

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION  
WRIT PETITION NO. 3792 OF 2016**

1. Seva Co-operative Housing Society and Ors. Petitioners

Vs

1. M/s Reliance Enterprises Pvt Ltd and Ors. .. Respondents

Mr. Jayesh Bhatt, Advocate for Petitioners.

Mr G.S.Godbole, Senior Advocate a/w. M.Majmudar and Merlyn D. for Respondent no.1.

Mr. R.S.Apte, Senior Advocate a/w Kamlesh Ghumre a/w Supriya Kadam, Advocates for Respondents no.2 and 3

CORAM : R.G.KETKAR,J.  
DATE : 16/04/2016

**PC:**

1. Heard Mr. Jayesh Bhatt, learned counsel for the petitioners, Mr. G.S.Godbole, learned senior counsel for respondent no.1, Mr R.S.Apte, learned senior counsel for respondents no.2 and 3 at length.

2. By this Petition under Article 227 of the Constitution of India, the petitioners have challenged the Judgment and order dated 3.3.2016 passed by Additional Collector (Enc/Removal) Western Suburbs (for short, 'Appellate Authority') in Appeal No. 421 of 2015. By that order, the Addl. Collector confirmed the Judgment and order dated 8.10.2015 passed by Competent Authority-Cum-Land Manager, Mumbai Housing and Area Development Board (for short, 'Competent Authority'). The Addl.

Collector held that out of 14 appellants, appellants no. 7, 9, 12 are ineligible and remaining 11 slum dwellers are found to be eligible and are entitled to benefits of rehabilitation scheme. The Addl. Collector further directed respondent no.1-developer to pay 18 months rent to the 3 ineligible slum dwellers and gave liberty to 3 ineligible slum dwellers to approach Competent Authority along with documents to establish their eligibility as per Government Resolution dated 16.5.2015.

3. In support of this, Mr. Bhatt strenuously contended that Annexure-II prepared by respondent no.2 is not signed by Chief Officer. The said Annexure is forged and fabricated document. Respondent no.2 or its Authorities did not carry out survey of the slum area. He submitted that the petitioners were not parties to the decision dated 19.11.2011 passed by High Power Committee (H.P.C.). For the first time in the affidavit dated 30.3.2016 made by R.M.Totewar, Dy. Engineer of the second respondent, it is averred that Annexure-II was prepared after actual scrutiny on 26.7.1999 and the same is verified by Officers of respondent no.2 and has been signed and approved by Surveyor/Mumbai Board, Assistant Land Manager, Mumbai Board, Jt. Chief Officer, Mumbai Board, Chief Officer, Mumbai Board. He submitted that respondent no.2 has not produced the original Annexure-II and has produced Annexure-II which is furnished to respondent no.1 under Right to Informations Act, 2005. He submitted that as

basically Annexure-II is a bogus document, the authorities below were not justified in passing the impugned orders based on such Annexure-II. Apart from 14 members, there are several members in the petitioners-society whose eligibility is not considered by Competent Authority. For all these reasons, he submitted that the impugned orders deserve to be set aside.

4. On the other hand, Mr. Godbole and Mr. Apte submitted that on 8.10.2015, Competent Authority passed order under Sections 33 and 38 of the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971 (for short, 'Act') and declared that 23 persons were ineligible and directed them to vacate the premises in their possession and hand over vacant possession to the first respondent within 7 days thereof. Aggrieved by that decision, Appeal was preferred by 14 persons, out of 23 under section 35 of the Act before Addl. Collector. They submitted that basically only those persons who are found ineligible have locus to maintain Appeal under section 35. Present petition is instituted by the petitioners who are not aggrieved persons and against whom no order is passed. The society is also a proposed society. They, therefore, submitted that as the petitioners have no locus to maintain the petition, the petition deserves to be dismissed. Apart from that, it was submitted that Annexure-II prepared on 20.11.2001 is not challenged by the aggrieved persons. Even on this count, the

impugned orders cannot be challenged.

5. In reply, Mr. Bhatt submitted that Addl. Collector has considered the submissions advanced on behalf of the society and, therefore, it cannot be said that the society has no locus to maintain appeal or intervene in the matter as also that society has no locus to maintain this petition.

6. I have considered the rival submissions advanced by the learned counsel appearing for the parties. I have also perused the material on record. As noted earlier, the Competent Authority passed order under sections 33 and 38 of the Act and declared that 23 persons are ineligible . The Competent Authority also directed these persons to vacate the premises in their possession and hand over vacant and peaceful possession to the first respondent. Section 33 of the Act empowers the Competent Authority to pass orders directing eviction of occupants from the premises subject to giving reasonable opportunity to occupants to show cause as to why they should not be evicted therefrom. Section 38 thereof empowers the Competent Authority to make orders directing demolition of building in certain cases. As noted earlier, the Competent Authority exercised powers under sections 33 and 38 of the Act after giving apartments to the affected persons. Aggrieved by that order, 14 persons out of 23, preferred Appeal. Perusal of Exhibit-E (Pages 52 to 63 of writ petition compilation) shows that Appeal was preferred by the

petitioners as a proposed society through its members who are 14 in persons against respondents no. 1 and 2. By order dated 3.3.2016, Addl. Collector dismissed the Appeal and confirmed the order of the Competent Authority subject to certain directions. Perusal of that order shows that main contention advanced before Addl. Collector was as regards validity of Annexure-II. Mr. Godbole and Mr. Apte submitted that the remedy to challenge Annexure-II is by approaching H.P.C as per the Full Bench decision of this Court in the case of T.N.Co-op.Hsg.Society Vs. State of Maharashtra, 2007(6) Mh.L.J. 851. Mr. Bhatt did not dispute this proposition. In view of paragraphs 114(c) and 118 (D) of T.N.Co-op.Hsg Society (supra), if any party is aggrieved by Annexure-II, it has to approach H.P.C. Thus, Addl. Collector could not have gone into validity or otherwise of Annexure-II and has to proceed on the basis that the said Annexure is valid. Understood thus, I do not find that the Competent Authority committed any error in passing the orders under sections 33 and 38 of the Act as also Addl. Collector in dismissing the Appeal.

7. Mr. Godbole appearing for respondent no.1 reiterated that 3 ineligible slum dwellers who are appellants no. 7, 9 and 12 before the Addl. Collector will be given 18 months rent and if they approach the Competent Authority along with documents for establishing their eligibility as per Government Resolution dated 16.5.2015 and if they are found eligible, then respondent no.1

will also give all benefits which are otherwise given to 11 appellants who were found eligible. Statements made by Mr. Godbole are recorded.

8. In view thereof, I do not find any merit in this petition and the petition is dismissed reserving liberty to the petitioners to approach H.P.C. challenging Annexure-II dated 20.11.2001. The contention of respondents no.1 and 2 about locus of petitioners society as also locus to intervene in the said proceedings is expressly kept open. Petition fails and the same is dismissed.

9. At this stage, Mr. Bhatt orally applies for staying this order for a period of 4 weeks from today. Mr. Godbole opposes this application on the ground that the project of respondent no.1 is stalled because of impugned order. Hence, oral application is rejected.

(R.G.KETKAR, J.)