

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Writ Petition NO. 14577 OF 2018

Niyaz Ahmed Mohammed Jama
Ansari and others

...Petitioners

Versus

Grievance Redressal Committee, Mumbai Suburban,
Mumbai and others

...Respondents

....

Mr. Tushar Kochale a/w. Ajay Jankar, Advocate for the petitioners.

Mr. Y.D. Patil, A.G.P. for Respondents No.1 to 3 & 7.

Mr. Yogesh Bandal i/b. Prashant A. Nakati, Advocate for Respondent No.5.

Ms. Ankita Nishad i/b. Abhijeet Desai, Advocate for Respondent No.6-S.R.A.

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CORAM : R. G. KETKAR, J.

DATE : 22nd DECEMBER, 2018

P.C.

1. Heard Mr. Tushar Kochale, learned counsel for the petitioners, Mr. Y.D. Patil, learned A.G.P. for respondents No.1 to 3 & 7, Mr. Yogesh Bandal, learned counsel for respondent No.5 and Ms. Ankita Nishad, learned counsel for respondent No.6-S.R.A., at length.

2. By this petition under Article 227 of the Constitution of India, the petitioners have challenged

- (i) the common eviction order dated 11.4.2018 passed by respondent No.3 – Deputy Collector (Encroachment/Removal) & Competent Authority, Ghatkopar (for short, 'Competent

Authority');

- (ii) the orders dated 24.8.2018 passed by respondent No.2 – Additional Collector (Encroachment/Removal), Eastern Suburbs, Mumbai in Appeals No.75/2018, 78/2018 and 79/2018;
 - (iii) the order dated 4.9.2018 passed by respondent No.2 Additional Collector (Encroachment/Removal), Eastern Suburbs, Mumbai in appeal No.80/2018; and
 - (iv) common order dated 6.12.2018 passed by respondent No.1 – Grievance Redressal Committee, Mumbai (for short, 'Committee') in Appeals No.1138/2018, 1136/2018 and 1139/2018 filed under Section 35(1A) of the Maharashtra Slum Areas (Improvement, Clearance And Redevelopment) Act, 1971 (for short, 'Act')
3. The relevant and material facts that are necessary for disposal of this Petition are as under. Slum Rehabilitation Scheme (for short, 'Scheme') is being implemented on City Survey Nos.151, 151/1 to 61 (new City Survey No.151B) of respondent No.4 Pankheshah Baba Co-operative Housing Society Limited (for short, 'society'). The scheme includes about 557 slum dwellers. On 21.8.2008, Annexure-II of the society was published and final report was submitted to the Additional

Collector (Encroachment & Removal). Out of 557 slum dwellers, 395 slum dwellers were declared eligible and 162 slum dwellers were declared as ineligible. Similarly the scheme is proposed to be implemented on C.T.S. No.151 (part), 152, 152/1 to 43, 153 (part) and 154 (part) of the society. The scheme includes 71 slum dwellers. In respect of this, final Annexure-II was published on 2.3.2013 and the final report was submitted before the Additional Collector (Encroachment / Removal), Eastern Suburbs. Out of these 71 slum dwellers, nine slum dwellers were found eligible and 46 slum dwellers were found ineligible. No decision was taken in respect of six slum dwellers and there are about other 10 slum dwellers.

4. On 23.10.2017, respondent No.5 Developer informed that despite calling upon non-cooperative slum dwellers to vacate their structures, they are not vacating their structures and consequently he cannot proceed with the construction. Respondent No.5 offered to pay them 11 months' advance rent @ Rs.5,000/- towards temporary arrangement. This aspect was informed to them on 28.9.2017 and 9.10.2017. Respondent No.5, therefore, requested to initiate action under Sections 33 and 38 of the Act.

5. In pursuance thereof, show cause notice dated 20.11.2017

was issued to the petitioners and others. Hearing was conducted before the Competent Authority. By order dated 11.4.2018, the Competent Authority directed the ineligible and non-cooperative slum dwellers to vacate their structures within seven days and hand over the land beneath their structures to respondent No.5 developer. Respondent No.5 developer was directed to pay Rs.5,000/- per month for a period of six months to ineligible and non-cooperative slum dwellers. It was made clear that in case the non-cooperative ineligible slum dwellers did not comply with this direction, appropriate action under Sections 33 and 38 of the Act will be taken. The Competent Authority also issued other directions.

6. Aggrieved by this decision, appeals were preferred by the petitioners and others before respondent No.2 Additional Collector (Encroachment/Removal), Eastern Suburbs, Mumbai. By orders dated 24.8.2018 and 4.9.2018, appeals were dismissed. Aggrieved by these orders, appeals were preferred before the Committee. By the impugned order dated 6.12.2018, appeals were dismissed. It is against these orders, the petitioners have instituted present petition.

