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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION (L) No. 720 OF 2015

Prakash Gangaram Ahire & Ors. ... Petitioners
Vs.
State of Maharashtra & Ors. ... Respondents

WITH
WRIT PETITION (L) No. 1829 OF 2015

Sanjay Dashrath Sakpal & Ors. ... Petitioners
Vs.
High Power Committee & Ors. ... Respondents

Mr. Devvrat Singh a/w Mr. Mahesh Mishra, Ms. Manali Khot i/b
Lawfin Associates, for the Petitioners in both petitions.

Mr. V. S. Tiwari, AGP for Respondent Nos. 1, 3 and 7 in WPL
720/2015.

Mr. J. G. Reddy, for Respondent No. 2 in both petitions.

Mr. Ramakant Shalu i/b Utangale & Co. for Respondent Nos. 1 and 2
in WPL 1829/2015.

Mr. Navroz Seervai, Sr. Counsel a/w Arun Panickar, for Respondent
Nos. 4 & 6 in both the petitions.

CORAM : V. M. KANADE, &
B. P. COLABAWALLA, JJ.

DATE : JULY 15, 2015

PC.

1. Both these petitions can be disposed of by this common
order since the reliefs claimed in both the petitions pertain to the
Letter Of Intent, which has been granted in favour of the Respondent

No. 4; so also the counsel representing the Petitioners in both the petitions is also common.

2. Brief facts, which are relevant for the purpose of deciding both the petitions are as under:

. The Petitioners are residing in a plot of land, which according to them, is not part of the slum area though it was declared as a slum by a notification under Section 4 of the Maharashtra Slum Area (Improvement, Clearance & Redevelopment) Act, 1971 (for short “Slum Act”) on 24.8.1978. There is a chequered history to this litigation, and therefore, it is not necessary to refer all the facts since they are not relevant. Only relevant facts are that the Petitioners in Writ Petition (L) No. 720 of 2015 claim to be the lessee in the Larger Property and claim to be residing there for more than 50 years. According to the Petitioners, the said plot on which they are residing has not been declared as a slum. It is submitted that there are two properties, viz. Property-A and Property-B. The Petitioners claim to be residing in Property B. According to them, Property-A has been declared as a slum. Respondent No. 5, a Developer and the Society i.e. Respondent No. 6 entered into an agreement to develop the Larger land under the Slum scheme under Section 33(10) of the DCR. It is

submitted that even the land occupied by the Petitioners which is a non-slum land is included in the said agreement. The land initially belonged to A. H. Wadia Trust, who sold the land to Respondent No. 4 by a deed of conveyance. According to them, a further joint venture agreement was entered between Respondent No. 4 and Respondent No. 5 to develop the said land, which according to the Petitioners included the non-slum land. It is the contention of the Petitioners that the land occupied by the Petitioners has not been declared a slum on that date. It is contended that, however, it was declared as slum on 8.9.2010 by impugned notification under Section 3(C)(1) of the Slum Act.

3. An appeal was preferred before the Slum Tribunal by the Petitioners vide Appeal No. 28 of 2010 and in the said appeal notification dated 8.9.2010 was challenged. In the meantime, during pendency of the appeal, the SRA issued Annexure-II in respect of the Larger Land on 14.8.2013.

4. It is submitted that on 19.9.2013 the Slum Tribunal set aside the notification dated 8.9.2010, in respect of the property occupied by the Petitioners. It is submitted that, therefore, from that

date the said land was deemed to be a non-slum land.

5. The Respondents challenged the said order of the Tribunal by filing Writ Petition No. 1013 of 2014 and the said writ petition was allowed on the ground that the the order was passed without giving hearing to the petitioners therein, and the matter was remanded back to the Slum Tribunal, by order dated 12.9.2014. It is submitted that in the meantime, however, several orders were passed by the SRA on account of the notification dated 8.9.2010.

