

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.7356 OF 2015

Mr. Jalil Ahmed Khan.	]	... Petitioner
Versus		
The Deputy Collector (Ench. And Rem.)	]	
and Ors.	]	... Respondents

WITH

WRIT PETITION NO.7357 OF 2015

Mr. Abusalim Jalil Ahmed Khan.	]	... Petitioner
Versus		
The Deputy Collector (Ench. And Rem.)	]	
and Ors.	]	... Respondents

WITH

WRIT PETITION NO.7358 OF 2015

Mr. Abdulla Jalil Ahmed Khan.	]	... Petitioner
Versus		
The Deputy Collector (Ench. And Rem.)	]	
and Ors.	]	... Respondents

WITH

WRIT PETITION NO.7636 OF 2015

Mr. Sagir Ahmed Khan.	]	... Petitioner
Versus		
The Deputy Collector (Ench. And Rem.)	]	
and Ors.	]	... Respondents

WITH

WRIT PETITION NO.7637 OF 2015

Mr. Mohammed Sakib Khan.	]	... Petitioner
Versus		
The Deputy Collector (Ench. And Rem.)	]	
and Ors.	]	... Respondents

Ms. Shabana P. Sothe for Petitioners in all Writ Petitions.

Mr. Devvrat Singh a/w Mr. Mahesh Mishra & Mr. Ravi Thankian for Respondent No.2 in all Writ Petitions.

Mrs. M. S. Bane, 'B' Panel Counsel for Respondent No.1 in Writ Petition Nos.7356 of 2015, 7357 of 2015 and 7358 of 2015.

Mr. S. D. Rayrikar, A.G.P., for Respondent No.1 in Writ Petition Nos.7636 of 2015 and 7637 of 2015.

CORAM :- M. S. SONAK, J.

DATE :- FEBRUARY 10, 2016

P. C. :-

1. The challenge in these petitions is to the orders dated 06/05/2015 and 06/02/2015 made by the Additional Collector and the Competent Authority under the provisions of The Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971 ('Slum Act') ordering the demolition of the suit structures referred to in the impugned orders.

2. Ms. Shabana P. Sothe, learned Counsel for petitioners in all writ petitions, has submitted that in terms of certain property cards as well as title documents, the petitioners are the owners of property bearing C.T.S. No.7373. She submits that in respect of these properties, the petitioners have never given any consent for its inclusion in any slum redevelopment scheme. She points out that the suit structures are located in the property bearing C.T.S. No.7373 and therefore, the authorities, without consideration of this fundamental aspect, were not entitled to order eviction/demolition.

3. Mr. Devvrat Singh, learned Counsel for respondent no.2/developer in all writ petitions, has made a statement that there is no slum redevelopment scheme insofar as the property surveyed under C.T.S. No.7373 is concerned. He has submitted that the suit structures are not on the property bearing C.T.S. No.7373. In this regard, he has pointed out that the petitioners had made a statement on 10/03/2015 before the Competent Authority stating that they will vacate the suit structures on 11/03/2015 by 3.00 p.m. He points out that this statement, though solemnly written and signed by the petitioners, has been suppressed by the petitioners from this Court. He further pointed out that there are averments in the petition to the effect that the petitioners have applied for being declared as eligible to obtain the benefits of the SRA scheme in respect of the suit structures. He also pointed out that the petitioners have already been declared to be ineligible to avail the benefits of the SRA scheme in respect of the suit structures. In this view of the matter, he submitted that no interference is warranted, particularly as the entire scheme is held up and further, the respondent no.2 is making rent payments to several eligible slum dwellers who have already vacated their structures.

4. There is substance in the contention of Mr. Singh that the petitioners have suppressed the statements dated 10/03/2015 filed by them before the Competent Authority stating that they will vacate the suit structures. However, considering that the petitioners have been carrying the business of bakery through the suit structures and perhaps were interested in warding off the eminent eviction order, the

statements may have been made. The petitioners may be excused for having made such statements and despite such statements, having pursued the matter before the Competent Authority and the Appellate Authority. However, even in such a situation, the petitioners are duty-bound to disclose the true, correct and entire facts before this Court, which the petitioners have not done.

