

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

WRIT PETITION (L) NO.3417 OF 2015

Mohan Pralhad Brahme

Petitioner

versus

The Chief Executive Officer, Slum
Rehabilitation Authority and others

Respondents

Ms.Vrushali Mohan Brahme, Constituted Attorney of Petitioner,
in person.

Mr.Madhur Surana for Respondent no.3.

CORAM : S.C.DHARMADHIKARI AND
B.P.COLABAWALLA, JJ.

DATE : 11 December 2015

PC :

The Petitioner is appearing through his Power of Attorney. The Petitioner prays that this Court should issue a Writ of Prohibition or any other appropriate writ, order or direction in the nature prohibiting the Respondents, their officers and subordinates from implementing slum rehabilitation scheme on land bearing CTS Nos.628A and 629C of Bandar Pakhadi Road, Kandivali (West), Mumbai-400 067.

2. The two other reliefs that are claimed are of Mandamus directing the authorities to withdraw or set aside the Letter of Intent ('LOI') dated 30 July 2014, Annexure-II, Intimation of Approval ('IOA') dated 4 October 2014 and Commencement Certificate dated 27 May 2015 ('CC') so also all permissions pertaining to slum rehabilitation scheme on the subject property. These permissions and approvals have been issued by Respondent no.1 in favour of Respondent nos.3 and 4.

3. Then it is claimed that this Court should call for the record and proceedings pertaining to an order dated 27 November 2015 passed by the Respondent no.2 namely the Deputy Collector (Encroachment Removal) and Competent Authority exercising powers under the Maharashtra Slum Areas (Improvement, Clearance and Rehabilitation) Act, 1971 ('Slum Act').

4. The essential argument is that the entire scheme is vitiated by underlying fraud. The argument is based on the fact that the Petitioner's mother Anandibai was the original tenant in respect of room being Room no.B-4 in Kishan Bhandari Chawl which is situated on the piece of land in Kandivali, Mumbai. The room is claimed to be a tenanted property. She expired on 25 December 2003 leaving behind the Petitioner as the only heir and legal representative.

5. The landlords are certain Bhandaries and they own, according to the Petitioner, land Survey No.88, Hissa No.07, CTS. no.628, Village Kandivali, Taluka Borivali, Mumbai, admeasuring 2,539.40 square meters. There were 77 rooms constructed on the property/piece of land which included tenanted premises of the Petitioner's mother. It is claimed that some time in 1985, the mother of the Petitioner approached the landlord for obtaining one room on rent basis in the chawl and that proposal was accepted. Some money is alleged to have been paid and the rent receipts were issued in favour of the Petitioner's mother but those were destroyed in the floods on 26 July 2005. Thereafter the Petitioner approached the landlord and requested him to transfer the rent receipt in his name. Since the rent was being paid and collected, the landlord is stated to have informed the Petitioner that he need not worry about the transfer being effected in the records. From 2004, the landlord stopped collecting the rent from the tenants and also managing the property. Since he failed to maintain the property, the tenants' association styled as "Shramik Rahivasi Sangh" ('Sangh') was formed and that started collecting the rent and maintenance charges. The Sangh is stated to have paid all the charges and the Petitioner pleads that the Sangh passed a general body resolution appointing a developer for development of the property in question. A meeting was convened on 24 October 2011 and consent of slum dwellers taken in writing and all other activities being referred indicates as to how the

Petitioner was aware of the developments post formation of Sangh. That is how at pages 8 and 9 of the petition, all the events have been narrated. It has been pointed out as to how the tenants' association proceeded and certain factual statements have been made.

6. It is common ground that there was a survey by the Second Respondent for preparation of Annexure-II. It is at that stage and having realized that it would not be possible for the Petitioner to obtain benefits unless the eligibility is established, that the Petitioner challenged the very declaration of the property as slum. Then the Petitioner's daughter made applications under Right to Information Act, 2005 and she relies upon certain information collected. It is alleged that a major fraud has been perpetrated on all the tenants. All of them are forced and pressurized to vacate. Pertinently while narrating such facts and when the Petitioner refers to certain parties as Defendants, it is apparent that the pleadings from some other proceedings are casually lifted and incorporated in the writ petition. Pertinently the Petitioner is aware that the property is declared as slum under Section 3C of the Slum Act and a Notification to that effect was published in Maharashtra Government Gazette on 18 April 2011. It is in these circumstances that only on 31 December 2014, the Petitioner filed a suit in the Court of Small Causes, at Mumbai being RAD Suit No.7341 of 2014 and that is stated to be pending.

7. It is claimed that an injunction is granted in favour of the Petitioner and that injunction order continues. It is also stated that Respondent nos.3 and 4 have issued notices and asked the Petitioner to accept the rent in lieu of permanent alternate accommodation by vacating the premises in his possession. Such notices have been dispatched throughout and thereafter followed the exercise undertaken by the Competent Authority. It is common ground that Sections 33/38 of the Slum Act empower the Competent Authority to take such steps as are enunciated therein to ensure that the property is developed and that those eligible slum dwellers who have agreed and consented to the appointment of developer and builder, obtain the fruits of the development expeditiously. Any offending or obstructing structure whether occupied by an eligible or ineligible slum dweller would have to be removed so as to facilitate redevelopment of the property. It is a slum rehabilitation project which is proposed and being implemented. Rehabilitation is at the very site at which the old structures or the slum existed. That would have to be demolished and removed for constructing new buildings. The scheme is implemented on the lines that first the rehabilitation measures have to be effected by construction of buildings to house all eligible slum dwellers and it is only thereafter the construction which is comprising of flats and tenements for being sold in open market can be undertaken and completed.

