

rrpillai

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.2569 OF 2018

Mr. Parimal H. Kokate

... Petitioner

vs.

The Grievance Redressal Committee
and Ors.

... Respondents

WITH

WRIT PETITION (L) NO.2467 OF 2018

Mr. Prafull H. Kamble

... Petitioner

vs.

The Grievance Redressal Committee
and Ors.

... Respondents

Mr. S. S. Sawant for the Petitioner.

Mr. Madhur Surana for Respondent no. 14.

Mr. Ashish Kamat i/b. Mr. Parag Shah for respondent no. 12 in WP/2569/2018 and respondent no.6 in WP (L)/2467/2018.

Mr. Hemant Haryan, AGP for the State in WP/2569/2018.

Mr. Sukanta Karmakar, AGP for the State in WPL/2467/2018

CORAM : A.K. MENON, J.

DATE : 18th SEPTEMBER, 2018

P.C.

1. By these Writ Petitions the petitioners challenge orders dated 17th May, 2018 whereby two appeals filed by the present petitioners were rejected and two weeks protection was granted against eviction. Although the facts may vary to some extent, Mr. Sawant's submissions in support of the petitions are made in common since the challenge is identical. For convenience Mr. Sawant has referred to the

facts in Writ Petition No. 2569 of 2018. It is therefore appropriate that the facts in Writ Petition No. 2569 of 2018 be briefly dealt with.

2. At the outset Mr. Sawant learned Advocate for the petitioners submitted that copy of the impugned order had not been received by him. However, he fairly admitted that the copy of the impugned order had been annexed to the affidavit in reply. It is his case in this petition that the petitioner is absolute owner of land under Room no. 8 situated at Sahyadri Nagar, Quarry Road, Bhandup (West), Mumbai-400 078 and that he has been in continuous physical possession of the Room no. 8 said to be admeasuring 300sq.ft. He has craved leave to refer documents to prove his claim. No document of title has been produced.

3. According to Mr. Sawant, the impugned order is unsustainable because the petitioner has not been heard in the matter. He therefore sought a writ quashing the impugned order on the basis stating that the impugned order is violative of principles of natural justice and for a direction remanding the Appeal to the grievance redressal committee for hearing the matter afresh. Mr. Sawant read through various portions of his petition and the impugned order copy of which has been annexed to the reply.

4. One other submission made by Mr. Sawant is that the impugned order is in violation of Rule 7(5)(a) of the Rules framed under the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971. He invited my attention to Rule 7(5)(a) which is reproduced below for ease of reference :

7(5) Non appearance of parties before Grievance Redressal Committee .

(a) The Grievance Redressal Committee may, while hearing appeal comes to a conclusion that the appellant has consistently remained absent at the time of hearings, either in person or through his Lawyer, without sufficient reasons, decide to dismiss such appeal, for default or proceed ex-parte to decide the appeal.

Mr. Sawant submitted that the rule provided for appearance of parties and hearing but it had not been followed and that by virtue of Rule 7(5) the appeal must be restored since it is deemed to have been passed in the absence of the petitioner.

5. The next point urged by Mr. Sawant is that the Court must not allow the respondent to avoid the obligation under a statute. In this behalf he relied upon decision of this Court in *Preetam Kaur vs. Prakash Ramdeo Jaiswal*¹. Mr. Sawant submitted that in the instant case the respondents are not entitled to proceed with the redevelopment on the basis that he is owner of the land and that due process is not been followed. He submitted that the impugned order has been obtained by playing fraud. He relied upon judgment in the case of *Peoples Education Society, JAT and Ors vs. Manohar Shivappa Modi (Dr.) and Ors.*² in which a single judge held that in a matter pertaining to the Bombay Public Trusts Act, 1960 in which all application filed under section 41A of the Act were viewed to play fraud upon the Court and the petitioner and therefore were rejected.

6. Mr. Sawant thus relied upon another decision of the single Judge of this Court in *Savitri Chandrakesh Pal vs. State of Maharashtra and Ors.*³ wherein it is

¹ [2011(6) Mh.L.J. 84]

² 2009 (2) Mh. L.J. 745

³ 2009(4) Mh.L.J. 406

observed that guidelines proposed by the High Court must be adopted by quasi judicial authorities. If any party is unable to remain present at the time of hearing for a sufficient cause, one more opportunity should be given to him to attend the hearing. He further submitted that the order passed by such authority shall forthwith be communicated to all parties by Registered post and that should be done immediately.

