away from residential house. It must be borne in mind that, the complainant is not a habitual offender nor there was any conviction at his credit. All these aspects were not at all considered. It is incumbent upon the Respondent Police, to take all the care, to act strictly according to law and to see that no such unpleasant thing is repeated in future.

- (i) **Copy of this order and copy of order dated 21.02.2006 be sent to Commissioner, BMC, Mumbai for information and necessary action according to law at early date under intimation to Commission.**
- (ii) **Copy of this order be also sent to Senior Police Inspector - Police Station, Dharavi for information and to see that peace, law and order is maintained and no unpleasant is repeated in future.**
- (iii) **Copies be sent to Respondents through Secretary - State Human Rights Commission, Mumbai for necessary action.**

With these observations / recommendations Case No. 1460/16/2005-06 is disposed of accordingly.




(Justice V G Munshi)
Member, SHRC