

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

**WRIT PETITION (L) NO. 3287 OF 2015
WITH
NOTICE OF MOTION (L) NO. 777 OF 2015**

St. James Educational and	}	
Welfare Trust	}	Petitioner
versus		
State of Maharashtra and Ors.	}	Respondents

Mr. Tushar Gujjar with Mr. Sachindra Shetye and Mr. Joseph Fernandes for the Petitioner.

Mr. Milind More - Addl. Government Pleader for Respondent Nos. 1 to 3.

Mr. Pravin Samdani - Senior Advocate with Mr. Madhur S. Surana for Respondent No. 5.

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

DATED :- NOVEMBER 23, 2015

P.C. :-

This Petition under Article 226 of the Constitution of India was placed before us on the earlier occasion and by virtue of the urgency pointed out, we had taken it out of turn.

2) The Petitioner states that it is an educational institution having set up a school and which was functional at site. However, on 11th July, 2014 and on 16th November, 2015, the contesting Respondents have called upon it to vacate the premises, as the Petitioner is obstructing the implementation and execution of the Slum Rehabilitation Scheme.

3) Our attention is invited to order passed in that behalf at page 180 of the paper book and the impugned communication dated 16th November, 2015. The Petitioner would submit that if the demolition is permitted, then, the running school will be adversely affected. It would be detrimental to the interest of students, teachers and staff. The students are taking education and in the crucial months to come when the syllabus has to be completed, the training necessary for appearing in the examinations has to be imparted and thereafter formalities to appear at the examinations have also to be completed that such a demolition as proposed should not be permitted.

4) It is on that footing and basis that we have heard the Counsel appearing for the parties.

5) The Petitioner pointed out, in response to the eviction notice, to the Deputy Collector that it is a charitable trust registered under the provisions of the Bombay Public Trust Act, 1991 and running a Government recognised school, namely Saint James High school. The school is recognised by the Education Department of the Government of Maharashtra as a primary and secondary school and is serving about 700 students from Junior KG. and 1st to 10th Standards. The said school premises is a

ground plus one storied structure admeasuring 26.05 square meters, which was belonging initially to two private parties. It is stated that this structure is mentioned as eligible and reference in that behalf is made to Annexure – II, Structure No. 479.

6) If the structure is shown as eligible in terms of Annexure – II dated 17th March, 2009, then, we do not think that the Writ Petition can be entertained, particularly to stall and obstruct the implementation of the Slum Rehabilitation Scheme. The Petitioner's is not the only structure at site. There are other structures, residential/commercial at site. All the structures have been removed or demolished and the occupants thereof evicted so as to develop the property. Ultimately, rehabilitation of the slum dwellers and eligible has to be at site and by a process of development of the property. That would envisage construction of buildings and styled as rehab buildings and sale buildings. If the Petitioner is eligible and the developers have proposed to it that they can shift to the alternate site as a temporary measure, then, all the more we do not think that the Writ Petition should be entertained. The overriding public interest would not enable the Petitioner to hold on to the partially demolished structure. They have been informed about and have taken part in the scheme. They were aware that eligible and

ineligible persons, their structures have to be removed from site so as to facilitate redevelopment.

7) There is one more reason why we refuse to exercise our equitable and discretionary jurisdiction because the adjoining structures have been demolished and removed. The redevelopment work is going on at site. If the Petitioner's structure alone is permitted to be retained and used, it would endanger the safety of students, staff and other visitors at the school. The children's life is precious and if any adjoining construction activity is going to pose a risk to their safety and security, then, the Petitioner's request to continue the school at site cannot be accepted.

8) Merely because the Petitioner would be required to close down its school, does not mean that the students are remedyless or the teachers and other employees would be adversely affected. As far as the students are concerned, since the school is claimed to be recognised by the Education Department of the Government of Maharashtra and as a primary and secondary school, we have no doubt that the Director of Education (Primary and Secondary) or the competent authority will take a decision in order to protect the interest and future of the children. In the event the students desire to pursue their

education in recognised schools in the vicinity, then, the students, who are validly and properly enrolled by the Petitioner, would be shifted to such schools and such schools would be directed to assist them. As far as students of 10th Standard are concerned, that is very valuable and crucial year for the students and their future. We have no doubt that on account of such contingency and because of the Petitioner's refusal to remove itself though it was aware of the implementation of the scheme, the Maharashtra State Board of Secondary and Higher Secondary Education will take a sympathetic view of the matter. They would take into consideration the period of study already undergone at the Petitioner's school and therefore issue appropriate authorisations and permissions to these students to appear for the examinations. We are constrained to pass this order simply because the Petitioner is aware that M/s. Lakdawala Developers Private Limited has been appointed as a Developer by the slum dwellers on a plot of land bearing CTS No. 470 (part) and 471(part) of village Kandivali. There are about 579 slum dwellers as per Annexure - II, of which, 470 are declared eligible and Annexure - II was issued on 14th December, 2005. The premium amount of Rs.2.98 crores has been paid and Letter of Intent has been issued on 21st January, 2009. Intimation of approval was issued for rehabilitation building No. 1 on 23rd

November, 2010 for 320 rehab tenements. The commencement certificate for rehab building No. 1 has been issued on 7th February, 2011. Intimation of approval for building No. 2 is also issued by the Slum Rehabilitation Authority for 299 rehab tenements on 8th September, 2011 and commencement certificate for the same has been issued on 7th June, 2012. The order under section 35 of the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971 was passed on an Appeal by the Builder/Developer. That was in Appeal directed against the order of the Deputy Collector and Competent Authority, Borivali dated 29th April, 2013. The Appellate order is passed on 11th July, 2014. That order records that the school structure will not be demolished without providing alternate accommodation of equal size and that is how the interest of the Petitioner has been protected. On the earlier occasion, we have recorded the undertaking of the Builder in respect of providing a temporary accommodation. It is up to the Petitioner and the Department of Education to take a decision in that behalf. Needless to state that if the Petitioner does not desire to shift the school to the temporary/transit accommodation, it is up to it to acquire such other premises as a temporary measure and thereafter all the clauses and conditions on which the scheme is undertaken and implemented will have to apply. We record the

statement of Mr. More, learned AGP that the Director of Education will extend all the assistance and co-operation to the students. The Writ Petition is disposed of accordingly.

(B.P.COLABAWALLA, J.)

(S.C.DHARMADHIKARI, J.)