

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION (L) NO.2744 OF 2015**

Sanjay Shivram Chirmure and others	... Petitioners
v/s	
State of Maharashtra and others	... Respondents

Mr Aakash Rebello i/b Mr K.K. Tiwari for Petitioners.
Mr Vinod Mahadik for Respondent Nos.2 and 3.
Mr Anil R. Mishra for Respondent No.4.
Mr D.A. Nalawade, GP for Respondent No.5.

**CORAM: S.C. DHARMADHIKARI &
B.P. COLABAWALLA JJ.**

DATE : 21ST SEPTEMBER 2015

P.C.:-

1. All the Petitioners have been served with identical notices as are found at Annexure 'X' to the petition.

2. As far as Petitioner No.1 – Sanjay Shivram Chirmure is concerned, he is claiming to be a power of attorney holder of the person one Chandrakant V. Gavas, who is served with the notice under section 33 of the Maharashtra Slum Areas (Improvement,

Clearance and Redevelopment) Act 1971 (Slum Act, for short) and copy of which is at Annexure 'X' to the Petition.

3. However, a common argument canvassed on behalf of each of the Petitioners is that under Chapter I-B of the Slum Act they are entitled, as protected occupier, for relocation and rehabilitation. Section 3X falling in the said Chapter contains the definitions and reliance is placed upon two definitions in clauses (a) and (c) of this section viz. words 'dwelling structure' and 'protected occupier'. Then reliance is placed on section 3Y – issuance of photo-pass and maintenance of register. Finally, reliance is placed on section 3Z and which reads as under :-

“3Z. Protection, relocation and rehabilitation of protected occupiers -

(1) Notwithstanding anything contained in this Act, on and after the commencement of (the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) (Amendment) Act 2014) no protected occupier shall, save as provided in sub-section (2), be evicted, from his dwelling structure.

(2) When, in the opinion of the State Government, it is necessary, in the larger public interest, to evict the

protected occupiers from the dwelling structures occupied by them, the State Government may, subject to the condition of relocating and rehabilitating them in accordance with the scheme or schemes prepared by the State Government in this behalf, evict them from such dwelling structures;”

4. The argument of the Petitioners' counsel is that protection, relocation and rehabilitation of the protected occupiers is an obligation of the State of Maharashtra and therefore, under sub-section (2) of section 3Z it is the opinion of the State Government, which is paramount, that in the larger public interest, to evict the protected occupiers from the dwelling structures occupied by them and power to evict is therefore conferred in the State Government.

5. The instant notice is stated to be issued by the Assistant Municipal Commissioner, serving in Municipal Corporation of Greater Mumbai. That is stated to be invoking section 33 of the Slum Act. However, since the Petitioners are protected occupiers, this notice could not have been issued by anybody else other than the State Government. Therefore, notice to each of the persons styled as Petitioners before us deserves to be quashed and set aside

on this legal ground alone.

6. At the outset, we must indicate that on notice the Respondent Nos.4 and 5 are present. Mr Nalawade has accepted notice for Respondent No.5. He states that he has not been served with the copy of Writ Petition. Mr Mishra appears for Respondent No.4.

7. Mr Mishra, on instructions, states that as far as the Petitioners are concerned, petitioner No.1 claims to be holding power of attorney in his favour from one Chandrakant Gavas. He claims to be a transferee but it is doubtful whether he satisfies the criteria of being in occupation and possession prior to the cut off date. In any event, if he is a transferee, he must get recognition of his right to possess and occupy a dwelling structure in accordance with law. However, even Petitioner No.1 would be paid the compensation in lieu of transit accommodation at the same rate as is applicable to all others who have moved out and during the course of implementation of the Slum Rehabilitation Scheme. Mr Mishra

states that Respondent No.4 has brought demand drafts towards the payment of monthly compensation and in the name of Petitioner No.1 and cheques in the names of Petitioner Nos.2 to 4 valid for the period prescribed in law. They are constituting a sum of monthly compensation for 36 months. The same can be handed over today itself. According to Mr Mishra, it is fallacious to contend that the Petitioners are being singled out in demolition of structures. The Petitioners do not seem to be aware that construction of three rehabilitation buildings has been carried out and the Petitioners' structure is on that portion of the land where the rehabilitation buildings are going to be put up. There are 17 rehabilitation buildings which are to be constructed and apart from the same, the sale buildings will be constructed. The project is of a huge magnitude and the moment the structures styled as rehabilitation buildings are put up, these old structures stage-wise will be removed. Thus, this is a project where the implementation is in phases. In the current phase, the Petitioners' structure would fall and that is why they should vacate. The land belongs to the Municipal Corporation of Greater Mumbai and therefore the Assistant Municipal

Commissioner was empowered in law to issue the notice. There is no substance and the Petition deserves to be dismissed.

