

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.12366 OF 2015

Mr. Jagannath V. Shedge (Ann.No.7) and Anr.] ... Petitioners

Versus

The State of Maharashtra and Ors.] ... Respondents

WITH
WRIT PETITION NO.12367 OF 2015

Mr. Jagannath Patiyane (Ann.No.1) and Ors.] ... Petitioners

Versus

The State of Maharashtra and Ors.] ... Respondents

Mr. Vishwanath Patil a/w Mr. Yuwraj D. Patil for Petitioners in both Writ Petitions.

Ms. M. S. Bane, 'B' Panel Counsel for Respondent Nos.1 and 2 in Writ Petition No.12366 of 2015.

Ms. Aparna Vhatkar, A.G.P., for Respondent Nos.1 and 2 in Writ Petition No.12367 of 2015.

Mr. J. S. Kini i/b Mr. Suresh Dubey for Respondent No.5 in both Writ Petitions.

Mr. Nikhil Chavan i/b Mr. Vijay Patil for Respondent No.7 on both Writ Petitions.

CORAM :- M. S. SONAK, J.

DATE :- DECEMBER 16, 2015

P. C. :-

1. Heard learned Counsel for parties.
2. The challenge in these two petitions is to the orders dated 31/10/2014 and 08/04/2015 made by the Competent Authority and the Appellate Authority respectively under the provisions of the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971 ('Slum Act').
3. Mr. Vishwanath Patil, learned Counsel for petitioners in both writ petitions, has submitted that the order made by the Appellate Authority is non-speaking and therefore, in view of the law laid down in the case of *Shankar Shantaram Dighe Versus State of Maharashtra & others*¹, such orders are required to be set aside.
4. Mr. Patil further submitted that in this case, no order could even have been made under Section 33 of the Slum Act as the very LOI issued in the matter was a nullity. He pointed out that proceedings have already been taken out by the petitioners before the High Powered Committee ('HPC') to question the validity of such LOI. He submitted that part of the property is affected by a cemetery and the LOI itself makes it clear that no development can come up upon the said area without obtaining permission from this Court in terms of interim order issued by this Court in Writ Petition No.1152 of 2002. Mr. Patil further pointed out that in this case, it is an admitted fact

¹ 2005(1) Bom.C.R. 237

that the original case-papers concerning the SRA scheme are lost and it is only on basis of duplicate papers that the scheme proceeds. Mr.Patil submitted that even the resolution passed by the Society is infirm and the agreement and the Power of Attorney with the developer, being unregistered, cannot be acted upon. For all these reasons, he submits that the impugned orders are liable to be set aside.

5. Mr. J. S. Kini, learned Counsel for Respondent No.5 – developer in both writ petitions, has submitted that the SRA scheme concerns approximately 286 occupants, out of which, about 250 occupants have already vacated their premises. The 19 petitioners in these two petitions are creating obstructions since past 22 months, as a result of which, even the occupants who have already vacated their structures, are suffering serious prejudice. Mr. Kini submitted that there is no proposal to develop or construct upon the area indicated as cemetery in the LOI and therefore, there arises no question of seeking any permission from this Court. That apart, Mr. Kini submitted that the challenge to the scheme, or to the LOI are, pending before the HPC and there is no interim relief obtained by the petitioners. On the mere ground of such pendency, the petitioners cannot refuse to vacate and thereby delay the entire project. Mr. Kini submitted that the entitlement of the petitioners in terms of the circular dated 06/06/2015 issued by the SRA shall be duly complied with. Mr. Kini went on to state that though some of the petitioners have not been found to be eligible, until there is some final decision in the matter of

their eligibility, the respondent no.5 will pay to such petitioners compensation in lieu of alternate accommodation. If, ultimately, such petitioners are found to be eligible, then, along with the rest of the eligible petitioners, even such petitioners would be allotted permanent accommodation in terms of the scheme. For all these reasons, Mr. Kini submitted that these petitions may be dismissed.

6. Having heard the learned Counsel for parties and perused the material on record, in my judgment, this is not a fit case to interfere with the impugned orders. The Competent Authority has noted that the petitioners were offered no less than 5 opportunities to file their replies in the proceedings. The petitioners, however, refused to file their replies on the spacious ground that they have challenged the LOI before the HPC and such challenge is pending. At the same time, the petitioners do not appear to have moved the HPC for any expeditious decision upon their challenge. In these circumstances, it is clear that the petitioners have been offered ample opportunities which they have failed to avail. This is not a case where there is any breach of principles of natural justice or fair play.

7. The Appellate Authority has held that the petitioners, despite afford of opportunities, have not placed any material before the Competent Authority. Therefore, at the stage of appeal, it is not permissible for such petitioners to attempt to argue the matter on merits. In these circumstances, it cannot be said that the petitioners' appeal has been dismissed without assigning any reason. No doubt,

the Appellate Authority could have made a brief reference to the grounds on merits.

8. For this reason, however, there is no necessity to remand the matter to the Appellate Authority. Mr. Patil, learned Counsel for petitioners was offered opportunity to indicate the nature of ground on basis of which it was submitted that the entire action is a nullity. Mr. Patil has made submission based upon the aspect of cemetery, duplicate file, non-registration of agreement and Powers of Attorney. These are hardly any grounds on basis of which the impugned action can be styled as a nullity. In any case, the petitioners' challenge to the LOI before the HPC is pending. For the purpose of proceeding under Sections 33 and 35 of the Slum Act, the authorities were required to proceed on the basis that the LOI is legal and valid. Accordingly, there is no case made out to interfere with the impugned order.

9. It is to be noted that out of 286 occupants affected by the scheme, almost 250 occupants are said to have vacated their structures. There is no record that the petitioners have challenged the resolution, which they find fault with, at this belated stage. In any case, the decisions in such resolution seem to have been accepted by overwhelming majority of members. The obstruction by the petitioners is undoubtedly occasioning prejudice to the 250 occupants who are said to have vacated their structures. The statements made by Mr. Kini, learned Counsel for respondent no.5, on the basis of instructions from respondent no.5, substantially protect the interest of

the petitioners, even though some of the petitioners have been held to be ineligible to the benefit of the scheme. Such statements are accepted as undertakings to this Court.

10. Accordingly, there is no case made out to interfere with the impugned orders. These petitions are dismissed with no order as to costs. The ad-interim orders, if any, stand vacated.

11. All concerned to act on basis of authenticated copy of this order.

12. At this stage, Mr. Patil, learned Counsel for petitioners, seeks stay of 8 weeks on the eviction, as the petitioners desire to seek remedy against this Judgment and Order before the Hon'ble Apex Court. As noted earlier, almost 250 occupants have already vacated their structures. The scheme is already delayed on account of obstructions by the petitioners. Accordingly, no case is made out for grant of any stay. However, considering that the festive season is round the corner, the eviction order shall not be executed up to 10/01/2016.

(M. S. SONAK, J.)