

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 7277 OF 2014

Londhe Sonabai Murlidhar and ors. .. Petitioners
vs.
The Deputy Collector(Enc/Evi.) &
Competent Authority and ors. .. Respondents

WITH
WRIT PETITION NO.1608 OF 2015

M/s. Baba Homes Builders and
Developers .. Petitioner
vs.
State of Maharashtra and ors. .. Respondents

Mr. Rupesh Lanjekar for the Petitioners in WP No.7277/14 and for Respondent Nos.5 to 32 in WP No.1608/15.

Mr. R.K. Mendadkar for the Petitioner in WP No.1608/15 and for Respondent No.3 in WP No.7277/14 for the Petitioner.

Ms Vaishali Nimbalkar, AGP for Respondent Nos.1,4 & 5 in WP 7277/14.

Ms Aparna Vhatkar, AGP for Respondent Nos.1 to 3 in WP No.1608/15.

Mr. Nikhil Chavan i/b Vijay Patil for Respondent No.4 in WP No.1608/15 and for Respondent No.2 in WP No.7277/14.

CORAM : M. S. SONAK, J.
DATE : 2 MARCH, 2015

P.C. :-

- 1] Both these petitions can be disposed of by common order.
- 2] Rule in both the petitions. With the consent of and at the request of learned counsel for the parties, Rule is made returnable forthwith.
- 3] In Writ Petition No.7277 of 2014, the challenge is to the order dated 27 January 2014 made by the Administrator and Divisional

Commissioner, Konkan Division, dismissing the petitioners (occupants) appeal under Section 35 of the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971 (Slum Act).

4] In Writ Petition No.1608 of 2015, the challenge is to the order dated 9 February 2015 made by the Minister (Housing) staying the notice issued by the competent authority under Sections 33 and 38 of the Slum Act. The Writ Petition No.1608 of 2015 has been instituted by the Builder/Developer.

5] The petitioners in Writ Petition No.7277 of 2014 has preferred an appeal under Section 35 of the Slum Act to the appellate authority, impugning the order dated 21 October 2013 made by the competent authority under Sections 33 and 38 of the Slum Act. The appeal has been dismissed by the appellate authority vide order dated 27 January 2014, by observing that the grievances raised therein will have to be redressed by taking out proceedings before the Slum Rehabilitation Authority (SRA) or High Power Committee (HPC).

6] The aforesaid approach of the appellate authority is not proper. Admittedly, the order dated 21 October 2013 was made by the competent authority in exercise of powers confirmed by Sections 33 and 38 of the Slum Act. Section 35 of the Slum Act provides that any person aggrieved by any notice, order or directions issued or given by the appellate authority under sub-section (1), within a period of thirty days from the date of issue of such notice, order or direction. Learned AGP now states that the appellate authority shall

be the Additional Collector (Eastern Suburbs).

7] Clearly therefore, as against the order made by the competent authority under Section 33 and 38 of the Slum Act, an appeal shall lie to the appellate authority under Section 35 of the Slum Act. In the appeal memo preferred before the appellate authority, several grounds and contentions have been raised. The appellate authority, therefore, ought to have adverted to the same in making the impugned order. The appeal has virtually be dismissed on grounds of maintainability by observing that the grievances ought to be redressed by the SRA or the HPC. This almost amounts to failure to exercise the jurisdiction. On this short ground, the impugned order dated 27 January 2014 made by the appellate authority is liable to be set aside. The appeal of the petitioners in Writ Petition No.7277 of 2014 is remanded to the appellate authority for fresh decision in accordance with law. The appellate authority to dispose of the appeal within a period of six weeks from today.

8] In so far as the order dated 9 February 2015 made by the Minister (Housing) in Writ Petition No.1608 of 2015 is concerned, at least *prima-facie* the same is without jurisdiction. This is because as against an order order made by the competent authority under Sections 33 and 38 of Slum Act, the legislature has provided remedy of an appeal under Section 35 of the Slum Act. Further no provision was brought to the attention of this Court under which an order of this nature could be made by the Minister (Housing). However, it is not necessary to decide this issue, because Writ Petition No.1608 of 2015 is rendered infructuous, on account of setting aside the appellate authority's order dated 27 January 2014 and the remand

of the appeal for fresh reconsideration in accordance with law. Section 35 (3) of the Slum Act provides that on the admission of an appeal, all proceedings to enforce the notice, order or direction, which is appealed against shall be held in abeyance pending the decision of the appeal. Accordingly, pendency of the appeal before the appellate authority is to operate as a stay upon the order dated 21 October 2013 made by the competent authority under Section 33 and 38 of the Slum Act. In this view of the matter, the reliefs in Writ Petition No.1608 of 2015 are rendered infructuous.

9] Parties to appear before the appellate authority on 9 March 2015 at 11.00 a.m. in order to obtain further directions in the matter of disposal of appeal instituted by the petitioners in Writ Petition No.7277 of 2014.

10] It is clarified that this Court has not gone into the merits of the matter and all contentions of all parties are therefore kept open.

11] Accordingly, Rule is made absolute to the aforesaid extent in Writ Petition No.7277 of 2014 and the Rule is discharged in Writ Petition No.1608 of 2015.

12] Both the petitions are disposed of . No order as to costs.

13] All parties to act upon an authenticated copy of this order.

(M. S. SONAK, J.)