

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

WRIT PETITION NO. 2783 OF 2014

Narialwadi Zopadpatti Welfare	}	
Society and Anr.	}	Petitioners
versus		
State of Maharashtra and Ors.	}	Respondents

Mr. Mihir Desai - Senior Adocate with
Mr.Chetan Mali and Mr. Vinamra
Kopariha for the petitioners.

Mr. M. A. Sayed - AGP for respondent
no.1.

Mr. Jagdish Reddy (Aradwad) for
respondent no. 2.

Mr. H. C. Pimple - for respondent no. 3.

Mr. R. A. Thorat - Senior Advocate with
Mr. Dharam Sharma and Ms. Uma
Sharma i/b. M/s. Dharam and Co. for
respondent nos. 4 and 5.

Mr. Sanjay R. Birwadkar - Rent
Supervisor (Estate), E/Ward present.

Ms. Shivani Lad - Rent Collector (Estate),
E/Ward present.

**CORAM :- S. C. DHARMADHIKARI &
B. P. COLABAWALLA, JJ.**

DATED :- OCTOBER 10, 2016

P.C. :-

1. This petition, under Article 226 of the Constitution of India,
prays for issuance of a writ of Certiorari to call for the records of
the case and upon scrutiny of the orders dated 21st May, 2011

and 30th April, 2012 as to their legality and validity, quash and set aside the same.

2. The further prayer is to quash a Letter of Intent (LOI) dated 3rd December, 2008 and Intimation of Approval dated 8th May, 2009. Lastly, it is submitted that the authority, namely, the Slum Rehabilitation Authority (hereinafter referred to as the "SRA") be directed to determine as to whether 70% of the occupants of Narialwadi are in favour of the development of the property by respondent no. 6.

3. It is the case of the petitioners that petitioner no. 1 is a welfare society, though registered as a public charitable trust of the slum dwellers residing in Narialwadi Zopadpatti. The second petitioner is a trustee and committee member. Respondent no. 1 is the State, whereas, the second respondent is the SRA and third respondent is the Municipal Corporation of Greater Mumbai. The fourth respondent is a co-operative housing society, whereas, respondent no. 5 is another developer.

4. The argument before us is that a plot of land bearing CTS Nos. 626 to 629 situate at Sant Sawta Marg, Narialwadi, Mazgaon Division, Mazgaon, Mumbai 400 010 admeasures 5504.21 square meters. This land belongs to and is owned by the Municipal

Corporation of Greater Mumbai. There are structures, which are standing on this land. There are two types of structures. One set of structures is occupied by vacant land tenants, where the rent is paid to the Municipal Corporation. There are 78 such rooms. Then, there are slum structures and they are inhabited by 112 persons.

5. The 112 slum dwellers are members of petitioner no. 1. These slum dwellers joined together and submitted a proposal for redevelopment under the then existing Slum Rehabilitation Scheme with respondent no. 6 as a developer. The scrutiny fee was paid by an architect. At that time 100% occupants had given their consent. A certificate was issued by the Municipal Corporation on or about 22nd May, 1995 certifying that the area of the plot was 5504.21 square meters. There were total 205 structures, out of which, 112 were censused/protected. The consent letters were also issued and the percentage of the slum dwellers is 100%. Thereafter, another society, namely, Asiana Narialwadi Co-operative Housing Society Ltd./respondent no. 4 also applied for redevelopment. In a note made on 5th December, 1995 by the official of the Municipal Corporation, it was stated that there are 241 structures on this plot, out of which, 230 were censused and eligible for alternate site. 183 of the eligible slum

dwellers became members of the Asiana Narialwadi Co-operative Housing Society and consented to participate in the Slum Rehabilitation Scheme. Annexure 'D' is a copy of this noting. Then, there was scrutiny of the 78 vacant land tenants and it is alleged that there are malpractices and the fourth respondent society had inflated the names. Therefore, a letter was addressed on behalf of occupants of these structures by the Municipal Corporation to the architect of respondent no. 4 society that the redevelopment was without consent of the occupants.

