

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 12222 OF 2017

Ganesh Vasant Kathekar & Ors. Petitioners

VERSUS

**Addl. Collector, Controller of Slum
(Encroachment/removal) & Ors. Respondents**

Mr.Jayesh Bhatt for the Petitioners.

Mr.Girish Godbole, i/by Mr.Mark D'Mello, Mr.Shaun Pinto for the
respondent no.3.

Ms.K.N.Solunke, A.G.P. for the State.

CORAM : R.D. DHANUKA, J.

DATE : 16th JANUARY, 2018

P.C.

By this petition filed by the petitioner under Article 227 of the Constitution of India, the petitioner has impugned the order dated 24th August,2017 passed by the respondent no.1 in Appeal No. 1442 of 2016 refusing to grant ad-interim relief to the petitioners.

2. On 22nd January,2015 an agreement came to be signed between the petitioner no.1 society and the respondent no.3 developer regarding deposit, transit rent, transfer charges etc. to be paid to all members of the society.

3. The dispute arose between the occupants of various tenaments who were members of the petitioner no.1 society and the developer

regarding the eligibility of members of the petitioner no.1 society. In respect of 23 members, an order came to be passed by the concerned officer of MHADA directing the developer to pay the monthly compensation at the rate of Rs.10,000/-for the period of 18 months and issued various other directions under section 33(38) of the Maharashtra Slum Area (I.C. & B) Act. The said order was subject matter of the writ petition bearing no. 3792 of 2016 filed by the society and others before this Court.

4. On 16th April,2016, Shri R.G.Ketkar, J. dismissed the said writ petition and granted liberty to the petitioners therein to approach the High Power Committee for challenging Annexure-II dated 20th November,2001. This Court refused to grant stay of the said order.

5. Being aggrieved by the said order passed by this court, the petitioners in the said Writ Petition No.3792 of 2016 filed Special Leave to Appeal (13807 of 2016). By an order dated 25th April, 2016, the Supreme Court recorded the statement made by the learned counsel for the petitioners therein that all the petitioners shall handover vacant possession of their hutments to the developer within seven days from the date of the said order. The petitioners made further statement before the Supreme Court that 11 of the eligible slum dweller mentioned in the order dated 3rd March,2016 passed by the court of the Additional Collector (Encroachment/Eviction), Western Suburbs and Appellate Authority, Mumbai have to be paid monthly rent which had not been paid to them. Learned counsel for the developer gave an undertaking before the Supreme Court that all 14 slum dwellers

referred to in the order dated 3rd March, 2016, 18 months' advance rent, would be paid within two days, by way of post dated cheques. It was further stated 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. The Supreme Court disposed of the said special leave to appeal accordingly with a direction to the petitioner nos. 2 to 15 in the said special leave to appeal to vacate their hutments within seven days from the date of the said order and further directed that the developer shall pay the rent as per the undertaking rendered.

6. The petitioners have filed an appeal before the High Power Committee. The said appeal is still pending. The High Power Committee however has refused to grant ad-interim in favour of the petitioners.

7. It is not in dispute that insofar as the petitioner nos.1 and petitioner no.3 are concerned, they are found eligible to get permanent alternate accommodation. However insofar as the petitioner no.2 is concerned, his eligibility to get the permanent alternate accommodation is disputed by the developer. An application for deciding the eligibility of the petitioner no.2 is pending before the concerned officer. Insofar as the validity of Annexure-II of the petitioners and few other members are concerned, the same is pending before the High Power Committee.

8. Mr.Bhatt, learned counsel for the petitioners submits that the Annexure-II relied upon by the developer is fabricated document. He submits that insofar as the petitioner no.2 is concerned, the name of some other person is mentioned at Annexure-II though he was not concerned with the impugned structure which has been occupied by the petitioner no.2. He submits that till the issue of eligibility is decided by the appropriate authority insofar as the petitioner no.2 is concerned, he cannot be asked to be evicted by the authorities as well as the developer. Insofar as the petitioner nos.1 and 3 are concerned, it is submitted that even these petitioners are not getting the permanent alternate accommodation and also not getting rent which was agreed by and between the developer and the petitioner society which was payable at the rate of Rs.14,000/- per month.

9. Mr. Godbole, learned counsel for the developer on the other hand heavily placed reliance on the finding recorded and the direction issued by Shri R.G.Ketkar, J. in Writ Petition No.3792 of 2016 dated 16th April, 2016 and also the orders passed by the Supreme Court. He submits that all the three petitioners were claiming to be the members of the petitioner no.1 society were parties to the said proceedings filed before this court. He submits that even if the application for eligibility of petitioner no.2 is pending before the concerned authority, he cannot refuse to vacate the premises in question till the issue of eligibility is decided. He submits that the Supreme Court has specifically directed all the occupants to vacate the hutments within seven days from the date of the order dated 25th April, 2016. He submits that the said order would clearly apply to the petitioners herein.

10. Insofar as the issue of rent raised by the learned counsel for the petitioner is concerned, it is submitted by the learned counsel that the concerned authority has already passed an order dated 8th October, 2015 which was subject matter of the said writ petition No.3792 of 2016. This court has not interfered with the said order directing the developer to pay the rent at the rate of Rs.10,000/- per month. He submits that neither this Court nor the Supreme Court had permitted any of the petitioners to occupy their respective tenements till the application for eligibility of the petitioner no.2 is decided by the concerned authority.

