

Shailaja

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION
WRIT PETITION NO.13497 OF 2018

Sunil Ramchandra Gosavi and others] Petitioners
Vs.
The Grievance Redressal Committee]
(Mumbai City) and others.] Respondents

.....

Mr. Abhay D. Parab, for Petitioner.
Mr. S.H. Kankal, A.G.P, for Respondents No.1 to 4.
Mr. Ashwin Mishra a/w Ravi V. Chidurala i/b Vikas S. Pandey, for Respondent No.5.

.....

CORAM : R.G. KETKAR, J.

DATE : 18th DECEMBER, 2018.

P.C.

Heard Mr. Parab, learned Counsel for the petitioners, Mr. Kankal, learned A.G.P, for respondents No.1 to 4 and Mr. Mishra, learned Counsel for respondent No.5 at length.

2. The Petition was heard on 29th November, 2018. In paragraph 2 of that order, statements of Mr. Parab that petitioners No.1 and 2 have re-occupied the structures, which were in their possession and that in so far as petitioners No.3 to 5 are concerned, they did not accept any amount from 5th respondent and are in possession of their respective structures were recorded. He submitted that petitioners No.1, 2 and 5 have re-occupied the structures instead of petitioner No.1 and 2 and accordingly, respondent No.5 had stopped paying monthly rent in the year 2015. He further states that petitioners No.3 and 4 did not accept any amount from 5th respondent and are in possession of their respective structures. Paragraph 2 of the order dated 29th November, 2018 may, therefore, be suitably corrected. Mr. Mishra confirms the said fact.

3. In view thereof, following sentences contained in paragraph 2 of the order dated 29th November, 2018 are substituted:

“Petitioners No.1 and 2, therefore, have re-occupied the structures, which were in their possession. He further states that in so far as petitioners No.3 to 5 are concerned, they did not accept any amount from the 5th respondent and are in possession of their respective structures.”

by the following sentences:

“Petitioners No.1, **2 and 5**, therefore, have re-occupied the structures, which were in their possession. He further states that in so far as **petitioners No.3 and 4** are concerned, they did not accept any amount from the 5th respondent and are in possession of their respective structures.”

4. Order dated 29th November, 2018 stands corrected accordingly.

5. This Petition takes exception to the order dated 26th December, 2017 passed by respondent No.3, Additional Collector (Encroachment/Removal), Mumbai City, Mumbai, Colaba Division (for short 'Additional Collector') as also the order dated 31st August, 2018 passed by the Grievance Redressal Committee (for short 'Committee') in Appeal No.311 of 2017. By order dated 26th December, 2017, respondent No.3 dismissed the appeal preferred by the petitioners and three others challenging the notices dated 10th November, 2017 issued by the Deputy Collector (Encroachment/Removal) and Competent Authority, Colaba Division (for short 'Competent Authority').

6. Aggrieved by that decision, the petitioners preferred Appeal No.311 of 2017 before the Committee under section 35 (1) (A) of the Maharashtra Slum Areas (Improvement, Clearance and Re-development) Act, 1971 (for short 'Act'). By order dated 31st August, 2018, Committee dismissed

the Appeal. It is against the order/notice dated 26th December, 2017 issued by respondent No.3, Additional Collector as also order dated 31st August, 2018 passed by the Committee, the petitioners have instituted the present Petition.

7. In support of this Petition, Mr. Parab submitted that certified Annexure-II was issued by the Competent Authority on 27th December, 2017. Out of 361 slum dwellers, Competent Authority declared 239 as eligible for rehabilitation. On 23rd September, 2010, Letter of Intent (for short 'L.O.I') was issued by Slum Rehabilitation Authority (for short 'S.R.A') to Jijau Prerana (SRA) Co-operative Housing Society Limited (for short 'Society'). Intimation of Approval (for short 'I.O.A') was given on 3rd February, 2012. Permission to construct transit camps was granted on 27th January, 2012. He submitted that as status-quo was granted by this Court in Writ Petition No.1489 of 2008, respondent No.5, Developer could not carry out construction of the transit accommodation. He submitted that the petitioners have serious apprehension that respondent No.5, developer will not be in a position to construct the transit accommodation as also complete construction and allot permanent alternate accommodation to the petitioners who are found eligible.

8. Mr. Parab invited my attention to the communication dated 29th August, 2016 issued by Society to Chief Executive Officer (for short 'C.E.O') of SRA setting out therein that the meeting of the Managing Committee of the society was convened on 22nd August, 2016. Resolution was passed unanimously terminating appointment of respondent No.5 as a developer. He submitted that S.R.A had issued notice dated 10th April, 2017 to respondent No.5, developer as to why its appointment as developer should not be revoked in terms of section 13 (2) of the Act. In pursuance thereof, hearing was conducted before CEO, S.R.A on 21st August, 2017. On 8th September, 2017, CEO directed respondent No.5 to pay up-to-date rent within 30 days. After

receipt of the rent, all the hutment dwellers should vacate the premises in their respective possession and hand over keys to respondent No.5, developer within 10 days. The Engineering Department should grant permission in accordance with law without any delay. He submitted that till date, respondent No.5 has not constructed the transit accommodation and, therefore, petitioners seriously apprehend capacity of respondent No.5, developer to complete project. The petitioners have no objection for implementation of the scheme. The petitioners are in fact found eligible and their names are included in Annexure-II. He, therefore, submitted that the Petition requires consideration.

