

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION (L) NO. 2014 OF 2017

Kaushalya Atmaram Shinde & Ors.
versus
Slum Rehabilitation Authority & Ors.

..Petitioners

..Respondents

Mr. Nitin P. Dalvi for the Petitioners.
Mr. A.P.Kulkarni for the Respondent No.1
Mr. L. T. Satelkar – AGP with Mr. Kunal Bhanage – AGP for the Respondent No. 3 – State.
Mr. A. Y. Sakhare - Senior Counsel with Mr. Ram Apte – Senior Counsel with Ms Geeta Joglekar for the Respondent No.2 – Mumbai Municipal Corporation.

CORAM: A. S. OKA & M. S. SONAK, JJ.
DATE : 22nd DECEMBER 2017

ORAL JUDGMENT (PER : A. S. OKA, J.)

1] Yesterday the petition was taken up for final hearing. The submissions were concluded yesterday. The issue involved in this petition is very narrow. In PIL No. 140 of 2006, on the basis of a scheme submitted by the officers of the State Government and the Mumbai Municipal Corporation, an order was passed by a Division Bench of this Court directing that slums/structures erected within a distance of 10 meters of both the sides of Tansa pipeline passing through the city of Mumbai should be removed. The said pipeline supplies drinking water to major parts of Mumbai from Tansa and other lakes in the Thane District. In short, the direction was to create a 10 meter wide open corridor on both the sides of the said pipeline. The reasons for passing a direction to clear the structures abutting the pipeline are very apparent. It will be

necessary to advert to the orders passed in PIL No.140 of 2006. In the order dated 29th July 2009, the Division Bench observed thus:

“This P.I.L. raises many important questions which concern the health and security of the citizens and the security of the city of Mumbai and the environment.

2. It is an admitted fact that the pipes carrying water from the source to Mumbai citizens are more than 100 years' old, and they carry water for 160 kilometers. From the record, it is evident that 90 kilometres of the pipes are overground, and 60 kilometres are underground. We are not sure, from the security point of view, whether these pipes are safe, particularly considering the present security environment of the country. We are also not sure whether the water, which is carried for the citizens of Mumbai, is hygienically safe, because throughout the route of these pipes, there are hutments built unauthorisedly by people.

3. According to the latest affidavit filed by the Municipal Corporation, there are more than 15,000 hutments, which are either adjacent to the pipeline or, even at places, over it. The Corporation submits that hutments constructed before 1995 are protected, and cannot be removed, unless the occupiers of those hutments are rehabilitated. This, in itself, is a huge task, but even after 1995, more than 8000 hutments have again come up. Therefore, the Municipal Corporation has also, in a way, failed to stop establishment of new hutments.

4. Now, in order to protect the pipelines, remove the hutments and ensure that the water, which is used by the citizens of Mumbai, is safe, and to ensure that these pipelines do not become a target for persons to attack the citizens of Mumbai, we feel that it needs concerted effort and a well thought over policy by various agencies, including the Government of Maharashtra. This Court will be handicapped in the absence of requisite inputs and data to give directions to achieve the purpose of ensuring safety and health of people of Mumbai.

5. Therefore, to enable this Court to pass orders, which ensure safety on account of health and security of the City of Mumbai, we appoint a Committee headed by the Chief Secretary of the State. This Committee shall have the Director General of Police, Maharashtra, the Municipal Commissioner, Mumbai Municipal Corporation, and the Finance Secretary, Government of Maharashtra, as Members. They shall meet soon, consider all

aspects of the matter, take assistance from any Department they like, which the Chief Secretary is otherwise authorised to do by virtue of his office, and submit a detailed plan of action to this Court within a period of 6 weeks. If the Committee, during its deliberations, feels it necessary to seek any clarifications from this Court, it shall be at liberty to approach the Court.”

