

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

WRIT PETITION NO. 486 OF 2016

Dost Mohammad Allabhbox Makrani ... Petitioner.

V/s.

Kailash Babulal Deora & 4 Ors. ... Respondents.

Mr. P. M. Shah a/w. Meetal Savla, Nikhil Dedhia for the
Petitioner.

Mr. R. M. Pandey, Advocate for Respondent Nos. 1 and 2.

Mr. Chirag Mody a/w. Rishikesh Soni, Mr. Tejas Gokhale,
Ashok Purohit i/by Ashok Purohit & Co. for Respondent No.3.

Mr. Suraj Swami, Advocate for Respondent No.5.

**CORAM : V. M. KANADE AND
P.R. BORA, JJ.**

DATE : 14th FEBRUARY, 2017

P.C. :

1 The order passed by the High Power Committee, under the provisions of Slum Rehabilitation Act, in Appeal No. 01 of 2013 on 30th December, 2014 is challenged in the present Petition. The said Appeal was filed by the Petitioner pursuant to the order dated 16th January, 2013 passed by this court (Coram : S.C.Dharmadhikari, J.) in Appeal from Order No.61 of 2013 in Notice of Motion No. Nil of 2012 in B.C.C.C. Suit No. 2806 of 2012.

2 It was the contention of the Petitioner before the High Power Committee that the suit property i.e. City Survey No. 572 (Part), Survey No. 319 (Part) situated at Makrani Pada, Malad (East), admeasuring 444 square yards, known as "Jamadar Chawl", was in use, occupation and possession of one Shri Alla Bux Dost Mohammed and he had constructed the said chawl over the said portion of the property which had been assessed by the Municipal Corporation, Greater Mumbai and the same was owned by the legal heirs of late Alla Bux Dost Mohammed. It was the further contention of the petitioner that the late Allahbux had challenged Gazette Notification dated 13th October, 1977, declaring the suit property as 'Slum Area' before the Maharashtra Slum Tribunal under section 4(1) of the Maharashtra Slum Areas (Improvement Clearance and Re-development) Act, 1971 by filing an Appeal No. 1179 of 1977, which was allowed by the Tribunal by setting aside the said gazette notification and the subject property, therefore, remained as a 'private property'. It was further contended that though the said portion of 444 square yards was never declared again as a 'slum area', the Respondent Nos. 1 and 2 in the month of May, 2012, started giving threats to the petitioner, not to cause any obstruction in the development being carried out by them. It was further contended by the petitioner that the occupants, occupying the tenements in the 'Jamadar Chawl', who according to him are all his tenants had never given their

consent to the Respondents for the purpose of re-development thereof under the Slum Rehabilitation Scheme.

3 On the aforesaid grounds, it was prayed by the petitioner before the Tribunal that the LOI (letter of intent) issued to the Respondent No. 2 i.e. M/s. K.D.Builders for implementation of the slum rehabilitation scheme which include the suit property, admeasuring 444 square yards, be declared as illegal.

4 Per contra, it was contended by the respondent nos. 1 and 2 that vide government gazette notification dated 26th July, 1984, the suit property was also declared as a slum area after following the due process of law. It was further contended by the respondents that the petitioner did not challenge the said notification till the year 2012. It was further contended by the respondents that the slum dwellers residing over the larger piece of land including the portion allegedly claimed by the Petitioner, admeasuring 444 square yards, formed a Co-operative Housing Society in the name of "Makrani Pada SRA CHS (P) and appointed respondent no. 2 as a developer of their slum rehabilitation scheme.

5 It was further contended by the respondents that the SRA has approved the slum rehabilitation scheme, taking into account the certified Annexure-II, issued on 2nd August,

2006 and has issued LOI on 10th August, 2009. It was further contended that the SRA has also approved the plans for rehabilitation buildings nos. 1 and 2 and issued IOA on 6th November, 2009 as well as amended IOA on 4th May, 2012. It was further contended that in spite of issuance of the LOI and IOA for the SRA scheme, when some of the slum dwellers refused to vacate their structures, demolition notices were issued to said slum dwellers. Said notices were challenged before the Administrator and Divisional Commissioner, Konkan Division, by filing three different appeals and all the said three appeals were dismissed by the Administrator and Divisional Commissioner.

6 It was the further contention of the respondents that the petitioner had filed BCCC Suit No. 2860 of 2012 in the City Civil Court at Mumbai and had taken out Notice of Motion for the grant of ad-interim relief, however, no injunction was granted in favour of the petitioner. The petitioner then filed Appeal from Order bearing A.O. No. 61 of 2013, which was disposed of by the order dated 16th January, 2013 by the High Court and the liberty was granted to the petitioner to agitate the issue before the High Power Committee. According to the Respondents when the subject property was notified as slum area way back in the year 1984, the petitioners were not having any right or authority to seek

any relief and to cause impediment in the implementation of the slum rehabilitation scheme.

7 The learned Tribunal after having considered the submissions advanced by the respective parties, rejected the appeal filed by the petitioner vide the impugned order.