7. In support of this petition, Mr. Kochale strenuously contended that the petitioners are occupants of C.T.S. Nos.152, 153 and 154. The

consent of the occupants of all these C.T.S. numbers is not taken by the society or the developer or by the authorities under the Act for implementation of the Scheme. He submitted that the petitioners have approached the Apex Grievance Redressal Committee (for short, 'A.G.R.C.') challenging the amalgamation of two schemes. One scheme is approved on plot bearing C.T.S. Nos. 151, 151/1 to 61 (new C.T.S. No.151B) and the proposed scheme on non-slum plot on C.T.S. No.151C (part), 152, 152/1 to 43 & 153(part) of village Ghatkopar, Taluka – Kurla, situate at L.B.S. Marg, Pankeshah Baba Dargah, Ghatkopar (West), Mumbai Said proceedings are pending before the A.G.R.C. He submitted that out of six petitioners, two petitioners are found eligible and remaining four petitioners who are found ineligible have approached the Deputy Collector (Encroachment/Removal) for determining their eligibility and said proceedings are pending. He submitted that as the proceedings challenging the amalgamation of two schemes is pending before the A.G.R.C. as also eligibility of four petitioners is pending before the Deputy Collector (Encroachment/Removal), the authorities below were not justified in passing the impugned orders. He relied upon following orders :

- [i] dated 3.5.2018 passed by this Court (Coram:S.C. Gupte, J.)
in Writ Petition (L) No.1076/2018 [**Shree Sidhi Vinayak**

Rahivasi Vikas Mandal and another Vs. Slum Rehabilitation Authority and others]; and

[ii] dated 26.4.2017 passed by this Court (Coram: Shantanu S. Kemkar & A.M. Badar, JJ.) in Writ Petition (L) No.1117/2017 **[Shree Sidhi Vinayak Rahivasi Vikas Mandal Vs. State of Maharashtra and others]**

8. Mr. Kochale submitted that as the petition challenging the amalgamation of schemes is admitted by the learned Single Judge of this Court, this petition also requires consideration and petitioners are entitled to protection.

9. On the other hand, Mr. Bandal invited my attention to condition No.14 of the Letter of Intent (L.O.I.) dated 23.6.2017. He submitted that as out of six petitioners, two petitioners are found eligible and four petitioners are not found eligible, the four petitioners have approached the Deputy Collector (Encroachment/Removal) for determining their eligibility. Condition No.14 of L.O.I. stipulates that the developer shall rehabilitate all the additional hutment dwellers if declared eligible in future by the Competent Authority, after amending the plans wherever necessary or as may be directed. On instructions, he states that if the four petitioners are found eligible in future by the

Competent Authority, respondent No.5 will allot them permanent alternate accommodation. Statement made on instructions by respondent No.5 is accepted in the form of undertaking to this Court.

10. I have considered the rival submissions advanced by the learned counsel for the parties. I have also perused the material on record. As mentioned earlier, respondent No.5 has requested the authorities under the Act to initiate proceedings under Sections 33 & 38 of the Act. In pursuance thereof, the impugned orders are passed. The Authorities below have concurrently held that while considering the proceedings under Sections 33 and 38 of the Act, the objections to the appointment of the developer, L.O.I., inclusion of plots in the scheme cannot be gone into. The authorities below referred to the decision of this Court (Coram: Anoop V. Mohta, J.) dated 6.3.2009 in Writ Petition No.1708/2009 (**M/s. Andrade Motors Vs. The Additional Collector (Encroachment/Removal) & Competent Authority and others**) as also decision of Division Bench of this Court (Coram: H.L. Gokhale & Abhay S. Oka, JJ.) in the case of **Awdesh Vasistha Tiwari and others Vs. The Chief Executive Officer, Slum Rehabilitation Authority and others, 2006(4) Mh.L.J. 282** and held that in the proceedings under Sections 33 and 38 of the Act these issues cannot be gone into. The proceedings under Sections 33 and 38 have limited scope and the

authorities cannot test the validity of S.R.A. Scheme, L.O.I. already issued. In paragraph-13 of **Awadesh Tiwari** (supra), the Division Bench observed thus :

“13. Regulation 33(10) of D.C. Regulations provides for a scheme for rehabilitation of slum dwellers. Under such rehabilitation scheme, there is a provision for providing a tenement in exchange of a dwelling structure whose inhabitants' names and structures appear in the electoral roll prepared with reference to 01st January, 1995. Clause (i) of Appendix IV of D.C. Regulation lays down that hutment dwellers in the slum or on pavement who are eligible in accordance with the provisions of D.C.Regulation 33(10) shall be entitled in exchange for their structure a residential tenement free of cost having carpet area of 225 sq.ft. Including balcony, bath and water closet, but excluding common free of costs. Thus, the right of a hutment dweller who is in possession of a hutment on an area to which the Scheme is made applicable is for a tenement admeasuring 225 sq.ft. in exchange of the hut irrespective of the area of the hut. Thus, an individual hutment dweller gets this limited right apart from right to seek protection from eviction under Section 3Z(1) of the Slum Act. However, there is nothing in the scheme of D.C. Regulation 33(10) that an individual slum dweller gets a right to decide which Society or which developer should implement the scheme.”

11. In paragraph-13 of **M/s. Andrade Moters** (supra), the learned Single Judge has observed that the Authorities under Section 33 of the Act are not empowered to interfere with the final sanctioned scheme. The scope under Section 33 of the Act cannot be enlarged so

as to permit the parties to agitate/challenge as regards appointment of developer, grant of L.O.I. and amalgamation of the schemes. In view thereof, I do not find that the authorities below committed any error in passing the impugned orders. Hence, the petition fails and the same is dismissed. Needless to observe that the Competent Authority will decide the proceedings filed by four petitioners, who are found ineligible, for determining their eligibility, within four weeks from today. Order accordingly.

(R. G. KETKAR, J.)

Deshmane (PS)