5. That apart, the contention of the learned Counsel for petitioners with regard to the SRA scheme, including the petitioners' property bearing C.T.S. No.7373, cannot be accepted in view of the categorical statement made by the learned Counsel for respondent no.2 that the SRA scheme is not concerned with and does not include the property bearing C.T.S. No.7373. The only question which remains is whether the suit structures are located in property bearing C.T.S. No.7373 or beyond. The two authorities have concurrently ruled that the suit structures are located in the property which forms a part of the SRA scheme. In exercise of writ jurisdiction, it is not possible to resolve disputed questions of fact.

6. Nevertheless, it would be noted that the petitioners themselves, in respect of the suit structures, have made a statement in the petition that they have applied to get themselves declared as eligible under the SRA scheme and that their application is pending consideration before the appropriate authority. Perhaps realizing that such a statement would contradict their case that the suit structures are situated in the property bearing C.T.S. No.7373, the petitioners

have made the following statement :-

“The Petitioner states that the Petitioner had filed the said application only to ascertain that if in future the slum structure is declared to be on the land that is being developed by the Respondent No.2 then the Petitioner would be at loss of a valuable structure.”

7. Further, reference is necessary to application dated 19/08/2014 by which the petitioners have applied to the Competent Authority to determine their eligibility in the context of the SRA scheme. In the light of the averments as well as the documents, no sufficient credence can be given to the guarded statement that the application for determination of eligibility was made only to safeguard their rights. There is absolutely nothing wrong in the petitioners' steps to safeguard their rights. However, there is a requirement of consistency in the case in which they put up, particularly before a Court of law.

8. In the aforesaid circumstances, there is no case made out to interfere with the impugned orders. The petitioners, however, seek four weeks time to vacate the suit structures, on the ground that presently they are carrying on bakery business therefrom. This request is quite reasonable, particularly if the petitioners are willing to file undertakings in this Court that they will, by themselves, vacate the suit structures and hand over the possession thereof to the respondent no.2, so that the respondent no.2 can proceed with its scheme.

Accordingly, if the petitioners file undertakings to this effect within one week from today along with advance copy of the same to the learned Counsel for respondents, including the learned Counsel for respondent no.2, the respondents shall not execute the impugned orders for a period of four weeks from today. However, if no undertakings are filed, there shall be no bar to the execution of the impugned orders.

9. Further, the learned Counsel for petitioners submits that suitable directions be issued to the authorities before whom the issue of eligibility is pending to decide the same within some time-bound period. There is no difficulty in issuing such directions as well. Further, the learned Counsel for respondent no.2, on the basis of instructions from Mr. Irani, representative of respondent no.2 who is present in Court, has made a statement that until the issue of eligibility is determined, the respondent no.2 shall, as a humanitarian gesture, pay to the petitioners compensation in lieu of alternate accommodation at the rate of Rs.12,000/- (Rupees Twelve Thousand Only) per month. Further, if ultimately the petitioners are held as eligible, the respondent no.2 will continue to pay the petitioners amount, as also the amounts as may be revised from time to time and further, allot permanent alternate accommodation to the petitioners as well. All these statements made by the respective parties are accepted as statements made to this Court. The authority before whom the issue of eligibility is pending, is directed to dispose of the same as expeditiously as possible and in any case, within a period of four

months from today. All the parties to cooperate in the matter of expeditious disposal of such proceedings. In particular, the petitioners, under no circumstances, should delay the disposal of such proceedings.

10. These petitions are disposed of in the aforesaid terms. There shall be no order as to costs.

11. All concerned to act on basis of authenticated copy of this order.

(M. S. SONAK, J.)