

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

WRIT PETITION NO.2006 OF 2014

Shaikh Jamaluddin Riyazuddin and others ..Petitioners.

v.

Firoz Ayub Khan and others ..Respondents.

Mr. M. M. Vashi alongwith Ms. Aparna Devkar i/by Mr. M.P. Vashi and Associates for the petitioner.

Mr. V.A. Thorat i/by Mr.A.K. Pande for the respondent Nos.1 and 2.

Mrs. Vandana Mahadik for the MMC.

**CORAM : A.S. OKA &
RIYAZ I. CHAGLA, JJ.**

DATE : 12th MARCH, 2018

P.C.

1 Heard the learned Counsel appearing for the petitioners, the learned Counsel appearing for the 1st and 2nd respondents and the learned Counsel appearing for the 3rd and 4th respondents.

2 This petition has been essentially filed for seeking a writ of mandamus directing the 3rd and 4th respondents to implement the order dated 13th February 1998 passed by the Additional Municipal Commissioner of the 3rd respondent, Mumbai Municipal Corporation. The operative part of the said order reads thus :

In view of the above, the order dated 5/3/1994 passed by the Deputy Municipal Commissioner (Zone II) is hereby set aside. The Ward Officer (K/West) is directed to expeditiously

get the demarcation of the CTS No.454A done by the City Survey Office and remove the structure in question (or any part of it) which comes in the area acquired by the Municipal Corporation comprising CTS No.454A.

3 It appears that the 1st respondent challenged the said order by filing Writ Petition No.2112 of 2001 . A Division Bench of this Court by judgment and order dated 3rd July 2002 dismissed the Writ Petition. From Paragraph No.3 of the said judgment and order, it appears that the Writ Petition was dismissed on merits as well as on the ground of delay. A Special Leave Petition was filed by the 1st respondent before the Apex Court, which was withdrawn as is clear from the order dated 15th September 2010.

4 There is an affidavit in reply filed by Mr.Parag Raghunath Masurkar on behalf of the 3rd and 4th respondents which is dated 11th April 2016. The stand taken in the reply is that a notice under Section 351 of the Mumbai Municipal Corporation Act, 1888, (for short “the said Act”) was issued on 13th June 2014. The stand taken in the affidavit and in particular clause (f) of the paragraph No.4 is that action is taken to implement the order dated 13th February 1998 by him by issuing the notice dated 13th June 2014. In the same affidavit, Shri Masurkar has stated that the entire structure subject matter of the said notice is on the land vesting in the 3rd respondent. It also refers to a Government Gazette dated 2nd August 2001 in which a notification was published declaring the land as a slum.

5 The 1st and 2nd respondents have also filed reply dated 7th April 2016. It is contended in the said reply that the order dated 13th February 1998 cannot be implemented now as the area in which the subject structure is situated, is in the declared slum. Reliance was

placed on the documents annexed to the Affidavit in reply including the Slum Rehabilitation Scheme sanctioned by the Slum Rehabilitation Authority. There is an Affidavit in rejoinder filed by the petitioners. In the said Affidavit in rejoinder, a reference has been made to L.C. Suit No.795 of 2014 filed by the 1st and 2nd respondents in the City Civil Court. It is contended that by order dated 31st July 2015 the learned Judge of the City Civil Court has dismissed the Notice of Motion taken out for interim relief by the 1st and 2nd respondents. It is pointed out that on the basis of the aforesaid notice issued on 13th February 2014 under Section 351 of the said Act, an order of demolition has been passed on 29th March 2014 and the suit filed by the 1st and 2nd respondents is for challenging the said notice and the said order passed under Section 351 of the said Act.

6 Our attention is invited to the fact that Appeal from Order No.988 of 2015 has been preferred by the 1st and 2nd respondents for challenging the order dated 31st July 2015 passed by the learned Judge of the City Civil Court in L.C. Suit No.795 of 2014. Copies of orders passed in the said Appeal from Order are produced before the Court. On 13th August 2015 the learned Single Judge continued the ad-interim relief granted in the said Notice of Motion till 1st September 2015, thereafter ad-interim relief was continued on 25th January 2017 till 3rd April 2017. On 5th April 2017 ad-interim relief was extended till 28th June 2017.

7 The submission of the learned senior Counsel appearing for the petitioner is that now there is no impediment in the way of implementing the order dated 29th March 2014 passed under Section 351 of the said Act, which was passed on the basis of the notice dated

13th February 2014 issued for the implementation of order dated 13th February 1998.

