

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.8277 OF 2015

Jaiswal Nandlal Pancham and ors. : Petitioners.
Versus
State of Maharashtra and ors. : Respondents.

**ALONG WITH
WRIT PETITION NO.1440 OF 2016**

Chandrakala Pralhad Kamble and ors. : Petitioners.
Versus
The State of Maharashtra and ors. : Respondents.

**ALONG WITH
WRIT PETITION NO.1441 of 2016**

Mrs. Hariyan Urmilabai Laxman and ors. : Petitioners.
Versus
The State of Maharashtra and ors. : Respondents.

Mr. Hemant Ghadigaonkar for the Petitioners in Writ Petition No.8277 of 2015.

Mr. Y D Patil for the Petitioners in Writ Petition Nos.1440 of 2016 and 1441 of 2016.

Mr. S D Rayrikar, AGP, for the State/Respondent Nos.1, 3 and 4 in all Petitions.

Mr. Ajay Khairnar i/by Mr. D A Nalavade for the Respondent No.5 Writ Petition No.8277 of 2015.

Mr. Tejas Gokhale i/by Ashok Purohit & Co. for the Respondent No.5 in Writ Petition No.1440 of 2016.

Mr. A P Kulkarni for the Respondent No.5 in Writ Petition No.1441 of 2016.

Mr. Prabhanjan Gujar for the Respondent No.6 in all Petitions.

Mr. V A Thorat, Senior Advocate with Mr. Bipin J Joshi for the Respondent No. 7 in all Petitions.

CORAM : R. M. SAVANT, J.
DATE : 27th April 2016

P.C.

1 The above Writ Petitions take exception to the order dated 22/07/2015 passed by the Additional Collector (Encroachment and Removal), Eastern Suburbs, Mumbai by which order the Appeal being Slum Appeal No.54 of 2015 came to be dismissed by the Additional Collector (Enc/Removal), Eastern Suburbs, Mumbai and resultantly, the order dated 08/05/2015 passed by the Competent Authority and Deputy Collector (Enc/Removal), Kurla, Mumbai making the notices issued under Section 33/38 of the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971 (for short “The Slum Act”) absolute came to be confirmed.

2 The Petitioners herein who are 52 in number are the occupants of a plot of land bearing CTS No.636 (pt.) of Village and Taluka Kurla, MSD, Mumbai. On the said plot of land a slum rehabilitation scheme is being implemented by the Respondent No.7 for the Respondent No.6 Society which is a Society of slum dwellers. It seems that there were 167 structures on the site in question out of which the occupants of 117 structures have been declared as eligible in the Annexure-II which was published by the Competent Authority. Out of the said 117 structures, the occupants of 112 structures have consented to the scheme and 41 have vacated their structures and accordingly their structures have been demolished. In view of the fact that the Petitioners herein were not vacating their structures so as to facilitate implementation of the

Slum Rehabilitation Scheme, that a show cause notice under Sections 33/38 of the Slum Act came to be issued to the Petitioners. The Petitioners filed their replies to the said show cause notice and raised contentions as regards the implementation of the said scheme. The replies filed by the Petitioners being not satisfactory, the Competent Authority and Deputy Collector (Enc/Removal), Eastern Suburbs, Mumbai initiated proceedings under Sections 33/38 of the Slum Act for eviction of the Petitioners from the site in question. The Petitioners filed their replies before the Competent Authority and Deputy Collector (Enc/Removal). The Competent Authority and Deputy Collector (Enc/Removal) having regard to the facts on record wherein a Letter of Intent (LOI) has been issued to the Respondent No.7 in the year 2008 as also having regard to the fact that the Commencement Certificate has been issued made the notices absolute by his order dated 08/05/2015 and directed the Petitioners to evict themselves from the site in question.

3 The Petitioners aggrieved by the said order dated 08/05/2015 passed by the Competent Authority and Deputy Collector (Enc/Removal) filed an Appeal being Slum Appeal No.54/2015. The Appellate Authority i.e. the Additional Collector (Enc/Removal), Eastern Suburbs, Mumbai considered the order passed by the Competent Authority and Deputy Collector (Enc/Removal) as also adverted to the antecedent facts of the LOI and IOA being granted to the Respondent No.7 as also the Respondent No.7 by way of transit rent is

paying an amount of Rs.8000/- each to the occupants who have vacated their structures, as also the statement made on behalf of the Respondent No.7 that the same facility would be extended to the Petitioners did not find any merit in the Appeal and accordingly dismissed the Appeal by the impugned order dated 22/07/2015. The Appellate Authority held that it cannot go into the validity of the scheme or whether the S.R.A. has the authority to grant permission in a proceeding arising out of Section 33/38 of the Slum Act. The Appellate Authority however referred to the judgment of the Apex Court in SLP No.9363 of 2011 dated 01/04/2015 wherein the Apex Court held that in so far as a Slum Rehabilitation Scheme is concerned, it is the S.R.A. which has the authority to approve the scheme. The Appellate Authority also observed that the Petitioners were present in the General Body Meeting of the Society held on 01/02/2015 wherein a decision was taken unanimously to accept transit rent in lieu transit accommodation. The Appellate Authority held that the Petitioners conduct in not vacating their structures by accepting the transit rent was obstructionist.

