

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.12837 OF 2015
WITH
WRIT PETITION NO.12840 OF 2015

M/s. Jaybharat Dairy Farm.] ... Petitioner

Versus

Additional Collector (Enc/Evic) & Appellate]
Authority, Mumbai City and Ors.] ... Respondents

Mr. Ram Mani Upadhyay for Petitioners in both Writ Petitions.
Ms. Aparna Vhatkar, AGP for Respondent No.1 in both Writ Petitions.
Mr. Arvind A. i/b Mr. J. G. Reddy for Respondent no.2 in both Writ Petitions.
Mr. R. D. Soni, a/w Mr. Omkar Kulkarni for Respondent No.4 in both Writ Petitions.

CORAM :- M. S. SONAK, J.
DATE :- MARCH 01, 2016

P. C. :-

1. The challenge in both these petitions is to the orders dated 18/09/2015 and 14/12/2015 made by the respondent no.2 and the respondent no.1 respectively, under the provisions of The Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971 ('Slum Act').

2. Mr. Upadhyay, learned Counsel for petitioners in both Writ Petitions, has submitted that the petitioners, for last over six decades, have been carrying the business of sale of dairy products from the said premises. Whilst the petitioners are not opposing the development as such, all that the petitioners seek is assurance as regards the suitable alternate premises once the development is complete. Mr. Upadhyay points out that the premises which are earmarked for the petitioners are not comparable to the premises presently occupied by the petitioners. He points out that the alternate premises, as indicated in the plan, are at S. M. Jadhav Marg, when in fact the main road is B. G. Deorukhkar Road where the said premises are presently located. He points out that the respondent no.4 has chosen to retain for himself the corner premises which could have always been allotted to the petitioners. Mr. Upadhyay points out that necessary complaint in this regard has already been made to the High Powered Committee and this issue is pending before the High Powered Committee.

3. Mr. Upadhyay further submitted that in any case, if the petitioners are permitted to continue to carry out their business from the said premises, development at the site will not be affected. He submits that as and when the area occupied by the said premises is really required, the petitioners will, without prejudice to their rights and contentions, vacate the said premises. Mr. Upadhyay has further submitted that the rent in lieu of alternate accommodation which the respondent no.4 offers are too meagre and by no means realistic to compensate the losses which the petitioners and their family

members, which number over 40, will fetch. Mr. Upadhyay points out that no action has been taken for last 4 to 5 years. However, no sooner the petitioners objected to the alternate premises being offered to them, action has been taken under the provisions of the Slum Act with ulterior purposes. For all these reasons, Mr. Upadhyay submitted that the impugned orders warrant interference.

4. There is no dispute that the petitioners have been held as occupants eligible for rehabilitation under the development scheme. The issue as to whether the alternate accommodation which is being offered is suitable or not, is pending consideration before the CEO, SRA, as per the contention of Mr. Upadhyay. As such, it is not possible for this Court to go into the said issue at this stage. However, merely because such issue is pending before the CEO, action under Sections 33 and 38 of the Slum Act can neither be faulted nor stayed. The two disputes have no direct nexus with one another. For the proposed development to take place, it is necessary that the petitioners vacate their said premises. If ultimately the CEO decides that the respondent no.4 is liable to allot some other premises to the petitioners, the petitioners will undoubtedly have such benefit. For that purpose, however, the petitioners cannot insist upon continuing in the present premises thereby stalling further development at the site.

5. The contentions that the said premises which the petitioners are presently occupying, are not obstructing the development or that the respondent no.4 should pay additional rent,

are really not issues germane to exercise powers under Sections 33 and 38 of the Slum Act.

6. Mr. Soni, learned Counsel for respondent no.4, has pointed out that from out of 77 occupants, 73 occupants have already vacated the site since last one year or thereabout. Only the 4 petitioners/their family members are at the site. He points out that unless the site is completely vacant, it will not be possible to proceed with the development work. All these, apart from being disputed questions of fact, are not some entitlements which the petitioners can claim as a matter of right.

7. On the aspect of rent in lieu of alternate accommodation, Mr. Soni points out that whatever rent that are being offered to other occupants, the same will be offered and paid to the petitioners. He points out that the rent offered to the occupants of commercial premises at the site will be offered to the petitioners as well. He submits that at this stage, it is not possible for the respondent no.4 to offer anything in excess, otherwise, there will be demand from other occupants who have already vacated the site almost one year ago in the fond hope that the development will be completed within reasonable time. Again, as a matter of legal right, the petitioners cannot insist upon any excess rent. This Court can, at the highest, express hope that the respondent no.4 will consider the case of the petitioners and make some additional allowances to the petitioners considering the location of their premises, the disruption which their

business activities which have gone on for last over 60 years will face and the number of family members dependent upon the said business. Besides this, it is not possible for this Court to issue any direction on this aspect. Besides, it is to be made clear that this is not a reason for the petitioners to insist upon continue to occupy the said premises. Accordingly, there is no reason to interfere with the impugned order. The impugned orders do not suffer from any jurisdictional error nor can it be said that any extraneous or irrelevant circumstances have been taken into consideration whilst making the same.

8. For all the aforesaid reasons, these petitions are dismissed. There shall be no order as to costs.

9. At this stage, Mr. Upadhyay seeks five weeks time to vacate the said premises. In case, the petitioners file undertaking before this Court within a period of one week from today, along with advance copy to the learned Counsel for respondents, that they shall, on their own, vacate all the premises in their possession, the impugned order will not be executed for a period of five weeks from today. Further, in the said undertaking, the petitioners shall undertake not to create any third party rights or part with possession of the said premises. If such undertaking is not filed within a period of one week from today or having filed such undertaking, if there is no compliance therewith, then, without prejudice, action under the Contempt of Courts Act, 1971, the authorities shall be entitled to execute their order, if necessary, with the assistance of police.

(M. S. SONAK, J.)