

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION (L) NO. 713 OF 2016

|                          |   |             |
|--------------------------|---|-------------|
| Lawrence Joaquim D'souza | } |             |
| and Anr.                 | } | Petitioners |
| versus                   |   |             |
| The State of Maharashtra | } |             |
| and Ors.                 | } | Respondents |

WITH  
WRIT PETITION (L) NO. 716 OF 2016

|                             |   |             |
|-----------------------------|---|-------------|
| Ratilal Madan Waja and Ors. | } | Petitioners |
| versus                      |   |             |
| The State of Maharashtra    | } |             |
| and Ors.                    | } | Respondents |

Mr. A. Y. Sakhare - Senior Advocate with  
Mr. Shashipal Shankar for the petitioners.

Mr. Umashankar Upadhyay - AGP for  
respondent nos. 1 and 2.

Mr. Vijay D. Patil for respondent no. 3.

Mr. Kunal Bhanage for respondent no. 4.

CORAM :- S. C. DHARMADHIKARI &  
DR. SHALINI PHANSALKAR-JOSHI, JJ.

DATED :- JULY 14, 2016

P.C. :-

1) The matter was placed today to seek clarification as to why an order has not been passed by the Deputy Collector (Encroachment and Removal).

2) Though the District Collector, namely, the Collector, Mumbai Suburban District was directed to remain present with the records, we find that as usual some Deputy Collector has been directed to remain present in court. It is stated that he is the deponent of the affidavit which is filed today.

3) In this affidavit, the competent authority says that before this court passed order on 30<sup>th</sup> March, 2016, notices were despatched to all concerned, including the petitioners on 19<sup>th</sup> March, 2016, calling them to remain present for a hearing on 2<sup>nd</sup> April, 2016. These notices suppressed by the petitioners.

4) Then, it is stated that the hearing has been adjourned in the month of April and May, 2016 because at one hearing, the advocate for the petitioners raised an objection that sections 33/38 of the Slum Act have no application, because the property or the land is not forming part of the scheme. It is only when there is a scheme styled as Slum Rehabilitation Scheme in force and in execution that these provisions can be resorted to. The deponent further states as under:-

“6. I say that in the meantime, I written a letter dated 11.04.2016 and 07.05.2016 to Slum Rehabilitation Authority (SRA) asking them whether the said plot in question comes under the SRA Scheme. The Slum Rehabilitation Authority asked me by their letter dated 06.06.2016 to make inquiry with Additional Collector.

7. I say that I called file from the Additional Collector, and ask my staff for detail survey and for personal

visit/inspection on the said plot on 12.07.2016 where on going through the files it seems that there is some confusion either the huts of the Petitioners are within or outside the proposed Slum Re-development Area boundary for that we are taking guidance from Slum Rehabilitation Authority (SRA).

8) I say that in the meantime, I come to know that the Housing Department of the government of Maharashtra issued Notification dated 27.05.2016 stating that plot concerned with the subject matter above gone to the Deputy Collector and Competent Authority, Bandra (2) and now the matter pertains to the said Department. I say that I had already intimated the said Department regarding the matter mentioned above and they will hear the Appeal of the Petitioners.

I say that I have high regards for the Orders passed by the Hon'ble High Court and have always tried to obey and comply with the same. I also tender my unconditional apology to this Hon'ble Court, if the Court comes to the conclusion that I had not complied with the Order of the Court.

I say that this Hon'ble Court grant me sufficient time to do the needful and will hear the Application of the Petitioners filed in my office."

5) After having heard both sides we find that there is no justification for this officer, after commencing the hearing before him, to now state that he does not have the authority to deal with the matter, but it is some other Deputy Collector to whom the matters and proceedings should be transferred. Further, the affidavit filed today strangely discloses his view of the matter. If his view of the matter is as what is set out and reproduced above, then, there was no occasion for him to call for any details from the SRA. A person cannot abdicate his powers or avoid taking decision merely because an issue of jurisdiction and his competency is raised. He would have to face the challenge and

pass an order either upholding that objection or rejecting it. There is no question of seeking any guidance from the SRA. Further, if this officer was already seized of the matter, then, there is no question of files being taken away from him and transferred to somebody else.

6) We direct that this very Deputy Collector (Encroachment and Removal) is the competent authority for the present case and he shall continue with the proceedings and pass the order. None would have any objection to appear before him without prejudice to their rights and contentions. None of the counsel have objected to this course either. In these circumstances, this officer should continue with the hearing and pass a reasoned order as expeditiously as possible and within a period of three weeks from today.

7) The petitioners as also the developer are free to place before this officer such materials as are permissible in law, including certified true copies of public documents and records. They can also file copies of the proceedings in this court and which contain the affidavit, according to them, of the State officials with regard to the status of the lands involved.

8) We do not express any opinion on the rival contentions, but dispose of this petition with the direction that no extension will be granted and the reasoned order should be passed within a period of three weeks from today.

9) While we take the affidavit in rejoinder tendered by Mr. Sakhare learned Senior Counsel appearing for the petitioners today on record of this petition, we clarify that we have expressed no opinion as far as merits of the controversy or the jurisdiction and the competence of the authority.

10) Needless to clarify that our order protecting the petitioners' possession shall continue until the Deputy Collector passes requisite orders pursuant to our direction and for a period of four weeks thereafter in the event the order is adverse to the petitioners.

11) With the aforesaid directions, the writ petitions are disposed of.

(DR. SHALINI PHANSALKAR-JOSHI, J.) (S.C.DHARMADHIKARI, J.)