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

PUBLIC INTEREST LITIGATION No. 16 OF 2006

Worli Hill Association through Prakash Chabaria	...	Petitioner
Vs.		
State of Maharashtra & Ors.	...	Respondents

Mr. Aditya Pratap a/w Kiran Bhalerao, for the Petitioner.
Ms. Geeta Shastri, AGP for Respondent No. 1 and 2.
Ms. Geeta Joglekar, for Respondent – BMC.
Mrs. Sharmila V. Deshmukh, for Respondent No. 6.
Mr. Zal Andhyarujina a/w Aarup Dasgupta i/b Jhangiani Narula &
Associates, for Respondent No. 7.
Mr. Ivor Peter D'Cruz, for Respondent No. 8.

CORAM : V. M. KANADE, &
A. M. BADAR, JJ.

DATE : JUNE 5, 2017

ORAL JUDGMENT [Per : V. M. KANADE, J.]

1. This Public Interest Litigation (for short “PIL”) has been filed by an association of housing societies situated around the area of Worli Hill, Mumbai. It is not in dispute that one Mr. Prakash Chabaria is pursuing this PIL.

2. The facts which are relevant for the purpose of deciding this PIL can be briefly stated as under:

(i) A piece of land admeasuring 2263 sq. mtrs. situated at Worli Hill Road, Mumbai was reserved for recreation ground. However, during the course of time, this land was encroached upon and several slums and hutments were constructed on the said land.

(ii) A Slum Rehabilitation Scheme was prepared by the State of Maharashtra in 1991 and under the said scheme if the slum dwellers are rehabilitated free of costs on the said land, the builder / developer will get FSI and an incentive so that he could after rehabilitation of the slum dwellers on the said plot free of costs, construct a building having sale component, which would compensate for the costs incurred by him for construction of rehab component / building.

(iii) Slum rehabilitation scheme of Respondent No. 7 was approved in May 1996 on the basis of list of eligible slum dwellers submitted by Respondent No. 9 as per the prescribed Annexure-II, on the said land.

(iv) However, 46 schemes out of total number of 55 schemes could not succeed and were stopped and the work came to stand still

in 1998 on the ground that they violated CRZ Notification 1991. It is an admitted position that 9 schemes out of 55 schemes, however, were given a green signal by the SRA. It is also an admitted position that the scheme of Respondent No. 7 was one of the 9 schemes, which was cleared by the SRA and it was released from the CRZ areas.

(v) Thereafter, a Letter of Intent was issued on 24.1.2003 and Respondent No. 7 started construction of the rehab component. The Petitioner has alleged that he came to know about the fact of violation of CRZ notification and therefore, he called upon the Chief Executive Officer and sought his appointment for personal hearing. However, no hearing was given to him, and therefore, the present petition / PIL was filed on 22.2.2006.

3. The Respondents filed their affidavit in reply. The State Government contended that there was no violation of either FSI or CRZ laws. The Ministry of Environment and Forests (Respondent No. 5) also filed reply on more or less similar grounds. Respondent No. 7 – the Developer filed a detailed affidavit in reply and raised a preliminary objection regarding maintainability of the PIL, firstly, on the ground of bona fides of the Petitioner, and secondly, on the ground

of delay and laches in approaching this Court. A detailed reply was also filed on merits of the allegations made by the Petitioner. It is contended that there was no FSI violation. It is contended that the draft DC Rules were prepared in 1989 and brought into force in 1991. The said draft DC Rules contemplate that FSI of 2.5 should be given and the same was accepted in 1999. Thirdly, it is contended that there was no violation of CRZ norms and no case was made out by the Petitioner for grant of any relief. It is further contended that Petitioner - Prakash Chabaria wanted to purchase a flat in the said scheme and claim concession, and since his offer was not accepted, with a malafide intention of harassing Respondent No. 7, present PIL has been filed by him.

4. We have heard the learned counsel appearing on behalf of the Petitioner at great length. He submitted that there was no delay in filing the petition. He submitted that the Petitioner tried to approach the Chief Executive Officer and also all other authorities from 2003 onwards. However, no cognizance of his complaint was taken, and therefore, he was constrained to file the petition in 2005. Secondly, he submitted that FSI at the relevant time was 1.33 and Respondent No. 7

has consumed 2.5 FSI and there was gross violation of FSI. He submitted that the CRZ regulation had come into force earlier before slum rehabilitation scheme came into force. It is contended that there was gap of 24 days between CRZ regulation coming into force, and the slum rehabilitation scheme being sanctioned. He also raised several other points in support of his submissions.