8. With the consent of the Petitioners and Respondents, we dispose of this Petition by this order. We find that the first argument stated to be legal is entirely misplaced. As far as section 3Z is concerned, that is dealing with protection, relocation and rehabilitation of protected occupiers. That is a power conferred in the State Government notwithstanding anything contained in the Slum Act but on or after the commencement of Amendment Act 2014. That is a power to deal with a protected occupier. It is he who can be evicted under section 3Z(2) from the dwelling structure by the State Government. Section 33 is the provision under which the subject notice has been issued and is empowering the Competent Authority to evict an occupant of a building who is not vacating in pursuance of any order or direction given or issued by the Authority. That is a power vested in the Competent authority. The term 'Competent Authority' is also defined in the Act and means the owner of the land. This is a power conferred under section 33 which

falls under Chapter VII for obvious reasons. That is the power of the Competent Authority to evict the occupier and who may not have abided by the direction issued or given by the authority. This is a power conferred so that if any slum rehabilitation scheme is framed and during the course of implementation thereof, it has become necessary to evict the occupiers, then, a direction can be issued or given by the Authority. The terms 'Competent Authority' and 'Authority' have been used so that the Competent Authority and the Authority viz. Slum Rehabilitation Authority have enough powers in terms of the Act to take such action as is warranted while implementation of the slum rehabilitation scheme. In the present case, if the Competent Authority is satisfied either upon a representation from the owner of a building or upon other information in its possession that the occupants of the building have not vacated, then, it may direct their eviction. A perusal of Annexure 'X' at page 247 of the paper-book would denote as to how the notice has been issued. That notice refers to a Circular dated 31st July 2013. It refers to the SRA sanction to the redevelopment scheme on the plot of land. Then there is Annexure II issued by the

Ward Officer dated 14th December 1993. The notice is issued not to the Petitioner No.1 but to one Chandrakant V. Gavas, who was eligible for residential tenement in the Slum Rrehabilitation Scheme. It is also found that this person requested to make arrangement for transit accommodation or for rent for which he was offered a sum of Rs.13,500/- p.m. Thus, with private participation, the slum rehabilitation scheme is implemented. Petitioner No.1 is not a person to whom the notice is issued but the person to whom the notice is issued viz. Chandrakant V. Gavas as found to be eligible and he was requested to make his temporary alternate arrangement. He could reside anywhere but it is not possible to provide him with an alternate accommodation and if that is not possible, in lieu thereof, monthly compensation would be paid. That the said Gavas has not vacated and that is why section 33 is invoked. There is no error, much less, serious legal infirmity in issuance of this notice. To such a case, we do not think that section 3Z(2) can be an impediment nor can it be invoked or applied. If the Competent Authority has been conferred with the power in the nature referred above, then, this notice cannot be faulted, more so, when we find that all the

Petitioners are being provided with the same compensation and at the same rate as is applicable to other occupants. There are several occupants who are eligible and to enable Respondent No.4 to put up rehabilitation buildings, the very same treatment would be given to the Petitioners as well.

9. However, since the argument is canvassed that Petitioner No.1 is also eligible for permanent alternate accommodation, we direct that till Petitioner No.1 establishes his right, title and interest to the permanent alternate accommodation in accordance with law, Respondent No.4 as also the SRA shall keep one tenement vacant as permanent alternate accommodation in the newly constructed rehab building.

10. At this stage, a request is made on behalf of Petitioner No.1 alone that he may be granted some time to vacate the premises on his own. After taking instructions, it is informed that this Petitioner who is presently residing in the accommodation which is residential, will continue to reside with his family and will not induct

any third party nor alienate, transfer or create third party right in any manner but would vacate it on or before 12th October 2015. The demand drafts in the sum of Rs.13,500/- per month for 36 months drawn in the name of Petitioner No.1 shall not be handed over to him until Petitioner No.1 hands over vacant and peaceful possession of the premises in his possession to the Competent Authority. Petitioner Nos.3 and 4 would also hand over their premises and identical sums be given to them. In the event, demand drafts are handed over but the possession is not given to the Competent Authority, it would be open for the Competent Authority to take forcible possession of the premises from Petitioner No.1. The Competent Authority as also Slum Rehabilitation Authority shall be rendered full assistance by the nearest Police Station.

11. Writ Petition is disposed of accordingly. No order as to costs.

(B.P. COLABAWALLA, J.)

(S.C.DHARMADHIKARI J.)**

**** CERTIFICATE**

Certified to be a true and correct copy of the original signed Judgment/Order.