7. Mr. Sawant stressed upon the fact that in the case of *Shewalkar Developers Ltd., Nagpur vs. Rupee Co-operative Bank Ltd, Pune*⁴ a Division Bench of this Court had held that when Highest Court has seized of matter, all courts subordinate thereto including High Courts, must wait for the decision of the Apex court. In this view the grievance redressal committee ought not to have passed the order since various aspects were pending before the High Court.

8. Mr. Sawant also relied upon decision of the Single Judge of this Court in Writ Petition (L)No. 1408 of 2018 dated 4th May, 2018 wherein the challenge was to an order passed by the Chief Executive Officer, Slum Redevelopment Authority ("SRA") cancelling a Letter of Intent. In that case the petitioners were the developers under the Development Agreement which was duly confirmed by registered deed of confirmation. The challenge was to an order of cancellation which was found to be a cryptic order without reference to documents produced by the appellant before the authority. In that view of the matter the order of cancellation was quashed and set aside. In this manner Mr. Sawant vehemently submitted that the present order is liable to be set aside.

4 2016 (1) Mh.L.J. 382

9. The petition is opposed by Mr. Kamat and Mr. Surana, learned Advocates appearing for respondent no. 12 and 14. Respondent no. 14 has filed an affidavit in reply to oppose the petition on the basis that the challenge in this petition is aimed at an order for eviction and demolition dated 1st January, 2018 passed by Respondent no. 6 under section 33 and 38 of SRA Act which was confirmed by order passed by respondent no. 5 in Slum Appeal No. 16 of 2018 and once again reconfirmed by judgment and order impugned in this petition. That the Competent Authority and Appellate Authority had to only verify whether SRA approval of the scheme was in order and whether eligible occupants had been provided for. The scope of the provision being limited and the petitioner being an eligible occupant he had already conveyed his written consent to respondent nos. 12 and 14 and executed a tripartite agreement and had accepted rent and compensation for the transit accommodation.

10. Mr. Kamat submitted that out of 269 structures 218 structures are demolished and 32 structures are not required to be demolished and only 19 structures were required to be demolished. The petitioner has held one of such premises. Furthermore he relied upon deed of conveyance dated 1st October, 2010 by which the property upon which the development was to take place is said to have been conveyed to respondent no. 12. He invited my attention to the Letter of Intent and Intimation of approval. Mr. Kamat submitted that the SRA had approved the slum scheme and issued Letter of Intent dated 16th January, 2015. An intimation of approval was also given on 18th December, 2014. He made reference to Exhibits-

R, S and T which it held against the petitioner. He submitted that in view of these concurrent findings there is no case for interference.

11. I have heard counsel for the parties and particular I have heard Mr. Sawant at length and have patiently considered his submissions. His principal contention that the order impugned in this petition is violative of the principles of natural justice cannot be accepted. Reference to the impugned order clearly reveals that Mr. Sawant himself has been heard on behalf of the petitioner along with a representative of the Society. The authority concerned has recorded the gist of the relief sought in both the appeals including the appeal filed by the petitioner. After setting out the aforesaid issues, the facts have been adverted to.

12. In paragraph 6 of the order submissions of the petitioners advocate have been set out. In paragraph 7 of the order, the committee has dealt with all the contentions before the committee. Although the petitioner sought time since developer was not present, the GRC had directed the petitioners Advocate to proceed with the hearing since it was his client who was seeking relief. Initially it appears that the Advocate for the petitioner submitted that he would file written arguments if the developer was inclined to file written arguments. This was suggested as an alternative for oral submissions.

13. On behalf of the society it was stated that the representative had instructions to state that the society and the developer will file written arguments. The Committee permitted the society to file written arguments. The appellants however

did not file any written arguments. The companion appeal no. 535 of 2018 by the same petitioner was found to be infructuous since the subject matter of the challenge did not survive in view of the eviction order dated 1st January, 2018. The GRC observed that the petitioner who was appellant in the appeal no. 656 of 2018 was eligible but not ready to participate in the scheme. He contended even there he was owner of the land beneath the structure. The committee adverted to the fact that in Appeal no. 535 of 2018 and in Appeal no. 656 similar appeals being Appeal no. 536 of 2018 and Appeal no. 657 of 2018 had been filed. The contention in these two appeals were similar to Appeal nos. 535 of 2018 and 656 of 2018 and both sets of the appellants were represented by the same Advocate before the Competent Authority and the Appellate Authority as well as before the GRC.