PIL was disposed of by order dated 14th October 2009 which reads thus:

“We passed the order on 29.7.2009 and appointed a Committee headed by the Chief Secretary of the State. It is not disputed that the pipes carrying water from the source to Mumbai citizens are more than hundred years old, and they carry water for 160 kilometers. The Ninety kilometers of the pipes are over the ground and sixty kilometers are underground. There are hutments constructed by illegal encroachers in an around the pipes. Apparently, there is threat to the security as well to the health of the citizens of Mumbai. According to the Corporation, there are more than 15000 hutments either adjacent to the pipeline or even at the place over it. The Committee has made and has chalked out a plan by which the hutments would be removed by 2015 and the eligible encroachers would be rehabilitated. This plan has been signed by the Chief Secretary, the Finance Secretary and the D.G.P., of the State and is part of an affidavit filed by the Deputy Secretary to the Government of Maharashtra. We accept the affidavit and the plan and direct that the plan shall be implemented in accordance with the report of the Committee. In addition to this, we direct the D.G.P., to take all steps and measures which are necessary to protect the pipes and ensure that the water reaching Mumbai through these pipes is not polluted or used for any purpose which would endanger the lives of the citizens of Mumbai. The directions are given in the context of the security of the country and also of Mumbai which has experienced some of the worst terrorists attacks in recent past. With these observations, the writ petition is disposed of. In view of disposal of the main petition, the chamber summons does not survive, same is also disposed of.”

Thereafter, several directions have been issued for implementation of the aforesaid order. The directions issued by this Court in PIL No. 140 of 2006 have become final. The said directions have been accepted by the State of Maharashtra as

well as by the Mumbai Municipal Corporation and in fact several steps have been taken by the Mumbai Municipal Corporation on the basis of the order passed in the PIL by demolishing several structures and allotting alternate accommodation to the affected persons at Mahul in Mumbai.

2] The question is of rehabilitating occupants of the structures which are required to be demolished for giving effect to the directions issued in PIL. The Municipal Corporation is offering alternate residential accommodation to the occupants who are held to be eligible as per the relevant policy. A package of rehabilitation is being offered in a different form to the eligible persons who were occupying non-residential structures.

3] As far as the petitioners (total 400) are concerned, it is an admitted position that all of them were found to be eligible for allotment of alternate residential premises. It is also an admitted position that by issuing letters of allotment to the petitioners in the year 2016, the Mumbai Municipal Corporation (for short "the said Corporation") allotted premises in HDIL Premier SRA Buildings at Kurla (West), Mumbai (for short "the premises in HDIL"). It is also not in dispute that the petitioners have been placed in possession of respective residential premises in HDIL. A letter of allotment issued in December 2016 to one of the allottees has been annexed to the petition. There is no dispute that identical letters have been issued to all the petitioners.

4] The cause of action for filing this petition under Article 226 is the public notice published by the said Corporation, a copy of which is annexed at Exhibit 'A'. The public notice records that the Municipal Corporation was allotted 400 premises in HDIL for the purpose of rehabilitating the project affected persons of Tansa pipeline. It records

that as per the direction of this Court in PIL No. 140 of 2006, a decision has been taken to repossess the said 400 premises in HDIL allotted to the Municipal Corporation. It records that the present petitioners will be rehabilitated in buildings constructed at Mahul near Chembur. The public notice further records that an allotment of the premises in HDIL made to the petitioners is being cancelled and that a lottery will be held on 26th July 2017 at 3.00 p.m for the allotment of premises at Mahul. It also records that premises in HDIL are required to be handed over to the Municipal Corporation within three days. It is this public notice which is the subject matter of challenge in this Writ Petition. To narrow down the controversy, we make it clear that the parties to the petition have not disputed that there is no order passed by this Court in PIL No. 140 of 2006 which directs the cancellation of allotment of the premises in HDIL to the project affected persons or the petitioners. We have also perused the record of PIL No. 140 of 20016, we find that no such order has been passed by this Court. The public notice also gives an impression that a direction to the said effect has been passed in Writ Petition (L) No. 1158 of 2017 (which is on board today). Perusal of the farad sheet of the said Writ Petition shows that no such direction has been issued. Thus, the impugned public notice proceeds on a wrong premise.

