

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 7007 OF 2016

M/s. Reliance Enterprises .. Petitioner
vs.
Shri. Mohamad Naiem Shaikh
and ors. .. Respondents

WITH
WRIT PETITION NO. 7006 OF 2016

M/s. Reliance Enterprises .. Petitioner
vs.
Shehzadi Begum Shaikh and ors. .. Respondents

WITH
WRIT PETITION NO. 7005 OF 2016

M/s. Reliance Enterprises .. Petitioner
vs.
Parvin Imran Ansari and ors. .. Respondents

Mr. G.S. Godbole i/b Merlyn Dias for the Petitioner.
Mr. S.P. Nalavade for Respondent No.1.
Mr. S.H. Kankal, AGP for Respondent -State .

CORAM : M. S. SONAK, J.
DATE : 20 SEPTEMBER 2017.

COMMON ORAL JUDGMENT :-

1] Mr. Godbole, learned counsel for the petitioners, in each of the petitions, craves leave to delete respondent Nos.2 to 4. Leave is granted. Amendment to be carried out forthwith.

2] Heard learned counsel for the parties.

3] Rule. With the consent of and at the request of learned counsel for the parties, Rule is made returnable forthwith.

4] The challenge in all these petitions is to the order dated 7th December 2015 made by the Additional Collector (E/R) exercising appellate jurisdiction under Section 35 of the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971 (Slum Act). The impugned order is a common order made in all five appeals. However, in these three petitions, we are concerned with Appeal Nos.42 of 2015, 44 of 2015 and 46 of 2015.

5] By the impugned judgment, the Appellate Authority has set aside the orders dated 19th January 2015 made by the Competent Authority and remanded the matters to the Competent Authority for reconsideration.

6] Mr. Godbole, learned counsel for the petitioners, submits that the appellants, in aforesaid three appeals, have been held to be ineligible to the benefits of redevelopment scheme. Since, they were not vacating the area under their occupation, the Competent Authority, made orders under Sections 33 and 38 of the Slum Act for

their removal. The Appellate Authority, in the impugned order, has held that such orders ought not to have been made until the issue of eligibility of the appellants in the three appeals was sorted out or finally decided. It is basically on this ground that the order dated 19th January 2015 made by the Competent Authority has been set aside and the matters are remanded to the Competent Authority.

7] Mr. Godbole submits that as a result of the impugned order, further redevelopment has come to a halt almost indefinitely. He submits that several other dwellers who have been adjudged as eligible have already vacated the area. He submits that without prejudice, the petitioner is prepared to pay 18 months rent in lieu of alternate accommodation to the three appellants. He submits that during the period of 18 months, it is for these appellants to sort out their issue of eligibility, if the appellants are adjudged as eligible, the petitioners, will have no difficulty granting them the benefits of redevelopment scheme. However, the entire redevelopment cannot be stalled in this manner. He relies on the decision of this Court in *Seva Co-operative Housing Society and ors. vs. M/s. Reliance Enterprises Pvt. Ltd. and ors. (Writ Petition No. 3792 of 2016 decided on 16th April 2016)* and the order made by the Hon'ble

Supreme Court on 25 April 2016 declining to interfere against the said order. He points out that the said orders also concern the petitioner and the development which the petitioner is undertaking. Mr. Godbole submits the said order applies squarely to the present petitions.

8] On the other hand, Mr. S.P. Nalavade, learned counsel appearing for respondent No.1 (appellants) before the Appellate Authority, in all the three petitions, submits that the petitioners have played fraud in getting approvals for the Scheme. He points out that the petitioners by their communication dated 6th September 2004, had applied for development in respect of Aradhana Society and Seva Cooperative Housing Society. He points out that the premises which are in the occupation of respondent No.1 do not pertain to either of the societies. He submits, therefore, that the permission for redevelopment stand vitiated by fraud. Further, he submits that until the issue of eligibility of respondent No.1, in each of these petitions, is decided, the said respondents cannot be ordered to be evicted from the premises in their occupation. He points out that several other occupants who were declared as eligible or ineligible are at the site and therefore, there is really no reason to make orders under

Sections 33 and 38 of the Slum Act. For all these reasons, Mr.Nalavade submits that these petitions are required to be dismissed.

