

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Writ Petition NO. 3961 OF 2017

Lalji Vishwakarma
And Ors.

...Petitioners

Versus

The State Of Maharashtra
And Ors.

...Respondents

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Ms.Minal Chavan, Advocate for the Petitioners.

Ms. Vaishali Nimbalkar, A.G.P. for respondents No.1 to 3.

Mr.S.G. Surana i/b. Mr.M.S. Surana, Advocate for Respondent No.4.

Mr.Rishikesh Soni, Advocate a/w. Ashok Purohit i/b. Ashok Purohit & Co. for Respondent No.6.

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CORAM : R. G. KETKAR, J.

RESERVED ON : 11.4.2017

PRONOUNCED ON : 21.4.2017

ORAL ORDER :

1. Heard Ms.Minal Chavan, learned counsel for the petitioners, Ms. Vaishali Nimbalkar, learned A.G.P. for respondents No.1 to 3, Mr. S.G. Surana, learned Counsel for respondent No.4 and Mr.Rishikesh Soni, learned counsel for respondent No.6, at length.

2. By this Petition under Article 227 of the Constitution

of India, the petitioners have challenged the judgment and order dated 10.5.2016 passed by the Deputy Collector (Encroachment/Removal)-cum-Competent Authority, Andheri as also the judgment and order dated 17.2.2017 passed by the Additional Collector (Encroachment/Removal), Western Suburbs in Appeal preferred by the petitioners. By these orders, the authorities below have directed the petitioners to hand over possession of their structures (huts) by accepting the amount offered by respondent No.4 Developer, failing which the removal squad will evict the petitioners.

3. In support of this Petition, Ms. Chavan strenuously contended that respondent No.4 developer is hand in gloves with respondent No.5, proposed society. She submitted that respondent No.4 has played fraud upon the slum dwellers as also the petitioners. Respondent No.2 has prepared all three Annexure-II at the instance of respondent No.4. These Annexures were not shared with the petitioners as well as other slum dwellers. Respondent No.4 does not have 70% consent of the slum dwellers which includes the petitioners. Respondent No.4 has submitted fake or bogus documents to the authorities and thus has played fraud for implementation of the

scheme. Respondent No.4 has submitted 28 bogus consent agreements in the office of the second respondent. There are 30 names and signatures of unknown persons or the strangers whose structures are not part of Annexure-II. Their names do not appear in Annexure-II. She further submitted that there are 24 eligible slum dwellers in all three Annexure-II whose consent agreements are not available in the official records of the second respondent.

4. Ms. Chavan further submitted that Annexure-II were sanctioned or issued in the name of non-registered welfare society. Respondent No.5 was registered on 23.3.2007 with the Charity Commissioner, Mumbai after issuance of Annexure-II. The office bearers of respondent No.5 are non-residents of the land where redevelopment scheme is being implemented. Their names are also not in Annexure-II. However, they are holding positions of office bearers of the fifth respondent and their consent agreements and rent agreements have been executed with respondent No.4 for the S.R.A. Scheme. Respondent No.6 has issued Annexure-III where respondent No.4 is shown as a Proprietary Concern. However, during the proceedings under Sections 33/38 and 35 of the Maharashtra Slum Areas

(Improvement, Clearance and Redevelopment) Act, 1971 (for short, 'Act'), respondent No.4 claimed to be a registered partnership firm. Respondent No.4, however, has not complied with the procedure of getting revised Annexure-III in view of change of its entity.

5. Ms. Chavan further submitted that I.O.A. and L.O.I. had expired when notices under Sections 33/38 of the Act were issued to the petitioners and other slum dwellers. Respondent No.6 has not provided any information about the validity of I.O.A. And L.O.I. She further submitted that out of 16 petitioners, 12 petitioners are found to be eligible. In respect of remaining four petitioners, the proceedings are pending before the High Power Committee for determination of their eligibility. The proceedings are pending for hearing since more than one year. It is, therefore, necessary to issue appropriate directions to High Power Committee to decide the appeal and till such time the appeal is decided, the impugned orders may be stayed.

6. Ms. Chavan invited my attention to 29 fake/bogus consent agreements as also 82 consent agreements executed in favour of M/s. Citizen Trading Private Ltd. and not in favour of

respondent No.4. She also invited my attention to circular No.147 dated 4.7.2014 issued by respondent No.6–S.R.A.

7. On the other hand Mr. Surana supported the impugned orders. He has taken me through the affidavit-in-reply dated 7.4.2017 of Deepak V. Sharma, Partner of respondent No.4. He submitted that respondent No.4 is owner of C.T.S. No.828(Part) of village Marol, Taluka-Borivali, M.S.D. The petitioners including other occupants are the rank trespassers on the suit property. He relied upon the decision of Division Bench of this Court in the case of **Avadhesh V. Tiwari and others v C.E.O., S.R.A. and others, 2006(4) Mh.L.J. 282** and in particular paragraph-13 thereof. In paragraph-13, Division Bench has held that the right of a hutment dweller who is in possession of a hutment on an area to which the scheme is made applicable is for a tenement admeasuring 225 sq. ft. in exchange of the hut irrespective of the area of the hut. An individual hutment dweller gets this limited right apart from right to seek protection from eviction under Section 3Z(1) of the Act. There is nothing in the scheme of Regulation 33(10) of the Development Control Regulations for Greater Mumbai, 1991

that an individual slum dweller gets a right to decide which society or which developer should implement the scheme.