That is how the permissions, authorizations and approvals have been granted. The Petitioner being aware of the outcome of the action and measures under Sections 33 and 38 of the Slum Act, so also knowing fully well that presently he is not held to be eligible for the permanent alternate accommodation, initially contested Writ Petition being Writ Petition (L) No.1879 of 2015 filed by Respondent no.2. That was withdrawn in the light of the statement recorded by this Court. Thereafter Commencement Certificate was issued and the Petitioner is aware that an adverse order is passed on 17 August 2015 by the Competent Authority namely the Deputy Collector (Encroachment Removal). An appeal was preferred before the Additional Collector being Appeal No.366 of 2015 and all compilations filed therein have been referred. The matter was heard by the Appellate Authority and it came to be remanded back to the Competent Authority. It is in these circumstances that the Petitioner claims that a conveyance which was registered and a copy of which was obtained, would enable him to establish and prove the allegations of fraud. In the mean time, pursuant to the order of the Appellate Authority, the Deputy Collector (Encroachment Removal) again heard the matter but has passed an order of eviction on 27 November 2015.

8. Apprehending that even if the Petitioner has filed an appeal being Appeal No.501 of 2015 before the Additional

Collector namely the Appellate Authority, no cognizance thereof would be taken and in any event the Petitioner would not be able to highlight and establish the fraud, that it is this Court alone which according to the Petitioner would grant him relief.

9. We have carefully perused the petition and all annexures thereof. Since the Petitioner is appearing in person through his Power of Attorney, we have referred to all the allegations in extenso. If the allegations are of illegalities and irregularities, so also fraud, then the Petitioner is aware that they will have to be established and proved elsewhere. The remedy of writ petition to resolve factual disputes is not available. Moreso, when the Petitioner has to prove that he is a lawful tenant of the structure/room in his possession qua the original owner/landlords, that process has been initiated by the Petitioner on his own. The legal proceedings in that behalf are pending. Although the Petitioner's name is not appearing in the records namely Annexure-II as eligible slum dweller, once the Petitioner alleges fraud and questions the entire scheme but desires to obtain benefits of the same scheme, then, it is for the Petitioner to decide as to what line of argument he would like to pursue. In any way, for all this, we consider the forums available under the Act have to be resorted. An appeal was admittedly filed before the Appellate Authority. Secondly, the suit in the Court of Small Causes is pending. Thirdly the remedies under the general law to establish and prove a fraud

and perpetrated in collusion allegedly by the owners, builders and developers and the tenants' association, is also available. However, we cannot countenance the resistance and obstruction to the scheme and to the reconstruction at the site at the instance of the Petitioner. It is evident that others who have vacated the premises are awaiting the fruits of the scheme undertaken and implemented under the control of the statutory authority like SRA. They cannot be inconvenienced. If the scheme was in force till date and to the knowledge of the Petitioner it is being implemented, then, we cannot consider the request of the Petitioner to stall the demolition of the structure occupied by the Petitioner and his family. In the end if the Petitioner succeeds either in establishing the fraud or his entitlement, he would be accommodated in the scheme or would get such reliefs as are permissible in law. The entire exercise and at the instance of the present Petitioner cannot be interfered with in our limited jurisdiction. Moreso, when the above factual disputes are noted. The Respondents have not admitted any of these allegations in the petition as is evident from the record and particularly stand of Respondent no.2.

10. In the above circumstances, leaving the Petitioner all remedies open as above, we dismiss this petition.

11. Learned counsel for Respondent no.3 society on private notice has stated before this Court, on instructions, that

if the Petitioner is held eligible for the benefit of the scheme, namely, a permanent alternate accommodation, the society will not allot one tenement in the rehab component namely rehabilitation building and keep that tenement vacant. However, according to the learned counsel, the Petitioner must obtain some relief else the tenement cannot be frozen permanently. We accept the statement made on behalf of Respondent no.3 society on instructions as an undertaking to this Court and direct that if the Petitioner desires to prove his eligibility, he will have to approach the Competent Authority with an application and if such an application is made, the Competent Authority shall deal with it and decide the same expeditiously and with a period of two months from the date of receipt of such application.

12. Learned counsel for Respondent no.3 society also produces before us a copy of the order passed by the Appellate Authority in Appeal No.501 of 2015. A copy of the same is taken on record and marked "X" for identification. Upon perusal of the same and particularly internal page no.5, it is apparent that the developments and events till date noted by us and pursuant to the LOI in favour of Respondent no.4 are accurate. Today, out of 95 eligible slum dwellers, almost all have handed over their tenements for demolition, save and except present Petitioner. It is only a single structure which is standing according to this appellate order.

13. In these circumstances, we do not find any reason to interfere also with the impugned order of the Appellate Authority dated 9 December 2015 and we dismiss the petition.

(S.C.DHARMADHIKARI, J.)

(B.P.COLABAWALLA, J.)

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