6. After the said order was passed by this Court, the Developer (Respondent No. 5) on 7.10.2014 wrote a letter to the SRA informing that by virtue of order dated 12.9.2014, the order dated 8.9.2010 declaring the said land as slum land stood revived. He, therefore, made a request that the slum dwellers including present Petitioners should be evicted from the land. In view of this letter, the eviction proceedings were initiated against various slum dwellers. Petitioners filed petition in this Court being Writ Petition (L) No. 3300/2014. He submitted that in paragraph 6 of the order dated 16.12.2014, the Court has observed that though the order dated 12.9.2013 passed by the Slum Tribunal was set aside, impliedly

notification dated 8.9.2010 is stayed. An order was passed by the learned Single Judge in Writ Petition (L) No. 3300 of 2014 in which strictures were passed against the conduct and action of the Respondents. Thereafter on 17.2.2015 the Petitioners were allowed to withdraw the petition with liberty to file a separate petition, challenging the slum scheme. In view of the said liberty, present petition (WPL 720/2015) is filed.

7. It is submitted by the learned counsel appearing on behalf of the Petitioners that in view of the order passed by this Court dated 12.9.2014 there was no notification in existence as of today in respect of the Property-B (non-slum land), and therefore, structures of the Petitioners cannot be demolished during pendency of the appeal before the Tribunal. It is submitted that order of *status quo* or stay to the demolition on slum land is not granted. The Developer was evicting the Petitioners. It would be contrary to the orders passed by the High Court in Writ Petition No. 1013/2014. It is then submitted that the SRA has changed the builder without obtaining the consent of 70% slum dwellers and therefore, said appointment is illegal. On 21.9.2013 a Revised Letter of Intent has been issued in favour of Respondent No. 4. Secondly, it is submitted that total 36 persons

including the Petitioners did not participate in the Slum Scheme. Our attention is also invited to the Annexure-II, and it is submitted that name of some of the persons, though mentioned in the said list, have not been added to the total number of occupants, and therefore percentage of 70% is not properly calculated. Thirdly, it is submitted that the Annual General Meeting of the Slum Society was held, and the crucial resolutions of said AGM are type-written whereas other items on the agenda, as also the decision taken in the said AGM are in hand-writing. It is submitted that therefore minutes of the said meeting are forged and fabricated. It is, therefore, submitted that the Petitioners have already approached the High Power Committee and the issue raised by the Petitioners in the first petition, viz. Writ Petition (L) No. 720/2015 is yet to be heard by the High Power Committee and during pendency of the appeal, the eviction and demolition of the structures, occupied by the Petitioners may be stayed.

8. On the other hand, Mr. Seervai, the learned senior counsel appearing for the Developer submitted that the Petitioners have suppressed important facts from this Court. It is submitted that the Petitioners had filed one petition in the year 2012 and no notice has been given to the respondents therein and the said writ petition is

still pending since objections have not been removed. It is submitted that the reliefs which are claimed by the Petitioners in the said petition as well as in the present petition are almost identical. Secondly, it is submitted that the structures occupied by the Petitioners are either not in existence or already demolished; and thirdly, only in respect of 16 petitioners there is existing structure. He, however, submitted that petitioners have been declared to be ineligible. It is submitted that Petitioner Nos. 8, 9 and 15 are residing in one structure on the subject property but the said Petitioners have been held to be ineligible. It is further submitted that therefore the Petitioners are not entitled to get order of stay to the demolition. It is further submitted that the Petitioners have an alternate remedy of approaching the High Power Committee. It is further submitted that the Petitioners have raised the disputed question of facts which are to be decided by the competent authority. Mr. Seervai, learned senior counsel further submitted that the Petitioners have filed the petition at the instance of M/s. Rizvi Builders, who was interested in developing the property.