9] Having considered the rival submissions, perused the impugned order as well as other material on record, I am satisfied that this is a case where the impugned order is required to be suitably modified.

10] In this case, before quite some time permissions/approvals for redevelopment have been granted. The validity or otherwise of such permission/approval is really not the subject matter of these petitions, because the same was not the subject matter of the appeals before the Appellate Authorities. In fact, in the impugned order, it is recorded that the appellants in Appeals had made a statement that they are not against the Scheme, but their basic grievance relates to their being declared as ineligible, on account of some discrepancy in names and such other untenable reasons. In these circumstances, the contention of Mr.Nalavade as regards fraud or any illegalities in the approvals/permissions for redevelopment Scheme cannot be entertained in these petitions.

11] In these cases, there is no dispute that at least as of now, respondent No.1, in each of the petitions, have been held to be ineligible to receive the benefits of the redevelopment. Mr. Nalavade was not quite clear as to whether the issue of their eligibility is pending before any Authority. Be that as it may, liberty can always be granted to respondent No.1, in each of the petitions, to take out proceedings before the appropriate Authorities for determination of their eligibility or for challenging their ineligibility. In fact, if respondent No.1, in each of the petitions, take out such proceedings within a period of one month from today, then, the Authority concerned is directed to adjudicate upon the same on merits, without advertent to the issue of limitation, if any. The Authority concerned, should endeavour to dispose of these proceedings, if initiated, within a period of six months from the date of their institution.

12] However, until the issue of eligibility is determined, it is not possible to countenance a situation where the entire redevelopment is stalled. The impugned order, which has such effect, is therefore required to be modified. It is to be noted that even if respondents No.1, in each of the petitions, were to be adjudged as eligible to the

benefits of redevelopment, they would have to vacate their premises in occupation and make way for redevelopment. At the highest, they would get the benefits of redevelopment as well as benefits of transit accommodation or compensation in lieu of transit accommodation. Respondents No.1, in each of the petitions, who have been declared as ineligible cannot be any higher pedestal than even their eligible counterparts.

13] In this case, the petitioner, has offered to pay 18 months compensation in lieu of alternate accommodation. In this regard, Mr.Godbole had offered to hand over post dated cheques for 18 months at the rate of Rs.10,000/- per month in respect of respondents No.1, in each of the petitions. Incidentally, Rs.10,000/- per month is the rate at which the compensation is paid even to eligible persons, who may not have been given transit accommodation. During this period, it is for respondents No.1, in each of the petitions, to sort out their issue of eligibility. If they are held as eligible, no doubt, they will be entitled for benefits of redevelopment. If they are held as ineligible, Mr. Godbole makes a statement that no refund will be sought from them in respect of the compensation of 18 months. This, substantially, protects the interest

of respondents No.1, in each of the petitions.

14] This Court, in case of *Seva Co-operative Housing Society (supra)*, made the following observations :-

“6. I have considered the rival submissions advanced by the learned counsel appearing for the parties. I have also perused the material on record. As noted earlier, the Competent Authority passed order under sections 33 and 38 of the Act and declared that 23 persons are ineligible. The Competent Authority also directed these persons to vacate the premises in their possession and hand over vacant and peaceful possession to the first respondent. Section 33 of the Act empowers the Competent Authority to pass orders directing eviction of occupants from the premises subject to giving reasonable opportunity to occupants to show cause as to why they should not be evicted therefrom. Section 38 thereof empowers the Competent Authority to make orders directing demolition of building in certain cases. As noted earlier, the Competent Authority exercised powers under sections 33 and 38 of the Act after giving apartments to the affected persons. Aggrieved by that order, 14 persons out of 23, preferred Appeal. Perusal of Exhibit-E (Pages 52 to 63 of writ petition compilation) shows that Appeal was preferred by the petitioners as a proposed society through its members who are 14 in persons against respondents no. 1 and 2. By order dated 3.3.2016, Addl. Collector dismissed the Appeal and confirmed the order of the Competent Authority subject to certain directions. Perusal of that order shows that main contention advanced before Addl. Collector was as regards validity of Annexure-II. Mr. Godbole and Mr. Apte submitted that the remedy to challenge Annexure-II is by approaching H.P.C as per the Full Bench decision of this Court in the case of *T.N.Co-op.Hsg.Society Vs. State of Maharashtra*, 2007(6) Mh.L.J. 851. Mr. Bhatt did not dispute this proposition. In view of paragraphs 114(c) and 118 (D) of *T.N.Coop. Hsg Society (supra)*, if any party is aggrieved by Annexure-II, it has to approach H.P.C. Thus, Addl. Collector could not have gone into validity or otherwise of Annexure-II and has to proceed on the basis that the said Annexure is valid.