5] The submission of the learned counsel appearing for the petitioners is that it is undisputed that the petitioners have right to rehabilitation by way of an allotment of alternate accommodation. He submits that the petitioners were allotted premises in HDIL on permanent basis. Now they cannot be evicted from the said premises without following due process of law as a right is created in their favour in respect of the premises in HDIL. His submission is that the allotment letters issued to the petitioners show that the allotment to the petitioners in the

premises in HDIL is of permanent nature and therefore, only on the basis of such a public notice, the petitioners cannot be evicted.

6] Another submission canvassed by the learned counsel appearing for the petitioners is that Rule was issued by this Court on 26th September 2017 but neither the Slum Rehabilitation Authority nor the State Government has filed any reply disclosing the reasons as to why and how a decision was taken to cancel the allotment made to the Municipal Corporation of the 400 premises in HDIL.

7] The stand of the learned senior counsel appearing for the said Corporation is that the premises in HDIL were allotted by the State Government to the said Corporation and now as per the directions of the State Government, the Slum Rehabilitation Authority (for short "SRA") has informed that the said Corporation is required to hand over possession of the said 400 tenements to the. It is stated that it is the only reason why the said Corporation has taken this move of calling upon the petitioners to vacate the premises in HDFIL and that the said Corporation is offering the premises to the petitioner at Mahul.

8] Yesterday, when the petition was called out for final hearing, we found that neither SRA nor the State Government had filed any reply. Therefore, we directed the learned counsel appearing for SRA to produce the relevant file. Accordingly, he produced the original file which we returned to him after perusing the same. He has placed on record a file containing photo copies of all the documents in the original file. His contention on the basis of the documents in the file is that the administration of SRA has acted in terms of the directions issued by the

Hon'ble the Chief Minister who is also the Chairman of SRA. He pointed out that this submission is borne out from the documents in the file.

9] The learned Additional Government Pleader states that the stand of the State is the same which is recorded in paragraph 8 of the order dated 26th September 2017 and that he is relying upon the decision of the Apex Court in the case of ***M. C. Mehta vs. Union of India & Others***¹ in support of the submission that where only one conclusion is possible, writ court need not interfere on the ground of the breach of principles of natural justice. He submitted that apart from the said stand which is already recorded in paragraph 8 of the earlier order, the State Government does not wish to make any further submissions.

10] We have given a careful consideration to the submissions. We have perused the photocopies documents in the file tendered on record by the learned counsel appearing for SRA. It appears from the file that on 8th May 2017, a note was put up by various officers of SRA in which there is a reference to the order dated 5th May 2017 passed by this Court in Writ Petition (L) No. 1158 of 2017 and Writ Petition No. 2638 of 2016. On the said file, there is an endorsement by the Chief Executive Officer of SRA recording that time should be sought from the High Court and in the meanwhile, the matter be followed up with the Hon'ble Chief Minister and MMRDA for taking appropriate decision. There is a further note put up on 19th June 2017 by the Chief Executive Officer (CEO) of SRA in which a suggestion is made that a decision about utilization of PAP tenements in premises of HDIL should be taken at the level of the State. A permission was sought by the said note from the Hon'ble Chairman for submitting a proposal to the Commissioner of the Mumbai Municipal

1 (1999) 6 SCC 237

Corporation for taking over possession of 400 premises in HDIL subject matter of this petition and of allotting tenements available elsewhere to the petitioners. On the said note, there is an endorsement by the Chairman of SRA who is the Hon'ble Chief Minister that as discussed, rehabilitation should be made. There is a further note on the same note by the CEO of SRA that as per the discussion with the Hon'ble Chairman, 400 slum dwellers should be rehabilitated at the same place where remaining persons affected by Tansa pipeline will be rehabilitated. Accordingly, by a letter dated 28th June 2017, the Secretary of SRA informed the Housing Department of the State that this Court should be informed that the present petitioners will be rehabilitated at the same place where other similarly situated project affected persons will be rehabilitated. Perhaps because of the aforesaid decision that the Municipal Corporation took the action of publishing the impugned public notice. We must record here that the note dated 19th June 2017 specifically refers to the fact that the petitioners are in possession of the 400 premises in HDIL.