8. Mr. Surana further submitted that the suit property was occupied by 94 occupants. Out of 94 occupants, 74 occupants are eligible. Out of 74 occupants, 57 eligible occupants have given their irrevocable consent to respondent No.4. He submitted that C.T.S. No.828(part) admeasures 1048.75 square meters. In that, there were 64 structures. Out of those 64 structures, 39 structures are protected. Out of 39 structures, 38 structures are for residential use and one structure is for mixed user, namely, residential-cum-commercial. Out of 39 eligible slum dwellers, 38 slum dwellers have given consent for the proposed S.R.A. Scheme. He submitted that on 20.2.2006, the Competent Authority issued supplementary Annexure-II certifying that there are another 30 structures on the said property out of which 20 are eligible.

9. Mr. Surana further submitted that an area admeasuring 406 square meters of C.T.S. No.808(part) was amalgamated with an area admeasuring 1048.75 square meters of C.T.S. No.828(part). In respect of an area admeasuring 406

square meters, there are 30 structures. Out of these 30 structures, 20 structures (18 residential and 2 residential-cum-commercial) are eligible. Out of these 20 eligible slum dwellers, 15 eligible slum dwellers have given their consents. Thus, out of 74 eligible slum dwellers, 53 slum dwellers have given consent which is more than 70%.

10. Mr. Surana invited my attention to Annexure-A pages-308-309 to the affidavit. He submitted that while issuing Annexure-II, the Competent Authority has certified that more than 70% occupants have given their consent to the fourth respondent. Respondent No.6 S.R.A. has approved the scheme and issued Letter of Intent on 14.6.2012. The competent authority has revised Annexure-II from time to time and held additional occupants are eligible.

11. Mr. Surana further submitted that out of 16 petitioners, 12 petitioners are found eligible. He further submitted that if the remaining 4 slum dwellers are held eligible, even they will be eligible to allotment of one self-contained rehab tenement free of costs on ownership basis. He, therefore, submitted that no case is made out for interfering

with the impugned order.

12. I have considered the rival submissions advanced by learned Counsel appearing for the parties. I have also perused the material on record. The petitioners have challenged the orders passed by the authorities below in proceedings initiated under Sections 33/38 of the Act. Section 33 of the Act lays down that where a competent authority is satisfied either upon a representation from the owner of a building or upon other information in its possession, then the occupants of the building have not vacated it in pursuance of the direction issued or given by the authority, however, by order which direct eviction of the occupants subject to giving reasonable opportunity to show cause as to why they should not be evicted. Ms. Chavan submitted that respondent No.4 has played fraud upon the authorities as also upon the slum dwellers including the petitioners. It is not possible to accept this submission. The scope of the proceedings under Sections 33/38 is very limited and the contentions raised by the petitioners are not the grounds for challenging the orders passed under Sections 33/38 and 35 of the Act.

13. Respondent No.4 is the owner of the said property. Out of 94 occupants, 74 occupants are held eligible. Out of 74 eligible occupants, 57 eligible occupants have given their irrevocable consents. On 11.6.2004, the Competent Authority certified that there are 64 structures on the suit property, out of which 25 occupants were held eligible. On 6.4.2005, respondent No.6 decided the eligibility of 15 other occupants and held them eligible. On 20.2.2006, the Competent Authority issued supplementary Annexure-II certifying that out of 30 structures, 20 structures are found to be eligible. Thus, the Competent Authority has certified that there are 94 structures on the suit property out of which 74 structures are protected and the scheme is supported by 70% consents of eligible slum dwellers.

14. In the affidavit-in-reply filed on behalf of respondent No.4, it is contended that out of 16 petitioners, 12 petitioners are eligible and if remaining 4 petitioners are also held eligible, they are entitled for allotment of self-contained rehab tenement free of costs on ownership basis. Respondent No.4 has started implementation of the scheme and has paid rent/compensation to near about 30 occupants who have vacated their structures by accepting rent/compensation and their structures are

demolished. It is further set out that since last about three years, respondent No.4 has paid more than Rs.1 Crore towards the rent/compensation of transit tenements to 30 occupants. In view thereof, no case is made out for invocation of powers under Article 227 of the Constitution of India. Hence, Petition fails and the same is dismissed.

15. At this stage, Ms Kabre, learned Counsel appearing for the petitioners orally applies for four weeks time for vacating the structures in their possession. Mr. Surana opposes on the ground that entire project is stalled.

16. Having regard to the fact that out of 16 petitioners, 12 petitioners are found eligible and further having due regard to the fact that on behalf of respondent No.4 statement is made that in the event the remaining 4 slum-dwellers are held eligible, they will also be entitled to allotment of one self-contained rehab tenement free of costs on ownership basis, no case is made out for granting any interim order. Hence, the oral application is rejected. Order accordingly.

(R. G. KETKAR, J.)