8 The learned senior counsel appearing for the 1st and 2nd respondents firstly states that the said respondents will move the learned Single Judge for extension of ad-interim relief. Secondly, he contends that the order dated 13th February 1998 cannot be implemented now as the property in question has been declared as a slum by a notification published in the Government Gazette dated 2nd August 2001. He submits that after the said position was pointed out, ad-interim relief was granted by this Court on 20th April 2016 was vacated by the same Division Bench on 22nd July 2016. He would further submit that now a writ as prayed for cannot be issued.

9 We have considered the submissions. The order dated 13th February 1998 has been quoted in the earlier part of this judgment and order. It clearly directs the removal of the structure or a part of it which comes in the area acquired by the 3rd respondent comprising of CTS No.454A. The order dated 13th February 1998 has attained finality in the sense that Writ Petition No.2112 of 2001 was dismissed on 3rd July 2002 and Special Leave Petition filed against the order was withdrawn.

10 Perusal of the affidavit of Shri Parag Masurkar dated 11th April 2016 shows that it is for the implementation of aforesaid order which has attained finality that the notice dated 13th February 2014 under Section 351 of the said Act was issued. The specific stand to that effect to had been taken as is clear on the conjoint reading of clause (b) and (f) of paragraph No.4 of the said affidavit. As stated earlier, on 29th

March 2014, an order of demolition was made by the 3rd respondent on the basis of the notice dated 13th February 2014.

11 Thus, the factual scenario which emerges today is that as on today, the order dated 13th February 1998 passed by the Additional Municipal Commissioner has attained finality. It is also crystal clear that for implementing the said order, the notice dated 13th February 2014 under Section 351 of the said Act was issued by the 3rd respondent. On the basis of the said notice, an order dated 29th March 2014 was passed by the 3rd respondent of demolition of the structures of the 1st and 2nd respondents.

12 Reliance is placed by the learned senior Counsel appearing for the 1st and 2nd respondents on the order dated 22nd July 2016 by which the earlier order dated 20th April 2016 was recalled. The said order is recalled by consent of the parties. The same order grants liberty to the petitioners to request for grant of same relief which was granted under order dated 20th April 2016. Therefore, the said order dated 22nd July 2016 has no bearing on the merits of this Writ Petition.

13 Thus, it is crystal clear that if there is no legal impediment in the way of implementation of the order dated 29th March 2014 passed on the basis of notice dated 13th February 2014 under Section 351 of the said Act, the said order dated 29th March 2014 will have to be implemented for giving effect to the order dated 13th February 2014. However, the order dated 29th March 2014 is subject matter of a challenge in the pending suit and therefore, in this Petition under Section 226 of the Constitution of India, we are not recording any finding on the legality and validity of the notice dated 13th February

2014 and the order passed thereon on 29th March 2014.

14 From the orders passed in the Appeal From Order No.988 of 2015, it is very clear that the order dated 29th March 2014 could not be implemented in view of the ad-interim relief granted in the said appeal which continued till 28th June 2017. Now, the learned senior Counsel appearing for the 1st and 2nd respondents states that the said respondents will apply for extension of ad-interim relief by moving the learned single Judge.

15 Thus, without adjudicating on the issue of legality and validity of the order dated 29th March 2014 and the notice dated 13th February 2014 which are subject matter of challenge in the suit, suffice is to say that if the said order dated 29th March 2014 is operative, the Municipal Corporation will have to take steps to implement the said order. Hence, we dispose of the petition by following order :

ORDER

(i) Subject to what is observed above and held in this judgment and order, we grant time of one month to the 1st and 2nd respondents to move to the concerned Court for the extension of ad-interim relief granted in Appeal From Order No.988 of 2015;

(ii) We make it clear that we have not made adjudication on the legality of the notice dated 13th February 2014 and the order dated 29th March 2014, as the same are subject matter of challenge in the pending suit;

(iii) We make it clear that for a period of one month from today, the order dated 29th March 2014 shall not be implemented only to enable the 1st and 2nd respondents to move to the Bench taking up the Appeal from Orders;

(iv) We also make it clear that if thereafter there is no prohibitory order passed by the Court of Law for preventing the implementation of order dated 29th March 2014, the Municipal Corporation shall proceed to implement the same.

(RIYAZ .I.CHAGLA, J)

(A.S. OKA, J)