5. On the other hand, learned counsel Mr. Zal Andhyarujina, appearing on behalf of Respondent No. 7 submitted that the scheme commenced in 1996. In 1998 Respondent No. 7's scheme was given clearance from CRZ and no objection was given by the SRA and other relevant authorities. He submitted that the Petitioner, more particularly Mr. Prakash Chabaria, was residing close to the premises where the scheme was being implemented and no steps were taken by him till December, 2005. He submitted that by that time, the construction of rehab component / building was almost completed. The Respondent No. 7 had spent about Rs. 9 crores, and third party rights had been created by way of registered agreement of sale. The sale component, however, has been constructed upto 13th floor and amount of Rs. 4.30 crores has been spent on the construction of the

sale component / building. He submitted that the Petitioner – Prakash Chabaria and the other persons were fully aware of the ongoing construction for the past eight years. He submitted that the Petitioner had challenged the said construction of the sale component / building only after the 7th Respondent had completed construction of the rehab building and accommodated the slum dwellers and had constructed 13 floors of the said building. He submitted that Respondent No. 7 spent Rs. 9 crores on the project. He submitted that these persons have not been joined as respondents, and therefore, the PIL is liable to be dismissed on the ground of non joinder of necessary parties.

6. The PIL was admitted by this Court by an order dated 24th August, 2006. However, in para 6 of the said order, the Division Bench of this Court had kept the issue of laches and delay open and directed to consider it at the time of hearing of the writ petition.

7. Though we have heard all the parties at length on that issue, we are of the view that the Petitioner has not satisfactorily explained the issue of delay and laches and there is a gross delay in filing the petition.

8. It is an admitted position that the project was sanctioned

in 1996. CRZ clearance was given in 1998 and by the time petition was filed, Respondent No. 7 had already constructed the rehab component, rehabilitated the slum dwellers in the said building and constructed 13 floors of the said building. It is also not disputed that Respondent No. 7 had already sold the flats in the said building. The averment made in para 3 of the affidavit in reply that Respondent No. 7 has spent about Rs. 9 crores on the said scheme has not been disputed.

9. On the other hand, the explanation given by the Petitioner for the delay caused is not acceptable since neither satisfactory explanation has been given nor sufficient cause has been shown for the delay caused in approaching this Court almost 8 years after the scheme was commenced.

10. It is a well settled position in law that though period of limitation is not applicable to the petitions which are filed in this Court, the petitions have to be filed within a reasonable period of time. It is further well settled that though no period of limitation is prescribed by any particular statute, that does not give any right to the petitioner to approach this Court at any time, and therefore, the cause

of action is presumed to commence from the date on which the steps are taken which are sought to be challenged, and within a reasonable period of time from such cause of action, the proceedings will have to be filed. In a catena of cases, the Apex Court has held that though no period of limitation is prescribed for filing the writ petitions, normally, they ought to be filed within three years. A cause of action commenced in 1996 or in any case from 1998 and by the time the petition was filed, much water has flown below the bridge and the scheme was already nearing completion.

11. It is equally well settled that the same principle is applicable even to the public interest litigations. A litigant is not expected to sleep over his right and wake up on one fine morning and knock the doors of this Court seeking redressal of his grievance.

12. Though rule has been granted in this PIL, the issue of delay and laches has been expressly kept open and therefore, this Court is given liberty to examine the said issue. After having given our anxious consideration, we are of the view that the PIL is liable to be dismissed on the ground of delay and laches alone. It is to be noted here that slum dwellers have been rehabilitated and they are in

possession of the rehab building. By the time the PIL has come up for hearing, 20 storeys of the sale component have been constructed and occupation / completion certificate has been granted upto 14th floors. All these flats have been sold. Third party rights have been created. At this stage therefore, we are not inclined to entertain this PIL.

13. Even otherwise on merits also, the Respondent No. 7 have established their case by filing the reply. Their stand has been supported by the State of Maharashtra through the Urban Development Department, the Bombay Municipal Corporation, and also by the Ministry of Environment and Forest. Taking into consideration all these factors, we are of the view that PIL is liable to be dismissed.

14. After we informed that we are not inclined to entertain this PIL and we are dismissing it on the ground of gross delay, the learned counsel Mr. Aditya Pratap appearing on behalf of the Petitioner got little annoyed, raised his voice and started vehemently arguing that if the builders are allowed to go scot free and violate the CRZ Rules, damage will be caused to environment. He invited our attention to the Environment Protection Act. He submitted that this

Act was passed pursuant to the notification of the International Covenant by the Republic of India. He submitted that therefore all these buildings were liable to be raised to the ground and demolished. He also submitted that no time was given to him to make his further submission. His submission is without any substance, since we have heard both the parties at great length and we have gone through the record. The said submission is therefore rejected. Public interest litigation is dismissed and rule is accordingly discharged.

Sd/-
[A. M. BADAR, J.]

Sd/-
[V. M. KANADE, J.]

Vinayak Halemth