Shailaja

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION [L] NO.3217 OF 2018

Prafull Harishchandra Kamble	]	Petitioner
Vs.		
Grievances Redressal Committee	]	
Mumbai Suburban and others.	]	Respondents

WITH
WRIT PETITION [L] NO.3221 OF 2018

Parimal Harishchandra Kokate	]	Petitioner
Vs.		
Grievances Redressal Committee	]	
Mumbai Suburban and others.	]	Respondents

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Mr. S.S. Sawant, for the Petitioners in both the Petitions.
Mr. Parag Shah, for Respondent No.12 in both the Petitions.
Mr. Madhur Suarana a/w Mrunal Surana for Respondent No.14 in both the Petitions.
Mr. Manish Upadhye, A.G.P, for Respondents No.5, 6 and 18 in W.P [L] No.3217 of 2018.
Mr. Hemant Haryan, A.G.P, for Respondents No.5, 6 and 18 in W.P. [L] No.3221 of 2018.

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CORAM : R.G. KETKAR, J.

DATE : 3rd October, 2018.

P.C:

Heard Mr. Sawant, learned Counsel for the petitioners, Mr. Shah, learned Counsel for Respondent No.12, Mr. Surana, learned Counsel for respondent No.14, Mr. Upadhye, learned A.G.P, for respondent No.5, 6 and 18 in W.P.[L] No.3217 of 2018 and Mr. Haryan, learned A.G.P for respondents No.5, 6 and 18 in W.P. [L] No.3221 of 2018 at length.

2. These Petitions were listed for admission before the regular Court presided over by Hon'ble Mr. Justice A.K. Menon. By order dated 25th September, 2018, the learned Judge removed the matters from the board. In view thereof, the petitioners moved the alternate Court presided over by Hon'ble Mr. Justice S.J. Kathawalla. As Hon'ble Mr. Justice S.J. Kathawalla has passed 'not before me' order, as per the administrative order dated 26th September, 2018 passed by the Hon'ble the Acting Chief Justice, the Petitions are specially assigned to this Court.

3. Writ Petition (L) No.3217 of 2018 is instituted by the petitioner Prafull Kamble under Article 226 of the Constitution of India. This Petition arises in the following circumstances;

Respondent No.14, Sukh Karta Co-operative Housing Society Limited (proposed) (for short 'Society') and respondent No.12, Akaar Nirman Properties (for short 'developer') proposed to implement slum rehabilitation scheme in respect of City Survey No. 237 (part), Mauje Kanjurmag, Taluka Kurla. On 9th February, 2017, respondent No.12-Developer submitted application before Deputy Collector, Slum Rehabilitation Authority (for short 'S.R.A') , Eastern Suburbs, Mumbai for initiating action under sections 33A and 38 of the Maharashtra Slum Areas (Improvement, Clearance and Re-development) Act, 1971 (for short 'Act') against 21 non participating eligible hutment dwellers. On 18th March, 2017, Office of the Deputy Collector (Encroachment/Removal) and Competent Authority, Bhandup (for short 'Competent Authority) received application from Deputy Collector, S.R.A. On 7th August, 2017, Secretary of S.R.A directed the Competent Authority to initiate action under section 33A of the Act. On 9th October, 2017, Additional Collector (Encroachment/Removal), Eastern Suburbs, (for short 'Additional Collector') directed the Competent Authority to initiate action under

Sections 33A (e) and (f) on the proposal received from Developer/Society/Architect against the non participating eligible hutment dwellers and thereafter initiate action for demolition under sections 33 and 38 of the Act. Accordingly the Competent Authority fixed preliminary hearing on 12th and 13th October, 2017. On 12th October, 2017, developer filed separate application under section 33A of the Act for initiating action against 20 non participating eligible hutment dwellers. On 13th October, 2017, the Competent Authority issued show cause notice under section 33-A of the Act against the petitioner Prafull Kamble and others (including Parimal Kokate, the petitioner in Writ Petition (L) No.3221 of 2018). The Competent Authority fixed hearing on 30th October, 2017 and directed the parties to produce supporting documents.

4. Aggrieved by the show cause notice dated 13th October, 2017, the petitioner Prafull Kamble preferred Appeal No.54 of 2017 before Additional Collector on 23rd November, 2017. By order dated 28th December, 2017, Additional Collector dismissed the appeal. Against this order, the petitioner instituted Appeal No.536 of 2018 before Grievance Redressal Committee, Mumbai Suburbs, Mumbai (for short 'Grievance Committee").

5. As noted earlier, in pursuance of the directive issued by Additional Collector on 9th October, 2017, the Competent Authority fixed preliminary hearing on 12th and 13th October, 2017. The matter was fixed for final hearing on 30th October, 2017. After hearing the parties, the Competent Authority passed order on 1st January, 2018. By that order, the Competent Authority directed 20 hutment dwellers to demolish their structures and hand over vacant possession to the Society/Developer; amongst other directions. Aggrieved by that order, the petitioner Prafull

Kamble preferred Appeal No.15 of 2018 before the Additional Collector. By order dated 17th March, 2018, the Additional Collector dismissed the appeal confirming the order dated 1st January, 2018 passed by the Competent Authority. Aggrieved by this decision, the petitioner preferred Appeal No.657 of 2018 before the Grievance Committee. By the impugned order dated 17th May, 2018, the Grievance Committee dismissed Appeal No.536 of 2018 as also Appeal No.657 of 2018. Aggrieved by these decisions, Writ Petition (L) No.3217 of 2018 is filed by the petitioner Prafull Kamble.