Understood thus, I do not find that the Competent Authority committed any error in passing the orders under sections 33 and 38 of the Act as also Addl. Collector in dismissing the Appeal.

7. Mr. Godbole appearing for respondent no.1 reiterated that 3 ineligible slum dwellers who are appellants no. 7, 9 and 12 before the Addl. Collector will be given 18 months rent and if they approach the Competent Authority along with documents for establishing their eligibility as per Government Resolution dated 16.5.2015 and if they are found eligible, then respondent no.1 will also give all benefits which are otherwise given to 11 appellants who were found eligible. Statements made by Mr. Godbole are recorded.”

15] The Hon'ble Supreme Court in its order dated 25th April 2016 has made the following order:

“Upon hearing the counsel the Court made the following

O R D E R

Since the petitioners have cured the defects, and paid the deficit Court fee, Registry is directed to register the instant special leave petition.

We have heard learned counsel for the rival parties.

Learned counsel for the petitioners states, that all the petitioners shall handover vacant possession of their hutments to respondent no.1 – M/s. Reliance Enterprises Private Limited, within seven days from today, i.e., on or before 2.5.2016. Learned counsel for the petitioners further states, that 11 of the eligible slum dwellers mentioned in the order dated 3.3.2016 passed by the Court of the Additional Collector (Encroachment/Eviction), Western Suburbs and Appellate Authority, Mumbai, have to be paid monthly rent, which has not yet been paid to them.

Learned counsel representing respondent no.1 – M/s Reliance Enterprises Private Limited undertakes to pay all the 14 slum dwellers, referred to in the order dated 3.3.2016, eighteen months' advance rent, within two days, by way of post dated cheques. It is submitted, that the 11 eligible slum dwellers will be continued to pay rent even thereafter. But payment to three ineligible slum dwellers would be made only

upon their obtaining appropriate orders of eligibility.

In view of the above, the instant petition is disposed of with a direction to petitioner nos. 2 to 15 to vacate their hutments, within seven days from today. Likewise, the respondent no.1 shall pay rent, as undertaken, within the time stipulated.

As a necessary consequence of the above order, the demolition of the hutments of petitioner nos. 2 to 15 shall remain stayed, till 2.5.2016.

Disposed of in the aforesaid terms.”

16] The aforesaid orders apply to the present petitions, as well. The impugned orders therefore warrant modification. The order made by the Competent Authority on 19th January 2015, is upheld and restored. However, it is directed that the same will be implemented only after a period of two months from today. Further, prior to implementation of the order dated 19th January 2015, the petitioners, shall hand over the cheques towards compensation in lieu of transit accommodation for 18 months at the rate of Rs.10,000/- per month to respondents No.1, in each of these petitions. Further, the petitioner, shall file necessary undertakings before the Competent Authority to effect that they will grant benefits of redevelopment to respondent No.1, in each of the petitions, should the said respondents be held as eligible to the benefits of redevelopment.

17] Rule is made partly absolute to the aforesaid extent. There shall, however, be no order as to costs.

18] The Competent Authorities to act on the basis of authenticated copy of this order.

(M. S. SONAK, J.)