11. It is submitted that in the event of the petitioner no.2 succeeding before the concerned authority and is eligible to get the permanent accommodation, the developer will comply with the said order subject to the rights of his client to challenge the said order. He submits that his client would comply with the said order passed by Shri R.G.Ketkar, J. and also the Supreme Court in the above referred order.

12. Insofar as the eligibility of the petitioner nos. 1 and 3 is concerned, the same is not even disputed by the developer. The dispute is in respect of the eligibility of the petitioner no.2. A perusal of the order passed by Shri R.G.Ketkar, J. on 16th April, 2016 indicates that the said proceeding was filed by the society and others. I am not inclined to accept the submissions made by the learned counsel for the petitioners that the said order passed by this court on 16th April, 2016 will not apply to the present petitioners. The petitioner no.1 society in that petition and others had challenged the order dated 3rd March, 2016

passed by the Additional Collector (Encroachment/Eviction), Western Suburbs and Appellate Authority, Mumbai. The writ petition filed by the petitioners came to be rejected by the said order and judgment dated 16th April, 2016. A perusal of the order dated 25th April, 2016 passed by Supreme Court clearly indicates that the said special leave to appeal was disposed of with a direction to the petitioner nos. 2 to 15 in the said proceedings to vacate their hutments within seven days from the date of the said order.

13. The Supreme Court also recorded the statement of the developer simultaneously to pay the rent as undertaken within the time stipulated. In my view even if the arguments of the learned counsel for the petitioners is accepted that the said proceedings were not filed by these three individual petitioners which arguments this court has already rejected aforesaid, the directions issued by this Court as well as by the Supreme Court would equally apply to these petitioners also as well as the developer, being part of the said scheme. A perusal of the aforesaid two orders make it clear that there is no protection granted by the Supreme Court to any of the members of the said society that their structures will not be liable to be vacated till issue of eligibility is decided by the appropriate authority.

14. It is the case of the petitioner no.2 himself that an application for eligibility filed by him is pending before the concerned authority. Copy of such application is not annexed to the petition. The petitioners shall furnish a copy of such application if any which is stated to be filed by the petitioners before the Deputy Chief Officer and Competent

Authority, MHADA on 15th January, 2018 the developer immediately. It is made clear that if the said application for eligibility of the petitioner no.2 is decided by the said authority in favour of the petitioner, the developer shall abide the said order as may be passed by the competent authority subject to its right to challenge the said order in accordance with law.

15. Insofar as the dispute about the quantum of rent raised by the petitioner is concerned, a perusal of the record clearly indicates that the order passed by the Additional Collector (Encroachment/Eviction), Western Suburbs and Appellate Authority, Mumbai on 3rd March, 2016 was subject matter of the Writ Petition No.3792 of 2016 which petition is already dismissed by this Court. The Supreme Court has not interfered with that part of the order. The developer had already made statement before the Supreme Court that 18 months' advance rent would be paid by the post dated cheques. Mr. Godbole, learned counsel for the developer at this stage on instruction states that his client will apply directions given by the Supreme Court in the order dated 25th April, 2016 in respect of these petitioners also within one week from today. The statement made by the learned counsel for the developer is accepted as and by way of undertaking to this Court.

16. For the reasons recorded aforesaid, I do not find any merit in the petition. The petitioners are liable to vacate their respective structures and handover vacant possession to the respondent no.1 developer within two weeks from today without fail. The writ petition is accordingly dismissed. No order as to costs.

17. High Power Committee as well as the competent authority before whom the application of the petitioners is pending for the eligibility shall decide the matter on its own merits without being influenced by the observations made by this Court in this order. The proceedings shall be disposed of expeditiously and not later than three months from the date of this order.

18. The parties as well as the authorities to act on the authenticated copy of this order.

19. The issue raised by the developer before the High Power Committee about the maintainability of the appeal filed by the petitioners shall be decided on its own merits. High Power Committee shall consider the issue of maintainability while passing the final order. It is made clear that the High Power Committee shall decide the issue of validity of the Annexure-II insofar as the petitioner is concerned first. The competent authority shall decide the issue of eligibility of the petitioner no.2 after order of High Power committee is passed on the validity of Annexure-II.

20. The cheques in respect of the rent payable to the petitioners would be sent to the Chamber of the learned advocate on record of the petitioners by the developer within one week from today which shall be acknowledged by the learned advocate for the petitioners. In the event of the petitioners through their advocate refusing to accept the cheques towards rent issued by the developer, the developer would be

at liberty to deposit the said amount with the Registrar of this court.

21. Mr.Godbole, learned counsel for the developer on instruction states that the format of the agreement for permanent alternate accommodation which has been already executed by the developer in favour of some of the other occupants would be furnished to the learned advocate for the petitioners within three days from today. He submits that if the petitioner nos.1 and 3 are agreeable to execute the agreement for permanent alternate accommodation in terms of the draft as may be received by the learned counsel for the petitioners, the said agreement would be executed by the petitioner nos. 1 and 3 within two weeks from the date of communication of petitioners' advocate informing the developer about their willingness to execute such agreement.

22. If the vacant possession of the structures stated to be in possession of the petitioners is not handed over to the developer within two weeks from today, the Court Receiver, High Court, Bombay shall stand appointed to take forcible possession of the tenaments from the petitioners with assistance of the police if required and shall handover the possession thereof to the respondent no.1 developer for the purpose of redevelopment immediately upon possession.

[R.D. DHANUKA, J.]