9. On the other hand, Mr. Mishra submitted that Division Bench of this Court issued rule in Writ Petition No.1489 of 2008 on 30th July, 2008 and directed the parties to the Petition to maintain status-quo during pendency of the Petition. He submitted that respondent No.5 was not made party in the said Petition. The petitioners took out Chamber Summons No.191 of 2012 for impleading respondent No.5 herein. By order dated 23rd August, 2012, Chamber Summons was made absolute and respondent No.5 was impleaded as party respondent. He submitted that in the meantime, permission to construct transit accommodation was granted on 27th January, 2012. Plans were accordingly sanctioned for construction of transit camp. He submitted that construction of transit camps was proposed in a plot earmarked for Play Ground in the sanctioned plan of 27th January, 2012. Subsequently, revised layout was sanctioned on 14th December, 2017 showing construction of transit Camp No.1 having built up area of 3679.92 and transit camp No.2 having built up area 3125.52, in all 6805.44. Respondent No.5 proposed to construct 160 residential tenements in transit Camp No.1 and 79 tenements in transit camp No.2, aggregating to 239 tenements.

10. Mr. Mishra submitted that by order dated 16th January, 2015, Division Bench disposed of the Writ Petition and vacated the interim order. He submitted that the petitioners are presently occupying respective structures and as soon as they hand over possession of their respective structures to respondent No.5, respondent No.5 will pay advance rent for one year @ Rs.15,000/- per month to the petitioners. He further assures that after completion of the construction of transit camp No.2, he will allot the transit camps to the Society who, in turn, is expected to hand over possession of the transit camps to the petitioners herein. Mr. Mishra, on instructions from Kishor Velani, partner of respondent No.5, who is present in the Court states that construction of transit camp No.1 is complete and assures that within two months from today, respondent No.5 will obtain Occupation Certificate in respect of Transit Camp No.1. Immediately after the petitioners vacating structures in their respective possession, respondent No.5 will complete construction of transit camp No.2 as also obtain Occupation Certificate within six months from the petitioners vacating structures in their possession.

11. Mr. Parab submitted that except structure of petitioner No.5, other petitioners structures are not affected by proposed transit camp. It is, therefore, not necessary, to vacate the premises in their possession and hand over the same to respondent No.5. Apart from that, there is no access way for approaching their transit camps.

12. Mr. Mishra submitted that structures of the petitioners are located at the place where transit camp No.2 (ground to 7 floor) is shown in the revised sanctioned plan dated 4th December, 2018. He further submitted that respondent No.5 was supposed to construct two steel bridges connecting main road and transit camp No.1 and respondent No.5 will ensure that access will be made available for approaching transit camp No.2. He submitted that unless

petitioners vacate the structures in their respective possession, it will not be possible for respondent No.5 to construct transit camp No.2.

13. I have considered rival submissions advanced by learned Counsel for the parties. I have also perused the material on record. As mentioned earlier, LOI was issued on 23rd September, 2010 and I.O.A was issued on 3rd February, 2012. S.R.A has also granted permission for constructing transit camp on 27th January, 2012. It is not in dispute and is rather a matter of record that Writ Petition No.1489 of 2008 was instituted in this Court. By order dated 30th July, 2008, the parties to the Petition were directed to maintain status-quo. The petitioners took out Chamber Summons for impleading respondent No.5. By order dated 23rd August, 2012, Chamber Summons was allowed. It is also not in dispute that finally Writ Petition No.1489 of 2008 was disposed of on 16th January, 2015 and interim order was vacated by this Court.

14. It has also come on record that earlier construction of transit camps was sanctioned by S.R.A on 27th January, 2012 and the revised plan was sanctioned on 14th December, 2017 and finally as on today, the plan is sanctioned on 4th December, 2018. Earlier, respondent No.5 was not impleaded in the Writ Petition No. 1489 of 2008 and status-quo was operating from 2008 till 2015. In these circumstances, it was not possible for respondent No.5 to construct transit camps.

15. Mr. Mishra submitted that as far as transit camp No.1 is concerned, respondent No.5 has constructed 160 tenements and within two months from today, respondent No.5 will obtain Occupation Certificate and accommodate eligible slum dwellers who have already vacated their respective structures. In so far as transit camp No.2 is concerned, on instructions, he

assured that respondent No.5 will complete construction of transit camp No.2 within 6 months from petitioners' handing over possession to respondent No.5 and will also obtain Occupation Certificate within 2 months therefrom.

16. As mentioned earlier, the petitioners are not opposing implementation of slum rehabilitation scheme. It is also not in dispute that as on today, appointment of respondent No.5 as developer is not terminated by SRA and complaint filed by the Society is pending before S.R.A. It is not in dispute that Annexure-II was issued by the Competent Authority on 27th December, 2007. 239 out of 361 slum dwellers were declared eligible for rehabilitation.

17. In view thereof, in my opinion, ends of justice will be served by directing the petitioners to hand over vacant and peaceful possession of their respective structures to respondent No.5 within two weeks from today. Respondent No.5 will issue advance cheques of 12 months @ Rs. 15,000/- per month to the petitioners upon vacating their premises. Respondent No.5 will obtain Occupation Certificate in respect of transit camp No.1 within two months from today and will complete construction and obtain Occupation Certificate for transit camp No.2 within six months from vacating of structures by the petitioners herein. It is made clear that this order is passed without prejudice to the rights and contentions of the parties in the complaint pending before S.R.A. Petition is dismissed subject to above with no order as to costs.

[R.G. KETKAR, J.]