

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION (L) NO. 3372 OF 2014

Suresh M. Solanki & Ors.

.. Petitioners

Vs.

Additional Collector (Enc/ Removal) & Ors.

.. Respondents

...

Ms. Sandhya Sreedhran i/b Mr. Satyam Sreedharan for the Petitioners.

Ms. Deepti Panda i/b Mr. R.M. Yadav for the Respondent No.2.

Mr. Akhil Upadhyay i/b Utangale & Co. for the Respondent No. 3.

Mr. U.S. Upadhyay, A.G.P. for the Respondent No.1.

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CORAM : A.A. SAYED, J.

DATED : 9 MARCH 2015

P.C.

On 16 February 2015, the following order was passed:

"1 The issues raised in the present Petition are substantially the same as in Writ Petition (L) No.2876 of 2014 which Writ Petition has been dismissed by an order dated 13 November 2014 of this Court (Coram: M.S. Sanklecha, J.). That order was carried to the Supreme Court by filing Special Leave Petition (SLP). The Supreme Court has not interfered with the said order. Liberty was however granted to the Petitioners therein on their request to amend the Notice of Motion pending in the City Civil Court and status-quo was granted in respect of the structure for a limited period of two weeks. In these circumstances, the Petitioners do not deserve to be granted any ad-interim relief in this Petition.

2 It is however noticed that in respect of the same structure an order has been passed by this Court on 13 January 2015 in Writ Petition No.1158 of 2014 (Coram: R.M. Sawant, J.) whereby status-

quo in respect of the structure has been granted until 17 February 2015. The learned Single Judge has directed the City Civil Court to hear and decide the Motions latest by 17 February 2015. The learned Counsel for the Petitioners states that the Notices of Motion before the City Civil Court which pertain to the same structure has been transferred from Court Room No.3 to Court Room No.8 on the Application of the Petitioners and that she would move the Court Room No.8 tomorrow itself so that Notices of Motion can be taken up for final hearing in view of the order passed by this Court (Coram: R.M.Sawant, J.). Learned Counsel for Respondent No.2 has pointed out that the Petitioners herein have been held ineligible and those Notices of Motion are of the Petitioners' family member who is held eligible.

3 *In these circumstances, only by way of indulgence, the matter is deferred by two weeks and it is directed that until then, the impugned notices under sections 33 and 38 of the Slum Act shall not be implemented. It is submitted on behalf of the Respondent No.2 Developer that the Redevelopment Scheme is in progress and except the present structure almost all the structures have been already demolished. Petitioners are put to notice that unless any favourable orders are passed in respect of the structure in question, this Court may vacate the limited stay that has been granted by this order on the next date and irrespective of the fact that the Motions are finally heard are not, considering the narrow scope of proceedings under sections 33 and 38 of the Slum Act. It is clarified that the City Civil Court shall in no manner be influenced by this order.”*

2. Today the Court is informed that the City Civil Court has dismissed the Notices of Motion. The Notices of Motion were taken out by the Petitioners' family members, who were held to be eligible in respect of the same structure. It is an admitted position that so far as the present Petitioners are concerned, they are held to be ineligible. They cannot have a better right than the Plaintiffs who are before the City Civil Court. In any event, in view of the order passed in Writ Petition (L) No.2876 of 2014 the issues raised in this Petition cannot be re-agitated.

3. In these circumstances, the Petition shall stand dismissed with no order as to costs.

4. Learned Counsel appearing on behalf of Respondent No.1 states that since the structure is a composite structure the notices u/s 33 & 38 cannot be enforced till the time the limited protection granted by the City Civil Court expires.

(A.A. SAYED, J.)

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