

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

WRIT PETITION LOD.NO.1935 OF 2017

Sahayog Rahiwasi Seva Committee & Ors. .. Petitioners

Versus

Municipal Corporation of Gr. Mumbai
and Ors. .. Respondents

Mr. Girish Godbole with S.B.Pawar i/b. M/s. S.K.Legal Associates for
petitioners

Mr. E.P.Bharucha, Senior Advocate with Ms. K.H.Mastakar for
respondent Nos. 1 to 3

Mr. Hemant Haryan Asst. Government Pleader for respondent No.4

Mr. Atul Damle, Senior Advocate with Pradeep J. Thorat for
respondent No.5

CORAM : B.R.GAVAI &
M.S.KARNIK, JJ.

DATE : 25th September 2017.

P.C.

1] Rule. Rule made returnable forthwith. Heard by
consent.

2] The petitioners have approached this Court being aggrieved
by the notices dated 1st January 2016 vide which the petitioners
have been informed that action would be taken in respect of their

structures under the provisions of section 314 of the Mumbai Municipal Corporation Act.

3] The petitioners are slum dwellers. Respondent No.5 is a society of occupants of flats constructed. It appears that initially as per the Development Plan of 1999 there was to be a rail over bridge of 21.35 meters width and on the two sides of the rail over bridge there were to be two development plan roads one measuring 15.25 meters and other one is 6.70 meters.

4] It appears that since the Corporation was not taking steps by removing unauthorised structures and developing the D.P. road, the respondent No.5 society which did not have an access, approached this Court vide W.P.No.3101 of 2014. The Division Bench of this Court passed the following order on 13th October 2015:-

“1.

2.

“3. By way of interim relief, we direct the Municipal Corporation to take all possible steps to remove encroachments on the land covered by the Development Plan Road and to ensure that the Development Plan Road is constructed at the earliest in accordance with law. If there are private properties

which are covered by the Development plan road, the Municipal Corporation shall take steps in accordance with law to acquire the private properties.

4. The learned Counsel appearing for the petitioner states that the petitioner is ready and willing to hand over possession of the property in its possession for the construction of development plan road. it is obvious that even if the petitioner wants to hand over the possession, the property should be free from all encumbrances.”

5] It appears that pursuant to the orders passed by this Court, the impugned notices were served upon the petitioners on 1st January 2016. Being aggrieved thereby, the petitioners have approached this Court by way the present petition.

6] However, it appears that during the pendency of the present petition, certain developments have taken place. Since, the MMRDA has already constructed a rail over bridge within a distance of half a kilometer from the proposed rail over bridge in the proposed D.Plan of 2034, the Corporation has done away with the ROB and instead of ROB it is proposed to have a 12.20 meters development plan road which connects the existing road and thereby provides a direct access to the residents situated at the said road of 12.20 meters, to the Swami Vivekanand Road. It would

also appear that in the proposed D.P. of 2034, there are two additional reservations apart from the existing garden which are provided, one being for rehabilitation and resettlement of the slum dwellers and another one is for parking lot.

7] It could thus be seen that in view of the proposed D.P. of 2034, the structures of petitioners would not be affected. It will also be relevant to refer to an affidavit filed by Mr. Surendra Chavan dated 8th September 2017. Along with the affidavit, a map is also placed on record as Exh.T-3. The map shows hashed line portion in black colour which is already acquired for the work and another area shown in hashed line portion in Red colour which is yet to be and required to be acquired. The map also shows the area which is already surrendered by respondent No.5 in favour of Corporation. It is also relevant to refer to para 14 of the said affidavit of Mr. Surendra Chavan.

8] It could thus be seen that in view of the subsequent development, the grievance of the petitioners would no more survive, inasmuch as, their structures would not be now affected for

the purpose of construction of D.P.Road which the Corporation proposes to construct.

9] Mr. Damle, learned Senior Advocate appearing for respondent No.5 would however submit that the stand of the Corporation in effect totally nullifies the statement made before this Court on 13th October 2015. He submits that when the Corporation had made a specific statement that they would take steps in accordance with law for removal of the encroachment, now the Corporation cannot be permitted to change the alignment of the road. He submits that this has been done only at the behest of local politicians so as to help the petitioners.

10] At the outset, we may mention that in the petition which was filed by the respondent No.5, neither petitioners herein or atleast some of them in the representative capacity were made party respondents. There is an order dated 13th October 2015 in Writ Petition No.3101 of 2014 so also an order dated 13th July 2017 in Notice of Motion No.145 of 2017 passed by this Court which adversely affects the rights of the present petitioners without they

being impleaded as party respondents in the said petition. In view of the law laid down by the Lordship of the Apex Court in the case of **Pobla Singh @ Rohla Ram and Ors. Vs. State of Punjab, reported in (2004) 6 SCC 126** the order passed in the petition filed by the present respondent No.5 would not bind the present petitioners and the present petitioners would be very much entitled to invoke powers of this court under Article 226 of the Constitution. In any case a perusal of the prayer clause made in the petition filed by respondent No.5 would itself reveal that the main relief therein was for providing permanent access to the plot of respondent No.5 herein by constructing 15.20 meters wide low level D.P. road. By the proposed D.P. of 2034, only the width of the said road is reduced to 12.20 meters from 15.25 meters. It would thus be clearly seen that the main relief which the respondent No.5 was seeking in its petition with respect to providing of access to S.V.Road would still stand granted in view of the proposed development plan of 2034.

11] Insofar as the allegations made by the respondent No.5 with regard to the development plan of 2034 that the same being passed at the behest of some politicians etc., we do not propose to go into

the said allegations in the petition filed by the present petitioners.

12] We, therefore, find that the grievance of the petitioners stands substantially satisfied. We, therefore, permit the Corporation to proceed further with the construction of the DP Road as provided in the proposed D.P. of 2034. Needless to state that in view of the change in development plan, the statement made by the Corporation in the earlier proceedings would not bind it.

13] We are, inclined to pass aforesaid order for two reasons. Firstly, the petitioners who are directly affected were not impleaded as party respondents in the petition filed by the respondent No.5 and secondly the proposed D.P. of 2034, apart from taking care of petitioner's interest, also substantially takes care of interest of respondent No.5 of providing access to its property.

14] In the facts and circumstances, we expect that the Corporation would expedite the matter with the authorities in charge of acquisition of the land and make an attempt to complete the road as far as possible within a period of one year from today.

15] Needless to state that in the event any of the structures of the petitioners are coming in the way of the D.P. Road, as per the D.Plan of 2034, the Corporation would be at liberty to take steps for removal of such structures in accordance with law.

(M.S.KARNIK, J)

(B.R.GAVAI, J.)