

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
Writ Petition NO. 2830 OF 2016**

KAILAS HARINTH JAISWAR AND ORS.	...Petitioners
<i>Versus</i>	
THE STATE OF MAHARASHTRA AND ORS.	...Respondents

Mr. G. B. Dixit i/b Mr. K. D. Kharat for the Petitioners

Mr. Vivek Walawalkar a/w Ms Asha Nair i/b Diamondwala & Co. for the Respondent No.5

Mr.G.D.Utangale i/b Utangale & Co. for the Respondent No.6-SRA

Mr. J. R. Vyas for the Respondent No.4

Mr. Vinod Mahadik for the Respondent No.3 BMC

Mrs. S. S. Bhende AGP for the Respondent Nos.1 & 2

CORAM: R.M. SAVANT., J
DATED: 16th March, 2016

PC:-

1 The Writ Jurisdiction of this court is invoked against the order dated 20-2-2016 passed by the Additional Collector and the Appellate Authority, Mumbai City by which order, the Appeal fled by the Petitioners under Section 35 of the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971 (for short the Slum Act), came to be dismissed and resultantly the orders passed by the Competent Authority i.e. the Assistant Commissioner G South Ward of the Municipal Corporation of Greater Mumbai which orders are referred to in the operative part of the impugned order, have been confirmed.

2 The Petitioners have their structures on Survey No.1 part and Survey No.2 part of Lower Parel Division. The said slum dwellers have constituted themselves into a society known as Saibaba Nagar Sahakari CHS. It is an undisputed position that all the Petitioners have been held to be eligible by the Competent Authority and that their names appear in Annexure -II which has been issued by the Competent Authority, in terms of the scheme applicable since 70% of the slum dwellers who are having their structures on the said land in question have come together that the said slum redevelopment scheme was permitted to be proceeded with. In view of the reluctance of the Petitioners to co-operate in the implementation of the said scheme, it appears that the said Saibaba CHS approached the Competent Authority to initiate proceedings under Sections 33 and 38 of the Slum Act to evict the Petitioners. However, prior thereto, two notices were issued, the first being the notice dated 5-8-2015 and thereafter the second being a show cause notice issued to the Petitioners on 8-10-2015 which resulted in the commencement of the proceedings before the Competent Authority. Before the Competent Authority on the day when the hearing was to take place i.e. in the office of the Assistant Commissioner, G South Ward, Mumbai Corporation of Greater Mumbai. It seems that commotion was created by the slum dwellers as a result of which the police were required to be called to control the situation and in the said circumstances, the Competent Authority was impeded from the proceeding

with the hearing. It has been so recorded in the order passed by the Competent Authority which is dated 13-1-2016. The Competent Authority has also recorded the fact that the copy of the complaint made by the Saibaba CHS was furnished to the Advocate appearing for the slum dwellers. The Competent Authority thereafter has passed the impugned order dated 13-1-2016. The said order is founded on the fact that the Petitioners are unco-operative slum dwellers and therefore their eviction is necessary in the larger interest of the execution of the slum scheme.

3 The order passed by the Competent Authority dated 13-1-2016 was taken exception to by the Petitioners and other similarly situated by filing Appeals, the numbers of which find place in the order passed by the Appellate Authority dated 20-2-2016. Before the Appellate Authority the main plank of challenge was that the Petitioners were not granted a hearing. The Appellate Authority has referred to what had transpired before the Competent Authority on the day when the hearing was to take place, the Appellate Authority having regard to the fact that the order was passed almost 4 months after the issuance of the notice, held that the Petitioners were given an adequate opportunity before the Competent Authority. The Appellate Authority has also referred to the fact that the Petitioners were eligible slum dwellers and that the developer would be extending the same benefits to the Petitioners as extended to the other slum dwellers. The Appellate Authority has negated the contention

sought to be raised on behalf of the Petitioners as regards the inadequacy of the rent offered in lieu of temporary transit accommodation and that the Petitioners were required to be provided temporary transit accommodation in-situ. The Appellate Authority endorsed the view taken by the Competent Authority that the implementation of the scheme is being impeded on account of the reluctance of the Petitioners to shift from the site in question. The Appellate Authority accordingly dismissed the Appeals numbers of which have been mentioned in clause (ii) of the operative part of the impugned order dated 20-2-2016.