9. He then submitted that assuming, without admitting, that the said land is a private land and not a slum land, it being part of contiguous area, can also be developed in the slum scheme by virtue

of the judgment of the Apex Court in the case of - ***Balasaheb Arjun Torbole & Ors., Appellants Vs. The Administrator & Divisional Commissioner & Ors. [2015 (3) MLJ 754 (SC)]***. It is submitted that the Apex Court has held that the land which is declared as slum, and even the other land which is a private land and which is also part of contiguous land, can also be developed in the slum scheme. He has invited our attention to the various paragraphs of the said judgment. It is submitted that no such stay be granted in favour of the Petitioners and therefore, Petitioners cannot be permitted to suppress the material facts and obtain an interim order from this Court. He then submitted that the Respondent Developer was willing to pay to all the Petitioners compensation in lieu of temporary alternate accommodation for a period of one year or provide temporary alternate accommodation till the eligibility of those slum dwellers, who are declared to be ineligible, is decided. He submitted that so far as occupants who are declared to be eligible would be given either temporary alternate accommodation or compensation in lieu of that, till permanent alternate accommodation is made available to them.

10. On the other hand, the learned counsel appearing on behalf of the Petitioners has distinguished the judgment of the Apex

Court on important points. He submitted that the question which fell for the consideration of the Apex Court was in respect of municipal land. He submitted that facts of the case before the Apex Court and the facts of the present case are entirely different. Therefore, ratio of the said judgment is not applicable to the facts of the present case. Secondly, it was an admitted position that 70% slum dwellers had given their no objection. In the present case the dispute is whether their consent was validly obtained or if they had given valid consent.

11. In our view, the submissions made by the learned counsel appearing for the Petitioners for continuation of stay cannot be accepted. Though the learned Single Judge in Writ Petition (L) No. 3300 of 2014 (in order dated 16.12.2014) has observed that there is implied stay to the notification, which was issued, it is an admitted position that the said writ petition has been allowed to be withdrawn, and therefore, the said order merges in the order of withdrawal. Secondly, after having seen the record and various orders passed by this Court, it is apparent that the order dated 19.9.2013 passed by the Slum Tribunal setting aside the notification dated 8.9.2010 was set aside by the High Court in its order dated 12.9.2014 passed in Writ Petition No. 1013/2014. In view of that, the notification issued under

Section 3(C)(1) of the Slum Act, dated 8.9.2010 stands revived. We do not agree with the view taken by the learned Single Judge that there is implied stay to the notification.

12. Apart from that, it is submitted by the learned counsel appearing on behalf of the Developer that it is apparent that most of the Petitioners are either not in occupation or their structures are not in existence except case of one or two petitioners; and secondly, the Petitioners are being offered temporary alternate accommodation by the Respondent-Developer. We, therefore, think that this is not a fit case for granting stay to the order of eviction. We, therefore, direct the High Power Committee to decide the appeal filed by the Petitioners and also the issue raised by the the Petitioners in Writ Petition (L) No. 720/2015, after hearing and permitting both the parties to file relevant documents, on merits and in accordance with law, without being influenced by any order or observations of this Court in any of the writ petition, as expeditiously as possible and in any case within a period of six months. All contentions raised by the Petitioners and the Respondents in both the petitions are kept open.

13. We direct the Respondent-Developer to provide the

Petitioners and other similarly situated occupants of the property temporary alternate accommodation or compensation in lieu of that, till they get permanent alternate accommodation. It is clarified that the occupants who are declared to be ineligible, are entitled to get compensation / temporary alternate accommodation for a period of one year. In the event they are found eligible by the competent authority, they would continue to get compensation / temporary alternate accommodation till the appeal is decided by the High Power Committee.

14. In our view, at this stage, it is not necessary for us to consider the ratio of the judgment in the case of *Balasaheb Arjun Torbole & Ors.* (supra), since we have remanded the matter to the High Power Committee. Petitioners would be entitled to rely on the this judgment before the High Power Committee. Both the writ petitions are disposed of in the aforesaid terms.

Sd/-
[B. P. COLABAWALLA, J.]

Sd/-
[V. M. KANADE, J.]

Vinayak Halemth