14. Apropos the claim of ownership, the committee correctly records that it is not empowered to decide ownership/title dispute nor is empowered to look into any boundary issues in the proceedings before it. Committee has made reference to decision in the case of *Andrade Motors vs. The Additional Collector (Eng.Rem) and Competent Authority and Ors.*⁵ which holds that once the scheme is sanctioned action for eviction cannot be held back on the basis of contention regarding title before the GRC. The committee's finding is that all other objections raised by the petitioner in the appeals had been appropriately considered and dealt with in a reasoned order dated 17th March, 2018 passed by the Appellate Authority. The appeals merely repeated the very same submissions which were made in the appeal before the Appellate Authority despite which the GRC had considered all aspects.

5 2009 (3) Bombay Case Reporter 120

The impugned order clearly records that ample opportunity had been given to the appellant to urge the appeals and that the petitioners advocate has opted to file written argument instead of making oral submissions even after opportunity was given to him on 3rd May, 2018.

15. Furthermore it is to be noted that on the factual aspects a tripartite agreement was executed by the petitioner and his wife on 2nd February, 2014. This tripartite agreement is annexed at Exhibit A. This pertains to hutment no. 19 as evident from the document. Exhibit B to the affidavit in reply is photocopy of the cheque issued by respondent no. 14 to the petitioner for a sum of Rs.1,32,000/-. This amount was payable under the agreement. Respondent no. 14 has also annexed the copy of the statement of accounts of respondent no. 12 in TJSB Sahakari Bank wherein on 8th May, 2014 the sum of Rs.1,32,000/- is seen to be debited indicating payment of cheque no. 169708 issued in favour of the petitioner.

16. In Writ Petition (L) No. 805 of 2018 filed by the very same petitioner, the Division bench had granted liberty to the petitioner to file appropriate proceedings before the Grievance Redressal Committee (GRC) and granted protection till 17th April, 2018 with further direction that if the order passed by the GRC was adverse to the petitioner, it would not be given effect to for a period of two weeks. I may mention here that this direction has been duly observed by the grievance redressal committee while disposing of the petitioners appeal.

17. Thus there is no substance in the challenge to the impugned order. The petitioner is an eligible occupant has accepted rent/compensation and has executed tripartite agreement dated 2nd February, 2014. This was a material circumstances, which in my view ought to have been disclosed in the petition. In Writ Petition No 2467 of 2018, the petitioner claims to be owner of premises being Room No. 5 admeasuring 300 sq.ft. He has adopted submissions made in Writ Petition No. 2569 of 2018. The contentions raised by the Advocate for the petitioners are identical as in the case of Writ Petition No. 2569 of 2018. The petitioners have entered into a tripartite agreement dated 2nd April, 2018 and have been paid a sum of Rs. 1,32,000/- vide cheque no. 169852 dated 1st May, 2014. The Bank statement relied upon. by Respondent no. 14 in this case reveals that the amount of Rs. 1,32,000/- has been paid over to the petitioner vide cheque no. 169852. For all the aforesaid reasons I am not inclined to interfere with this order in the writ jurisdiction of this Court. I therefore pass the following order :

- (i) Writ Petition is dismissed.
- (ii) No orders as to costs.
- (iii) All ad-interim orders stand vacated.
- (iv) Respondent no. 12 through its partners shall file in this court an undertaking to continue to pay rent till such time as permanent alternate accommodation is provided and undertake to put the petitioners in possession of such premises upon occupation certificate being issued. Undertakings to be filed within one week from today.

(v) In view of the disposal of the petition, notice of motion does not survive. Notice of motion is also disposed.

18. At this stage Mr. Sawant seeks stay of this order. The request is declined.

(A.K. MENON, J.)

Rajeshwari
Ramesh
Pillai

Digitally
signed by
Rajeshwari
Ramesh Pillai
Date:
2018.09.19
19:29:30
+0530