11] Since the file refers to the order of this Court dated 5th May 2017, it will be appropriate to reproduce paragraphs 5 to 8 of the said order passed in Writ Petition (L) no. 1158 of 2017 which read thus :

“5. As per the oral directions issued by this Court today, the learned counsel appearing for the Municipal Corporation has produced a compilation of documents which is taken on record and marked 'X1' for identification. The first letter in the compilation is dated 5th December, 2016. The said letter is addressed by the Chief Executive Officer of the Slum Rehabilitation Authority to the Municipal Commissioner. It is necessary to reproduce the entire contents of the said letter which read thus :

“Sub: For handing over 400 constructed tenement under Slum Rehabilitation Scheme at Premier Compound, Kurla(West) to the rehabilitation of Tansa Pipe Line PAPs.

Ref : 1. Oral directions of Hon. Minister for Housing Labour and Mining Works, Maharashtra State on 03/12/2016.

2. Hon. Chief Minister's directions on report submitted to Hon. Minister for Housing Labour and Mining Works, Maharashtra State dated 03/12/2016.

Dear Sir,

It is understood that one Public Interest Litigation (PIL) is pending in High Court, Mumbai, wherein the issue of shifting of slum dwellers of Tansa Pipe Line is involved. **In this regard the Hon'ble Minister for Housing Labour and Mining Works, Shri Prakash Mehta approached the Chief Minister of the State. Hon'ble Chief Minister has directed me to hand over 400 tenements for rehabilitation of Tansa Pipe Line Project.**

Under Section 3.11 of D.C. Regulation 33(10) some 7141 tenements were built at Premier Compound, Kurla. Mainly those tenements were constructed for the rehabilitation of slum dwellers around the International Air Port. Now there is no demand for the same. The maintenance of the readymade flats is also acute and problematic.

The question of the rehabilitation of Tansa Pipe Line slum dwellers has become important. **We feel there is no harm in handing over 400 tenements for this purpose. The Chief Minister is also the Chairman of Slum Rehabilitation Authority. Considering the eventuality the administration of SRA has also taken the same view. We are handing over 400 tenements for Tansa Pipe Line rehabilitation.**

The necessary further orders may be issued by the Municipal Corporation of Greater Mumbai.

Thanking you.”

(underlines supplied)

6. There is some grievance made in both the Petitions as regards the accommodation offered to the eligible persons at Mahul. As of today, prima facie, we are not in a position to accept the said grievance in the light of the observations made by the Apex Court in the order dated 27th November, 2015.

7. The letter dated 5th December, 2016 is very relevant as the petitioners in Writ Petition (L) No.1158 of 2017 have made a representation for allotment of tenements in the property subject matter of the said letter. The said letter records that there were certain oral directions issued by the Hon'ble Minister for Housing, Labour and Mining Works on 3rd December, 2016 in respect of handing over 400 constructed tenements under SRA Scheme at Premier Compound in Kurla (W) for rehabilitation of Tansa Pipe Line Project affected persons. The said letter also shows that there is a direction issued by the Hon'ble the Chief Minister on 3rd December, 2016 on the basis of the report submitted by the Hon'ble Minister for Housing Labour and Mining Works on 3rd December, 2016. The said letter records that the Hon'ble the Chief Minister has directed the SRA to hand over 400 tenements in the project at Kurla for rehabilitation of Tansa Pipe Line Project affected persons. The Chief Executive Officer has recorded that mainly the tenements in the said project were constructed for rehabilitation of slum dwellers around International Airport but now there is no demand for the same. Lastly, the Chief Executive Officer has noted that the question of rehabilitation of Tansa Pipe Line Project affected persons has become important and therefore, there is no harm in handing over 400 tenements for this purpose. **The possession of the said 400 tenements was handed over to the Municipal Corporation on 14th December, 2016. The learned counsel appearing for the Mumbai Municipal Corporation states that the tenements have been already allotted for rehabilitation of the Tansa Pipe Line Project affected persons. The learned Senior Counsel appearing for the petitioners in Writ Petition (L) No.1158 of 2017 on instructions states that about 5,400 tenements are still available in the scheme subject matter of the said letter dated 5th December, 2016.** Prima facie, the said statement may be true as in the letter dated 5th December, 2016 the Chief Executive Officer has observed that there is no demand for the tenements in the said project.