6. It is common ground that a writ petition was filed in this court by the petitioners being Writ Petition No. 1446 of 1996. That was dismissed on 20th August, 1996 by a learned Single Judge of this court. That order was challenged by filing Appeal No. 988 of 1996. That appeal was admitted and finally, on 22nd April, 1998, a Division Bench of this court heard that appeal, set aside the order of the Single Judge and remanded the matter for re-hearing. Respondent no. 4 challenged this order by approaching the Hon'ble Supreme Court of India, but even that special leave petition was dismissed.

7. The learned Single Judge heard the matter on 29th January, 1999, but did not accept the claim and case of the petitioners. Rather, he decided in favour of respondent no. 4 society. An

appeal was preferred by the Petitioners being Appeal No. 886 of 1999. That was admitted. It was disposed of finally on 4th November, 2004 directing the SRA to scrutinise and verify as to which society enjoys the consent of 70% slum dwellers/occupants.

8. Thereafter, the Chief Executive Officer of the SRA, under his supervision, undertook the exercise and it is claimed that an order was passed on 19th August, 2006 in favour of respondent no. 4 society. That order was challenged before the Housing Minister. He granted a stay. Subsequently, that stay order was vacated. Once again, a writ petition was filed in this court being Writ Petition No. 6707 of 2010 challenging the orders as above. That was dismissed on 13th October, 2010 directing the petitioners to approach the High Power Committee. The petitioners, thereafter, approached the High Power Committee by filing Appeal No. 3 of 2011.

9. In the meanwhile, information obtained by the petitioners reveals that on 6th March, 2009, the Municipal Corporation has issued a letter to petitioner no. 2 stating that no Annexure - II has been issued to respondent no. 4 society. The petitioners claim that Annexure - II was issued to petitioner no. 1. Yet, action under section 33/38 of the Slum Areas (Improvement, Clearance

and Redevelopment) Act, 1971 was initiated against 16 members of the petitioner society in the year 2009. Notices and orders in furtherance thereof were challenged in an appeal before the Additional Commissioner, but he dismissed that appeal. Then, these orders were also challenged by way of a writ petition, which was dismissed on 13th April, 2011 observing that the 16 members cannot challenge the scheme. Thereafter, an appeal was preferred by them against the order of the learned Single Judge. It was dismissed with liberty to intervene in the pending appeal/application before the High Power Committee. It is in these circumstances that Mr. Desai learned senior counsel appearing for the petitioners submits that the High Power Committee was obliged to consider the challenge to the order dated 19th August, 2006. The scheme of respondent no. 4 is entirely bogus. It concerns the land of the Municipal Corporation. There are 242 slum dwellers. However, the Annexure - II, copy of which is to be found at pages 37 to 40 of the paper book, would reveal as to how, later on, the number of members has been inflated to 242. There are bogus consents, which have been obtained. Mr. Desai invites our attention to page 41 of the paper book, which is a certificate issued by the Municipal Corporation, to submit that the version that there is consent of 70% slum dwellers, is entirely incorrect. Rather, the record would indicate

as to how it was prayed before the High Power Committee as well that the number has kept on shifting and changing. It is the developer, who was engaged by respondent no. 4 society, who is indulging in this falsification of the records. Therefore, the High Power Committee was obliged to consider the matter in depth and render a conclusion on these vital aspects of the matter. That having not been done, it is submitted that the writ petition be allowed.

10. On the other hand, all the contesting respondents and particularly respondent nos. 4 and 5, through their learned senior counsel, would submit that the successive writ petitions and raising the same issues took all the time for disposal. It is eventually the order of the Chief Executive Officer dated 19th August, 2006, which activated the whole project. Now, there are subsequent orders and it is established and proved that out of 242 slum dwellers, 231 are eligible. The LOI was issued on 22nd June, 1996. The revised LOI is issued on 3rd December, 2008. The construction of rehab buildings is allowed. Even transit camps are erected. When we inquired from Mr. Thorat learned senior counsel appearing for respondent nos. 4 and 5, on instructions, he made a statement before this court that these respondents would commence and complete the construction at

site within a period of two years from today. We accept this statement made as an undertaking given to this court. Mr. Thorat reiterated the finding of the High Power Committee that no evidence was placed on record to establish and prove the allegation that 35 tenants are bogus or their consents are not valid. For all these reasons, he would submit that in factual matters this court should not interfere, but proceed to dismiss the writ petition.

