

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

CRIMINAL WRIT PETITION NO.1565 OF 2013

Mrs.Asha Awadhesh Pal & Anr. .. Petitioners

V/s.

Mr. Vinod B. Nisar & Ors. .. Respondents

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Mr. Prashant Gawali, Advocate for the Petitioners.

Mrs. M. M. Deshmukh, APP for Respondent - State.

Mr. S.A. Waradkar, Advocate for Respondent Nos.1, 3 and 4.

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**CORAM : NARESH H. PATIL AND
PRAKASH D. NAIK, JJ.**

DATED : AUGUST 1, 2016.

P.C. :

Petitioners pray for following reliefs:

“a) *That the State Government be directed to take necessary disciplinary action against respondents 5, 6 & 7 i.e. (Shri Bipin Bihari, Shri Nerlekar and Shri Anavkar of Vile Parle Police Station for their illegal and arbitrary action and harassments made to Petitioners in misusing and abusing powers in discharge of public duty and to frustrate the object and purpose of the Slum Rehabilitation Scheme;*

b) *That the Respondent Nos.1, 3, 4, 5, 6, 7 & 8 be*

directed to pay compensation to the Petitioners for their arbitrary and illegal action against the Petitioners;

- c) Necessary action should also be directed against Respondent No.1, 3 & 4 who deliberately having ulterior motive to harassed the Petitioners has got favour of the Police Officer of Vile Parle Police Station;*
- d) The matter may be forwarded to CBI, CID, ACB & Police for investigation and taking criminal action on person concerned including respondent Nos.5, 6 and 7 under various IPCs sections including Atrocity Act.”*

2 It is submitted on behalf of the petitioners that both the petitioners were accused in C.C. No.179/PW/2006 for the offences punishable under Section 341, 355, 385, 323, 504, 506, 309, 210 and 211 read with Section 34 of the Indian Penal Code (for short “IPC”) and under Section 37(2)(9)(b) of the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971. By judgment and order dated 4th December, 2009, the Judge of Small Causes Court and Special Metropolitan Magistrate 48th Court, Andheri Mumbai acquitted accused of all the charges. Petition is filed in the year 2013 with the above stated prayers.

3 Learned counsel appearing for petitioners submitted that some of the police officers had vested interest in the subject SRA development project. They were allotted flats in the said project. One of the said witnesses i.e. P.W.1 Vinod had given admission that some police officers purchased flats in this scheme. The said fact was recorded by learned trial Court in paragraph 27 of the judgment. Learned counsel submits that the observations show inaction/negligence of the police officer in the complaint lodged against the officers. It is submitted that responsible officers shall be punished and petitioner be adequately compensated. Learned counsel further submitted that civil suit has been filed by petitioners in respect of the said subject matter and which is still pending. Petitioners had approached the High Power Committee of SRA. The High Power Committee had passed an order on 18th April, 2009 (Exhibit - "D"). Representation filed by petitioners is still pending with the SRA Authorities in respect of the subject grievances made before this Court.

4 Learned APP has placed before us Photostat copy of the communication made by Mr. Satyanarayan, Deputy Commissioner, Zone-8, Mumbai addressed to Additional

Commissioner, Western Zone dated 13th December, 2010. Deputy Commissioner in the said representation has not found any substance in the allegations made that the concerned police officers falsely roped petitioners in criminal case. Learned APP submits that petition has been preferred after trial Court acquitted accused person. According to learned APP, issue concerning allegations made by petitioners to the effect that they were illegally detained was also considered by the Deputy Commissioner.

5 Learned counsel appearing for respondents submitted that the subject issue is still being litigated before Civil forum. Respondents had filed an Appeal under provisions of Section 372 of the Code of Criminal Procedure which was admitted by the Sessions Court, Mumbai. Against the order of admission of Appeal, petitioner preferred a criminal revision application no.252 of 2010. Learned Single Judge of this Court on 2nd August, 2011 passed the following order:

“1 Admit. The ad-interim order in terms of prayer clause (c) is continued pending the hearing of the Revision Application.”

Learned counsel therefore submits that subject matter of criminal prosecution is also *subjudice*. Learned counsel has denied the allegations made by petitioners against respondents.

6 We have perused the record. We are of the view that the issue as to whether the subject SRA development scheme was developed in accordance with law, cannot be considered in proceedings of present criminal writ petition. Appropriate forums dealing with such issues are seized of the matter. Order of acquittal recorded by trial Court is also subject matter of consideration in Appeal. Deputy Commissioner of police looked into the grievances and allegations made by petitioners against some of police officers and did not find any substance.

7 Taking into consideration all these attending facts and circumstances, no interference is warranted under extraordinary writ jurisdiction of this Court. Petitioners may raise relevant issues before forums which are seized of the matters. Petitioners may resort to alternate remedy, as may be available in law for redressal of their other grievances.

9 Without expressing any opinion on the merits of the case, petition stands disposed of.

(PRAKASH D. NAIK, J.)

(NARESH H. PATIL, J.)