8. We direct the State Government to consider the case of allotment of the remaining tenements in the said Scheme at Kurla for rehabilitation of project affected persons of Tansa Pipe Line. Prima facie, we are of the view that as 400 similarly placed project affected persons have been given the benefit, the other project affected persons cannot be treated differently.”
(emphasis added)

12] We may note here the two petitions in which the above order was passed are filed by similarly situated project affected persons. After finding that the present petitioners were accommodated in premises in HDIL that the submissions were made in the said petitions for treating the petitioners in the said petitions equally. Thus, what is recorded in the said order shows that on the basis of the oral directions of the Hon'ble Minister for Housing, Labour and Mining Works Departments and on the basis of the directions of the Hon'ble Chief Minister that the CEO of SRA allotted 400 tenements in HDIL to the Municipal Corporation for accommodating the present petitioners. The letter of the CEO quoted in paragraph 5 of the said order shows that he acted in terms of the directions of the Hon'ble Minister and the Hon'ble Chief Minister.

13] In the same petitions, subsequently an affidavit was filed by Shri Kishore G. Pathak, Under Secretary of the Housing Department on behalf of the State Government. In paragraph 11 of the order dated 26th September 2017, this Court has quoted the statements made in paragraph 3 of the affidavit. Paragraph 11 reads thus :-

“11. It is on the basis of this communication of the Chief Executive Officer of the Slum Rehabilitation Authority that 400 tenements in HDIL Premier SRA Buildings at Kurla were allotted to the Municipal Corporation. In the same Petition, there is an affidavit filed by Shri Kishor G. Pathade, Under Secretary (Housing) on behalf of the State Government. In paragraph 3 of the said affidavit, Shri Pathade has stated thus :“

3) At the outset I say that in order to redress the aforesaid grievance of causing discrimination, the Slum Rehabilitation Authority has taken a decision, with the approval of Hon'ble Chief Minister and Chairman, Slum Rehabilitation Authority that the 400 Project Affected Persons in issue, who have been rehabilitated by the Municipal Corporation of Gr. Mumbai at Premier Compound Kurla, will now be shifted and rehabilitated at the very same place where rest of the similarly situate persons will be rehabilitated. I say that accordingly a letter dated 21.06.2017 has been issued through the State Government of the Housing Department to the parent Department of the Municipal Corporation of Greater Mumbai i.e. Urban Development Department for taking immediate action. Hereto annexed and marked as **EXHIBIT- 1** is the copy of the letter dated 21.06.2017.

(Underline supplied)”

14] Thus, the stand taken is that to redress grievances made by the petitioners in the said two petitions, a decision has been taken to shift the present petitioners to the tenements at Mahul.

15] From the file tendered by the learned counsel for the SRA, we find that there is no specific direction issued in writing either by the State Government or SRA to the Mumbai Municipal Corporation to dispossess the present petitioners. There is only one letter dated 28th June 2017 by which the CEO of SRA informed the Housing Department to inform the Municipal Corporation to rehabilitate the present petitioners at the same place where other similarly situated project affected persons are being rehabilitated.

16] What can be gathered from the file is that a proposal submitted by the CEO of SRA was approved by the Hon'ble Chairman of SRA. The proposal was of rehabilitating the present petitioners at Mahul where other project affected persons are being accommodated by granting them alternate accommodation.