11. After having heard Mr. Desai and Mr. Thorat and perusing, with their assistance, the petition paper book, we are of the opinion that the writ petition deserves to be dismissed.

12. The High Power Committee has found and as a matter of record that repeated attempts have been made to stall and obstruct the scheme. The petitioners before us challenged the order passed on 19th August, 2006 passed by the Chief Executive Officer of the SRA. The ground raised was of forgery and fraud. The main contention was that the Municipal Corporation has issued a fraudulent Annexure - II. The consent obtained for implementation of the scheme by respondent no. 4 society is bogus.

13. At page 176 of the paper book, the High Power Committee has rendered a finding of fact that the complainants/petitioners have only mentioned the names of 35 tenants, who, according to them, are bogus. However, when their consents and in writing were placed on record, it was incumbent upon the petitioners to produce evidence so as to falsify the contents of these documents. The petitioners have not made any averment in the application nor have they supplied any particulars. They filed written submissions before the High Power Committee on 14th November, 2011. In that as well, they did not rely on any material to support the contentions.

14. The committee then considered the facts of this case and found that despite successive writ petitions in the High Court raising the same issues again and again, the petitioners have not been able to place on record any material to prove that the consent is vitiated. Eventually, 70% of those eligible have consented to the implementation of the scheme. The consent is of the required percentage of eligible slum dwellers. In paras 10, 11 and 12, after having noted this aspect and object and purpose of the scheme, the High Power Committee found that this is not a matter where the petitioners can be assisted in any manner. The record indicates and throughout that even those persons, who

were obstructing the scheme, namely, the 16 members, out of the list of 78 (vacant land tenants), were also not able to substantiate the selfsame allegations. Thus, the attempt throughout made to stall the scheme for all these years has now been highlighted and that is discouraged by the impugned orders.

15. When such is the state of affairs and it is the Municipal Corporation's land, which requires urgent redevelopment so as to rehouse eligible occupants, then, all the more we are disinclined to entertain the writ petition. More so, in the light of the undertaking given by the learned senior counsel appearing for respondent nos. 4 and 5. We agree with the factual findings, which have been recorded in the orders passed by this court and particularly in the order dated 13th April, 2011 rendered in Writ Petition No. 4377 of 2010, copy of which is to be found from pages 131 of the paper book.

16. As a result of the above discussion, the writ petition fails and it is dismissed.

17. It was pointed out to us on the earlier occasion by Mr.Thorat that it is not entirely due to the actions of the developer and the society of the slum dwellers and the other eligible occupants that they are languishing in transit

accommodation or are obtaining some monetary benefit in lieu thereof. We impressed upon Mr. Thorat that from the time the LOI was issued i.e. way back in 1996, no concrete steps have been taken for these 20 years. He stated that respondent nos. 4 and 5 have faced several obstacles and hurdles and one of which was from a vacant land tenant. That single and solitary occupant held up the scheme for quite sometime. His case was also considered, according to Mr.Thorat in other writ petition by this court, but was rejected. That person has still not been ousted, from the single/solitary structure at site, by the Municipal Corporation. We directed Mr. Pimple to inquire as to why this occupant has not been removed. Today, when the matter was placed for passing final orders, on instructions, Mr. Pimple states that the possession of the single structure has been taken by the Municipal Corporation and it has placed its seal and lock on the same.

18. Now, the question is of demolition of this structure. It would be open for respondent nos. 4 and 5 to demolish this structure in the presence of the municipal officials and the staff of the local police station, after an inventory is made of the articles and belongings inside the premises. These articles and belongings, after the inventory is prepared, shall be placed in the custody of

the Assistant Municipal Commissioner of the concerned ward. Thereafter, the property, in complete vacant state, be handed over to respondent nos. 4 and 5 so that the construction work can be carried out and completed in full swing.

(B.P.COLABAWALLA, J.) (S.C.DHARMADHIKARI, J.)