8 The learned counsel for the petitioner has assailed the impugned order on various grounds. The learned counsel submitted that the High Power Committee has failed in appreciating that the purported scheme of SRA is being proceeded further on the basis of the old notification of 30th August, 1977, which was set aside by the tribunal in an appeal filed by the Petitioner bearing appeal no. 1179 of 1979, decided on 29th December, 1980. The learned counsel further submitted that the High Power Committee did not consider the voluminous documentary evidence placed on record by the petitioner, showing that the subject property was owned by late Allahbux and was duly assessed by the corporation. Learned counsel further submitted that though there was no concrete evidence before the High Power Committee showing that the suit property was notified as slum area vide alleged notification dated 26th July, 1984, the High Power Committee has recorded the incorrect conclusion that the same was notified as slum area leading to the further incorrect conclusion that the petitioner was not having any right to

create implementation of the slum rehabilitation scheme for 292 slum dwellers.

9 The learned counsel appearing for the respondent nos. 1 and 2 resisted the contentions raised on behalf of the petitioner. The learned counsel invited our attention to the writings executed by the petitioner and 7 other slum dwellers with respondent no. 2 for shifting to alternate accommodation and for handing over their premises for demolition. Learned counsel further invited our attention to the copy of the agreement executed by the petitioner with respondent no. 2 for alternate accommodation. The learned counsel also invited our attention to the order passed by the Sub-Divisional Officer, Mumbai Western Suburban, Mumbai in appeal no. DLN/RTS/A-12 of 2015, whereby the mutation entry no. 529 was challenged. The mutation entry no. 529 was made in the year 1963, whereby the name of F.E. Dinshaw was recorded in the record of rights pertaining to the suit property and the name of the predecessor of appellant was deleted. The learned counsel further submitted that the gazette notification of the year 1984 was challenged by the petitioner by filing an appeal before the Slum Tribunal vide appeal no. 41 of 2012 and the Petitioner had applied for condonation of delay of about 28 years in filing the said appeal. The learned counsel submitted that the slum tribunal by order dated 28th October, 2013 declined to condone the delay in filing the said

appeal. The learned counsel further submitted that the order passed by the Slum Tribunal was challenged by the petitioner by filing Writ Petition no. 2174 of 2014 and the same was also dismissed on 27th August, 2014. The learned counsel further submitted that the petitioner filed a special leave petition in the Apex Court being SLP No. 29645 of 2014 challenging the order passed in Writ Petition no. 2174 of 2014 and the same was also dismissed. The learned counsel further submitted that the name of the predecessor of the petitioner was wrongly recorded in the record of rights which was removed on 1st April, 1963 vide mutation entry no. 529. The learned counsel further submitted that all attempts made by the petitioner to challenge mutation entry no. 529 have also failed. Learned counsel further submitted that the majority of the slum dwellers have entered into an agreement for alternate accommodation with respondent no. 2 and the rehabilitation scheme has been substantially proceeded further. Learned counsel further submitted that the High Power Committee has by a reasoned order has rightly rejected the appeal filed by the petitioner and no interference is called for in the order so passed. The learned counsel for the Respondents, therefore, prayed for dismissal of the writ petition.

10 We have carefully considered the submissions advanced by the learned counsel appearing for the respective parties. We have also perused the voluminous documents

placed on record by the petitioner as well as the respondents. The impugned order is challenged by the petitioner mainly on the ground that the suit property, admeasuring 444 square yards has not been notified as a slum area by following due process of law and as such the respondents cannot be permitted to carry out SRA scheme by ousting the petitioner and other slum dwellers occupying the tenements in the suit premises. However, the documents filed on record and more particularly the gazette notification dated 26th July, 1984 clearly establishes that the suit property was notified as a slum area vide said notification after following due process of law. Even if the contention of the petitioner is accepted that no due procedure was followed before notifying the suit property as a slum area, the inordinate delay caused by the appellant in challenging the said notification has not been condoned by the Slum Tribunal and the writ petition filed against the said order passed by the Slum Tribunal has also been dismissed by the High Court. As has been noted above, the special leave petition was preferred by the petitioner, challenging the order passed in writ petition no. 2174 of 2014; however, no interference was caused in the order passed by the High Court and the special leave petition was dismissed by the Hon'ble Supreme Court. Thus the fact remains that the petitioner has failed in establishing that the suit property has not been notified as a slum area vide notification dated 26th July, 1984. Moreover, ample documentary evidence is placed

on record by the respondents, evidencing that the petitioner was having full knowledge of the fact that the suit property has been notified as a slum area and the petitioner himself had executed the document with respondent no.2 for shifting to the temporary alternate accommodation and handing over the premises in his possession for demolition. The another document filed on record by the respondents demonstrates that the petitioner has executed an agreement with the respondent no. 2 on 3rd October, 2016 for permanent alternate accommodation also.

11 After having considered the material placed on record it does not appear to us that any interference is required in the order passed by the High Power Committee. The Petitioner has failed in establishing his claim. The writ petition is devoid of any substance and deserves to be dismissed. It is accordingly dismissed, however without any order as to costs.

(P.R. BORA, J)

(V.M.KANADE, J)

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