17] In this writ petition, it is averred that a letter of allotment issued to one of them is annexed as Exhibit 'C' to the petition and identical letters of allotment for allotting premises in HDIL were issued to all the petitioners. It is not the case of Mumbai Municipal Corporation that allotment letters issued to other petitioners are different from the allotment letter, a copy of which is annexed as Exhibit 'C' to the petition.

18] Perusal of the allotment letter shows that the allotment was not on temporary basis. There are nine conditions incorporated in the letter of allotment. None of the conditions record that allotment made to the petitioners is liable to be cancelled and that they can be shifted elsewhere. Clause 5 provides that in case of sale or transfer by the petitioners of the allotted tenements, the allotment thereof shall be treated as cancelled and revoked. Thus, on plain reading of the allotment letter at Exhibit 'C', it appears to us that allotment of premises in the HDIL was a permanent allotment to the petitioners.

19] It is not in dispute that as per the policy which binds the Municipal Corporation, the petitioners were entitled to allotment of residential accommodation and that the allotment of the premises subject matter of this petition was made for rehabilitating the petitioners. Therefore, we have no hesitation in holding that by virtue of the allotment of the

premises in HDIL, a right was created in favour of the petitioners in respect of the said premises.

20] We need not refer to large number of decisions of the Apex Court under which the law governing principles of natural justice has been evolved. It is well settled that even if an administrative action is likely to affect a citizen's rights, the same cannot be taken without complying with the principles of natural justice. This law has been laid down in several cases including the leading case of ***Maneka Gandhi vs. Union of India & Anr.***² Therefore, on first principles, it is obvious that the right conferred on the petitioners in respect of the premises in HDIL cannot be taken away without following due process of law the essential ingredient of which will be compliance with the principles of natural justice. It is nobody's case that any due process of law was followed or the principles of natural justice were complied with. On the contrary, the stand of the State Government is that it is not necessary to follow the principles of natural justice. Reliance is placed on the decision of the *M. C. Mehta vs. Union of India* (supra). Our attention was invited to what is held by the Apex Court in paragraph 21, which reads thus :

“21. It is, therefore, clear that if on the admitted or indisputable factual position, only one conclusion is possible and permissible, the Court need not issue a writ merely because there is violation of the principles of natural justice.”

21] In the present case neither the State Government nor SRA have defended their decision of informing the Municipal Corporation to repossess the premises in HDIL. There is not even an attempt made by both the authorities to satisfy the Court that only one conclusion is possible with regard to the legality of their decision of directing the

2 (1978) 1 SCC 248

Municipal Corporation to evict the petitioners. In our view, this is certainly not one of those cases where it is possible to record that only one conclusion is possible and permissible. On the contrary, the earlier decision to allot the premises in HDIL was taken on the basis of a letter of the Hon'ble Chief Minister who is the Chairman of SRA. As far as the said Corporation is concerned, the stand is that it has acted in terms of the directions of the State Government. If attempt would have been made by either State or SRA to justify their decision reflected from the file, the Court would have certainly gone into the question of legality of the decision but they have not chosen to do so.

22] To reiterate, the right conferred on the petitioners cannot be taken away or infringed without following due process of law which will include compliance with the principles of natural justice. It is also obvious that on the basis of public notice dated 25th July 2015 published by the Municipal Corporation, the petitioners cannot be evicted.

23] Therefore, we dispose of the petition by passing the following order:-

(A) For the reasons recorded above, we restrain the respondents from dispossessing the petitioners from their respective premises in HDIL without following due process of law. We clarify that due process of law will include compliance with the principles of natural justice;

(B) We also make it clear that we have made no adjudication on the question whether the respondents have

right to evict the petitioners from the premises in HDIL. All the contentions of the parties in that behalf are kept open;

(C) Rule is made partly absolute on above terms with no order as to costs;

(D) File containing the photo copies of the documents in the original file shown to the Court shall be kept on record in a sealed envelope.

(M. S. SONAK, J.)

(A. S. OKA, J.)