4 The learned counsel appearing on behalf of the Petitioners in Writ Petition No.8277 of 2015 Shri Ghadigaonkar sought to raise contentions as regards the aspect of the LOI being not complied with inasmuch as the permission of the MSRTC to whom the land in question belongs has not been obtained, secondly the direction as regards change of developers has not been

complied with and thirdly that the elections to the Respondent No.6 Society have not been called for a long period of time.

5 The learned counsel appearing on behalf of the Petitioners in Writ Petition Nos.1440 of 2016 and 1441 of 2016 Shri Yuvraj Patil would reiterate the submissions made by the learned counsel Shri Ghadigaonkar as regards the NOC from the MSRTC. It was also the submission of the learned counsel Shri Patil that in the affidavit filed by the State Government it has come on record that MSRTC has not granted the NOC for transit camp. It was therefore the submission of the learned counsel Shri Patil that the interest of slum dwellers should not be jeopardized in the event MSRTC does not grant the NOC for the slum scheme in question.

6 Per contra, the learned Senior Counsel appearing on behalf of the Respondent No.7 Shri V A Thorat would draw this Court's attention to the fact that the LOI has been issued as long as in the year 2008, thereafter Commencement Certificate has also been issued by the Slum Rehabilitation Authority on 15/07/2011. It was the submission of the learned Senior Counsel that except the 52 Petitioners, other eligible occupants or slum dwellers have vacated their structures and are accepting the transit rent. It was also the submission of the learned Senior Counsel that the Petitioners were present in the General Body Meeting of the Society held on 01/02/2015 where various

decisions were taken in the year 2015 and therefore the Petitioners are now estopped from questioning the implementation of the scheme. The learned Senior Counsel sought to draw this Court's attention to clause 2.8 of Appendix-IV of the Development Control Regulation for Greater Mumbai, 1991 which postulates that after the project is sanctioned/approved then an application can be made to the concerned undertaking of the State and if the reply is not received, then the NOC is deemed to have been granted. Relying upon the said provision, it was the submission of the learned Senior Counsel that the apprehension of the Petitioners in the light of the said provision is misconceived.

7 As indicated above it is the said order passed under Sections 33/38 of the Slum Act which are taken exception to by way of the above Petitions. The said order can only be challenged on the grounds which can be said to be germane. In the instant case, in so far as the allegation as regards non-compliance of LOI is concerned, it is on the basis that the NOC of the MSRTC has not been obtained. In the said context it is required to be borne in mind that the LOI has been issued to the Respondent No.7 as long as back in the year 2008, as also the Commencement Certificate issued on 15/07/2011. The same obviously cannot be without the concurrence of the land owners which is part of the conditions of the Commencement Certificate. In so far as the aspect of change of developers is concerned, reliance is placed on a

document which only talks about calling a meeting of the Society so as to consider a change in the developers. There is no direction issued to the Respondent No.6 Society to change the developers. In so far as the contention as regards the elections to the Respondent No.6 Society is concerned, it is for the Petitioners to approach the authorities under the Maharashtra Co-operative Societies Act if they deem it appropriate, for the said relief. A reading of clause 2.8 of Appendix-IV in my view takes care of the apprehension if any of the Petitioners as regards the NOC of the land owner i.e. the MSRTC.

8 In so far as the Respondent No.7 is concerned, an affidavit in reply has also been filed in the above Petitions wherein it has been stated that as and by way of transit rent an amount of Rs.8,000/- would be paid for one year and thereafter the amount would be increased to Rs.9,000/-. The learned Senior Counsel appearing on behalf of the Respondent No.7 in the course of the submissions in the above petitions confirmed the said offer to the Petitioners who would vacate their structures. In view of the said assurance given by the learned Senior Counsel for the Respondent No.7, there can be no apprehension on the said count.

9 In my view, the order passed under Sections 33/38 of the Slum Act cannot be adjudicated on the basis of the apprehension or contentions raised in respect of the sanction granted to the scheme. Once the scheme is being

implemented, then the object is to see that the scheme is taken to its logical end so that the interest of the slum dwellers is protected. In the instant case, as indicated above 41 slum dwellers have vacated their structures and are accepting transit rent. It is therefore the Petitioners who can now be said to be impeding the implementation of the slum scheme. In my view, no interference in the writ jurisdiction of this Court is called for. The above Writ Petitions are accordingly dismissed.

[R.M.SAVANT, J]