

Ladda

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

[1] WRIT PETITION No. 2826 OF 2013

Najma Isimdar Ansari & Ors ..Petitioners.

Vs

State of Maharashtra & Ors ..Respondents.

ALONG WITH

[2] WRIT PETITION (L) No. 296 OF 2015

Balkrishna Shivram More & Ors ..Petitioners.

Vs

State of Maharashtra & Ors ..Respondents.

ALONG WITH

[3] WRIT PETITION No. 2123 of 2014

Ajay Jankar s/o Dadasaheb Jankar & Ors ..Petitioners.

Vs

State of Maharashtra & Ors ..Respondents.

Mr Altaf Khan i/by Anjali Awasthi for the petitioners in Writ Petition No. 2826 of 2013.

Mr Yusuf Khan i/by Altaf Khan for the petitioners in W.P. No. 296 of 2015.

Mr Nitesh Acharya i/by Anjali Awasthi for petitioners in W.P. No.2123 of 2014.

Mr D.A. Nalawade, Government Pleader for Respondent Nos. 1, 2 and 3 in Writ Petition No. 2826 of 2013 and for SRA-Respondent No.4 in Writ Petition (L) No. 296 of 2015.

Ms Anjali Helekar, AGP for Respondent Nos. 1 to 3, 5 and 6 in WP (L) No. 296 of 2015.

Ms M.Kajale AGP for Respondent No. 1 to 3 in W.P. No.2123 of 2014.

Mr Vijay Patil a/with Mr J.G.Reddy for Respondent No.4 SRA in W.P. No.2123 of 2014 and W.P. No.2826 of 2013.

Mr Arun Panikar for Respondent No.7.

Mr Chirag Balsara a/with Ms Leena Shah for Respondent No.8.

CORAM : V.M.KANADE &

A.R. JOSHI, JJ.

DATE : 24th FEBRUARY, 2015.

P.C.

1) Writ Petition No. 2826 of 2013 is not on board. Upon mentioning taken on board.

2) Heard learned counsel for the petitioners and the respondents in all the petitions. A common question is involved in all the above petitions and, therefore, they are being disposed of by this common order.

3) The question which falls for consideration before this Court is whether a tenant who is residing on the first floor of the structure constructed prior to 1964 and which has been declared as a tolerable structure by virtue of the policy of the Municipal Corporation, would be entitled to get the benefit of being permanently rehabilitated in the Slum Rehabilitation Scheme.

4) The brief facts relevant for the purpose of deciding these petitions are as under :

The petitioners are the tenants residing on the first floor of the building which was constructed in the year 1921. The fact that they are tenants of the landlord and are residing on the first floor is not disputed by any one. The said building and the adjoining area was declared to be a slum under the provisions of the Maharashtra Slum (Improvement, Clearance and

Redevelopment) Act, 1971. The landlord of the said building who was the owner of the land and structure thereon had conveyed this property to a developer by a registered conveyance and in the Annexure to the said conveyance had given the names of all the tenants including the petitioners who are having their rooms on the first floor of the said building. After the letter of intent was given by the Competent Authority, the Slum Authority started the process of preparing Annexure-II in order to declare the list of persons who are eligible to be rehabilitated under the Slum Scheme. Thirty one tenants who are residing on the first floor were held to be ineligible in view of the Government Resolution which was issued on 11th July, 2001 and it was subsequently modified in 2002. The Slum Rehabilitation Authority who prepared the Annexure-II came to the conclusion that in view of the policy decision which was taken by the State Government which was reflected in the Circulars dated 11th July, 2011 and modified in 2002 and since the petitioners and others were residing on the first floor of the said chawl, they were not eligible

to get permanent alternate accommodation.