4 On behalf of the Respondent No.5 i.e. the developer, an affidavit of one Vijay Kunder has been filed, a reference to the contents of the said affidavit would be made a bit later.

5 On behalf of the Petitioners, the Learned Counsel Mr. Dixit would seek to urge the case of the Petitioners that was sought to be urged before the Appellate Authority, namely that the Petitioners were not given a proper hearing by the Competent Authority. The Learned Counsel also sought to make submissions as regards the sanction of the said slum redevelopment scheme.

6 Per contra the Learned Counsel Mr. Walawalkar appearing for the Respondent No.5, the Learned Counsel appearing for the Mumbai Corporation

of Greater Mumbai and the Learned AGP would support the impugned orders. However, it was the submission of Mr. Walawalkar, the Learned Counsel appearing for the Respondent No.5 that though the Respondent No.5 is ready to extend the same benefits to the Petitioners as extended to the other slum dwellers, for the reasons best known to the Petitioners, they are not accepting the same.

7 Having heard the Learned Counsel for the parties, in my view, there is no merit in the above Petition. In so far as the contention of the Learned Counsel for the Petitioners that no hearing was granted by the Competent Authority is concerned, it is required to be noted that on the day when the hearing was fixed a commotion was sought to be created by the slum dwellers thereby impeding the Competent Authority from proceeding with the hearing and which resulted in the police being called. However one fact cannot be lost sight of is that the Competent Authority passed the order on 13-1-2016 which is long after the first notice asking the Petitioners to vacate the premises, as also the show cause notice issued thereafter. In the interregnum the hearing has taken place before the Competent Authority. The Petitioners grievance in the above Petition can only be as regards their eviction from the site. However in so far as the sanction for any slum scheme is concerned, the forum to challenge the same is different than the forum which adjudicates upon the notices issued under Sections 33 and 38 of the Slum Act. The Petitioners seek

to oppose the eviction on the ground that the rent provided to them is inadequate and that they should be provided temporary transit in-situ. In so far as the said aspect is concerned, it seems that the Co-operative Housing Society of the slum dwellers has passed a resolutions accepting the payment of rent in lieu of temporary transit accommodation in-situ. Once that be so, a minority of the slum dwellers cannot be heard to say that they be treated differently than other slum dwellers. In my view, in the facts and circumstances of the present case, the Appellate Authority was right in coming to a conclusion that the contention of the Petitioners that no hearing was granted to the Competent Authority could not be accepted.

8 In so far as the Respondent No.5 is concerned, the said Respondents has reiterated its commitment to the Petitioners by stating in paragraph 6(o) that the developer shall pay transit rent at Rs.15,000 for residential premises and Rs.20,000/- for commercial premises. It has been further stated in the affidavit that out of 1513 slum dwellers, 1272 have given their consent thereby constituting 84% of the slum dwellers out of the said 1513, 1127 have already accepted the rent and approximately 908 have vacated their structures. Having regard to the said figures, the implementation of the slum redevelopment scheme expeditiously is the need of the hour, as otherwise a large number of slum dwellers would be left in the lurch. In so far as the Petitioners are concerned, it appears that the Petitioner Nos.1, 5, 7, 8, 9,

13, 15, 21, 29, 30, 33 & 34 have handed over possession and have also accepted the rent. In my view therefore, having regard to the aforesaid facts, no case for interference in the Writ Jurisdiction of this Court is made out. The Writ Petition is accordingly dismissed.

9 However, the Petitioners are granted time till 31-3-2016 to vacate the structures in question. In the event, the Petitioners do not vacate the structures, then the authorities would be free to proceed against them in accordance with law.

(R.M. SAVANT.,J.)