

MAHARASHTRA STATE HUMAN RIGHTS COMMISSION

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SHRC/VGM/09/2009/ 2706
Date: 23 September 2009

Case No. - 213/2006-07

Name of the Complainant : S S Setranjiwala
Modern English High School,
Nagpada Neighbourhood House,
Between 109 Sophia Zubair Road
187, Dimitimkar Road, Nagpada
Mumbai - 400 008.

Vs.

The Dy Commissioner of Police
Zone - III, Bawla Compound,
Chinchpokli, Mumbai - 400 027.

Date : 16 September 2009

Coram : Justice V G Munshi, Member

ORDER

Read the allegations made in the complaint and report received from the Dy Commissioner of Police, Zone - III, Mumbai. Read the report received from Investigation Wing of the Commission. Read the case papers. Heard the parties.

2. The important facts of the case of the complainant may be briefly stated as under

The father of the complainant started school sometimes in the year 1957 in the building in dispute. The complainant worked in the school as a founder member since year 1986 and working as a Principal of the School since year 1994. After the death of his father, which occurred in 1997, complainant and his sister, looked after the management of the said school.

The said school of the complainant is situated within the compound of, Nagpada, Neighbourhood House and is situated on Sophiya Zuber Road.



The building and the open land situated around the building, is of the ownership of Marathi Mission Trust. This trust runs school in some part of the said building.

The Respondent Trust wanted that the complainant should vacate the school premises, to which the complainant opposed. Thus, there arose a dispute of civil nature among the parties. It was alleged by the complainant that the Respondent started harassing the complainant on some ground or other. The Respondent tried to evict the complainant forcefully and therefore, the complainant apprehended dispossession of those premises. Therefore, the parties did file number of civil suits against each other and the matter is subjudice before the Court. It was alleged by the complainant because of harassment at the hands of the Respondent, they have filed number of complaints in Police Station and even then Police did not take any action against the Respondent. It was alleged that the Police have joined hands with the Respondent and therefore, they do not take any action in this matter. On the other hand according to the complainant he was falsely implicated in criminal case, by PI Shaikh at the instance of the Respondents. In short according to the complainant, because of such activities of the Respondent, he finds it very difficult to run the school in the same building. He made complaints about this nuisance and harassment, to number of Authorities. As he could not get relief he moved the Commission for necessary action in this matter.

3. The Respondent Dy Commissioner of Police (Zone - III) Mumbai by filing their report denied and disputed all the allegations made against them. According to them they have taken the proper action in this matter. Secondly, the dispute that arose among the parties is of civil nature. Lastly, number of civil and criminal cases are pending in the Courts. In short according to the Respondent, in view of this situation no further action is necessary in this matter.

4. Therefore, we have to view the case of the complainant in the light of facts and circumstances brought on record and also in the light of legal position.

- (i) If we go through the averments made in the complaint and the report filed by the other side, then there is no scope for doubt that, the dispute that arose among the parties is of civil nature. The dispute that arose among the parties or referred in the complaint is of civil nature and therefore, it is to be heard and decided by the competent Civil Court and not by the Commission. In other words the

Commission in such matter cannot go so deep into the merits of the case, and record findings or order on such issues of civil nature and that too without jurisdiction. In that case it is incumbent upon the complainant to select and avail proper remedy available under law.

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.

- (ii) The report shows that the parties filed in all six civil matters against each other in respect of the building in dispute and the matters are subjudice before the competent Court. Moreover, in Civil Suit No. 1329/1998 the Court passed order on 13.07.2009 granting injunction. By passing this order the Court made it clear that the complainant cannot be dispossessed from the suit premises without following due procedure of law. In such circumstances, it is incumbent upon the parties to obey the directions given by the Civil Court. It was submitted by the complainant even thereafter the harassment from the Respondent continued. It is necessary to mention that the Respondent has to honour the order passed by the Court and not to act in such a way, which amounts to disobedience of the orders of the Court. In a fit case the complainant can initiate action against the other side for the disobedience of the orders of the Court. Thus, the case of the complaint is governed by clause 8 (h) and (i) of the Maharashtra State



Human Rights Commission (Procedure) Regulations, 2001 r/w Sec. 10 of the Protection of Human Rights Act, 1993. In other words when the matters are pending before competent Court the Commission cannot go so deep in to the merits of the case and record findings and order on its merits that too without jurisdiction.

(iii) It was alleged by the complainant that the Respondent with the help of the Police falsely implicated the complainant in a criminal case No. 104/2007 u/s 354, 342, 454, 427 r/w Sec. 34 of IPC and the said criminal case is pending in Court at Mazgaon. All these aspects that the complainant falsely implicated in criminal cases etc are to be heard and decided by the Court where criminal case is pending and not by the Commission. The complainant can very well take all these defences before the Court at the time of the trial.

(iv) It was alleged by the complainant though he filed number of complaints in Police Station, Police did not take any action. The record shows that on the basis of the complaints given by the complainant in Police Station in all 55 NC cases were registered. It was the grievance of the complainant though number of cases were registered in Police Station, Police did not take any action. According to the Respondent Police, they could not take any action in this matter, because the allegations made in the complaints, did not amount to cognizable offence. In other words according to them, permission from the competent Court was necessary for making investigation in non-cognizable offence. As those offences were of non-cognizable nature, the Police directed the complainant to approach the concerned Court and to seek necessary permission for investigation. The record further shows that on the basis of the complaints given by the complainant even cognizable offences were registered. In those matters the Respondent Police completed the investigations and filed the charge sheets. Thus, the report shows that Police have taken proper action in this matter and calls for no adverse remarks. In such circumstances, it cannot be said that the Police joined hands with the Respondent and did not take any action.



- (v) It was pointed out by the complainant in open Court even now the harassment is continued. It is expected from the other side to maintain peace law and order, when the matters are subjudice before the competent Court. In meantime the matter was referred to the Investigation Wing of the Commission. In the given circumstances, of the case the Investigation Wing opined that, the Respondent Police may be directed to take proper preventive action and they should keep watch on the situation and to see that peace law and order is maintained. In the given circumstances, the opinion given by the Investigation Wing, needs to be accepted.

In the given circumstances of the case it is necessary to make recommendations as under.

- (i) Respondent Dy Commissioner of Police (Zone -III), Mumbai to keep close watch on the situation and see that peace, law and order is maintained in the School premises.
- (ii) In case of necessity, Dy Commissioner of Police, Zone -III, Mumbai is required to take preventive action in this matter, to avoid law and order problem, over the issue.
- (iii) Copy of this order be sent to Respondent Dy Commissioner of Police, (Zone - III), Mumbai for information and necessary action according to law.
- (iv) Copy of order be sent to Dy Commissioner of Police, Zone - III, Mumbai through Secretary State Human Rights Commission Mumbai.

With these observations and recommendations Case No. 213/2006-07 is disposed of accordingly.



V. G. Munshi
(Justice V G Munshi)
Member, SHRC