5) We have also heard learned counsel for the petitioners. It is submitted that the tenants of the building were residing on the first floor. It is submitted that the said chawl was constructed in the year 1921 and the petitioners are paying taxes as well as property assessment tax to the Municipal Corporation, Greater Mumbai. It is submitted that the petitioners do not have any proof of sanction being granted to the landlord for the construction on the said building. It is submitted that survey of the said building was made and a report was submitted. It is submitted that in the said report, it is clearly stated that the structure in question is having ground plus one floor. He submitted that therefore this structure cannot be equated to a hutment which is referred to in the Government Notifications dated 11th July, 2001 and 5th June, 2002. It is submitted that the SRA has clearly committed an error of law which is apparent on the face of the record by treating an authorized tenant who is residing on the first floor of a building to be an occupant residing on the mezzanine or loft of a illegal

structure which is constructed prior to 1964. It is submitted that therefore a direction may be given to the Slum Rehabilitation Authority not to treat the petitioners as hutment dwellers residing on the first floor or the mezzanine floor or the loft of a illegally constructed hut or dwelling house.

6) Our attention is also invited to the correspondence made to the SRA and the concerned authority. It is submitted that even the SRA authority has given opinion that these petitioners cannot be equated with slum dwellers who are residing on the first floor of a hut.

7) The learned counsel appearing on behalf of the SRA submitted that unfortunately no instructions have been given to them despite several requests being made.

8) The learned counsel appearing on behalf of the developer has submitted that in the event the petitioners are held to be eligible, they will be provided with permanent alternate accommodation as well as temporary alternate accommodation. The learned counsel appearing on behalf of the SRA submitted

that the petitioners should approach the Competent Authority for getting a declaration that they are eligible and that their names are entitled to be included in Annexure-II.

9) After having heard all the counsel at length, we are of the view that it is not necessary to relegate the petitioners back to the SRA Authority. As pointed out herein-above, the short question is whether the Circular dated 11th July, 2001 and modified in 2002 is applicable to the petitioners herein.

10) Upon a plain reading of the Notifications dated 11th July, 2001 and 5th June, 2002, it is abundantly clear that in the said Notification the Government has taken a policy decision not to protect the persons staying on the mezzanine / first floor / loft of the hut and for that purpose the said notification has been issued. In the present case, there is ample material on record to show that the petitioners are tenants since 1921. It is an admitted position that the Municipal Corporation of Greater Mumbai have long back taken a policy decision and have issued Notification and Circulars from time to time declaring the structures which have

been constructed prior to 1964, to be treated as tolerable structures and, therefore, they are assessed and properly tax is levied on the occupant of the said structures. There is no dispute that this structure is in existence since 1921 i.e much prior to 1964 and it is also not in dispute that these petitioners are tenants and are paying rent to the landlord.

11) Taking into consideration the aforesaid material, we are of the view that the Notification dated 11th July, 2001 and the subsequent Notification of 5th June, 2002 will not apply to the facts and circumstances of the case of the present petitioners. We, therefore, direct the SRA to declare that the petitioners being tenants of old building of 1921, though residing on the first floor are eligible to be rehabilitated by the Competent Authority and we direct that their names be included in the Annexure-II. This process shall be completed within a period of four weeks. The petitioners, however, shall in the meantime vacate the premises and thereafter the developer shall pay them same rent which is being paid to the other occupants. The Developer shall also enter

into regular agreement with the petitioners herein for the purpose of giving them permanent alternate accommodation in the rehab building which is constructed by him.

12) It is made clear that this order has been passed under the peculiar facts and circumstances of the case.

13) It is clarified that in case the original tenant has expired and the tenancy is not transferred in the name of his heirs even such tenants are declared to be eligible, provided the tenancy is not transferred to a third party. It is also clarified that this would be subject to fulfillment of other conditions, if any, which may be applicable in such cases. It is clarified that even if other tenants residing on the first floor who are not before us and if they fulfill these conditions as mentioned by us herein-above, even their names would be included in the Annexure-II by the Competent Authority.

14) After the Competent Authority enters the name of the petitioners and others who are similarly situated in Annexure-II, the developer shall enter into agreements with the petitioners and

other similarly situated persons for the purpose of granting them permanent alternate accommodation. The petitioners have also given undertaking that they will vacate the premises which they are occupying. The undertaking is accepted. The petitioners shall vacate the premises within a period of two weeks. It is clarified that this order will not be treated as precedent.

15) Writ Petitions are disposed of in the above terms.

(A.R. JOSHI, J)

(V.M.KANADE,J)