6. Writ Petition (L) No.3221 of 2018 is instituted by the petitioner Parimal H. Kokate under Article 226 of the Constitution of India challenging the order dated 17th May, 2018 passed by the Grievance Committee in Appeal No.535 of 2018 and Appeal No.656 of 2018. Controversy raised in this Petition is identical with the controversy raised in Writ Petition (L) No.3217 of 2018. As common questions of law and facts are involved in these Petitions, the same can conveniently be disposed of by this common order. In order to appreciate the controversy raised between the parties, facts from Writ Petition [L] No.3217 of 2018 instituted by Prafull Kamble are taken into consideration.

7. In support of this Petition, Mr. Sawant strenuously contended that the impugned order dated 17th May, 2018 is a forged and fabricated order. The order is forged and fabricated by Mr. Ravikant Thumare in collusion with members of the Grievance Committee viz; Bansi Gawli and Kiran Achrekar, Mrs. U.D. Borde, all partners of respondent No.12-Developer Mr. Tushar B. Kuvadia and Mr. Rajesh Bhosale. He submitted that the impugned order is without jurisdiction and is null and void. He invited my attention to Roznama of 19th April, 2018 maintained by the

Office of the Grievance Committee. A perusal of Roznama dated 19th April, 2018 shows that Chairperson Bansi Gawli and Dr. Avinash Gote, Member were present. The other member Kiran Achrekar was not present. Roznama is signed only by Chairperson Bansi Gawli. By order dated 19th April, 2018, appeals were clubbed together. He also invited my attention to Roznama dated 3rd May, 2018. On that date, Chairperson Bansi Gawli and Member Dr. Avinash Gote were present. The other member Kiran Achrekar was not present. Roznama is signed by Chairperson Bansi Gawli.

8. Mr. Sawant has invited my attention to the impugned order dated 17th May, 2018 passed in Appeal No.536 of 2018 and Appeal No.657 of 2018. He submitted that in this order Member Dr. Avinash Gote was shown absent. In fact, Dr. Avinash Gote was present. Still, he was shown absent. As far as other Member Kiran Achrekar is concerned, though he was absent, he was shown present and has signed the impugned order. The impugned order is signed only by 2 members viz: Chairperson Bansi Gawli and Kiran Achrekar and is not signed by the other Member Dr. Avinash Gote. He submitted that Rule-8(a) of the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) (Grievance Redressal Committees), Rules, 2014 (for short 'Rules') lays down that orders of the Grievance Committee have to be signed and dated by the Chairperson and all members. He submitted that in the instant case, the impugned order is not signed by all the members and is therefore, in violation of Rule-8(a) and is a nullity. In support of this proposition, he relied on the following decisions;

[1] **Income Tax Appellate Tribunal Vs. V.K. Agarwal and another, 1999 (SC) 235 ITR, 175;**

In this case, the Apex Court dealt with Rules-34 and 35 of the Income Tax (Appellate Tribunal) Rules, 1963 which regulate the procedure of the

Appellate Tribunal. Rules 34 and 35 which were extracted therein read thus;

> "34(1) : The order of the Bench shall be in writing and shall be signed and dated by the Members constituting it."
> 35: The Tribunal shall, after the order is signed, cause it to be communicated to the assessee and to the Commissioner".

After extracting Rules-34 and 35, the Apex Court observed that unless the order of the Bench is signed by all Members constituting it and is dated, it is not an order of the Appellate Tribunal.

[2] **The United Commercial Bank Ltd Vs. Their Workmen, AIR 1951 Supreme Court 230**.

In this case, section 16 of the Industrial Disputes Act, 1947 was extracted which is to the following effect;

> "16. The report of a Board or Ct. and the award of a Tribunal shall be in writing and shall be signed by all the members of the Board, Ct. or Tribunal, as the case may be:
> Provided that nothing in this section shall be deemed to prevent any member of the Board, Ct. or Tribunal from recording a minute of dissent from a report or award from any recommendation made therein".

9. Mr. Sawant submitted that section 16 thereof lays down that a report of the board or Court and the award of a Tribunal has to be in writing and has to be signed by all the members of the Board, Court or Tribunal as the case may be. In paragraph 15, the Apex Court has observed thus;

> "In our opinion, the position here clearly is that the responsibility to work and decide being the joint responsibility of all the three members, if proceedings are

> conducted and discussions on several general issues took place in the presence of only two, folld. by an award made by three, the question goes to the root of the jurisdiction of the Tribunal and is not a matter of irregularity in the conduct of those proceedings. The absence of a condition necessary to found the jurisdiction to make the award or give a decision deprives the award of any conclusive effect".

10. Mr. Sawant submitted that Dr. Avinash Gote was not present. The proceedings are conducted and discussions on issues took place only in the presence of remaining two members. This issue goes to the root of the jurisdiction and is not mere a matter of irregularity in conducting of the proceedings. Even on this count also, the impugned order deserves to be set aside.

11. Mr. Sawant submitted that notice under section 33-A of the Act was issued on 13th October, 2017 by Deputy Collector (Encroachment/Removal) and not by the Deputy Collector, S.R.A. He submitted that on 26th March, 2015, Chief Executive Officer of S.R.A has issued Office Order authorizing Deputy Collector S.R.A to take action under section 33-A (d), (e) and (f). As in the present case, the notice is not issued by the Deputy Collector, S.R.A and is issued by the Deputy Collector (Encroachment/Removal), even on this count notice is vitiated. He, therefore, submitted that the Petitions require consideration.

12. On the other hand, Mr. Surana has invited my attention to Rule-5 of Rules which deals with Office, sittings and quorum of Grievance Committee. Rule-5 (3) and (4) read thus;

> **5.Office, Sittings and Quorum of Grievance Redressal Committee._**
>
> (3) All Members of the Grievance Redressal Committee shall remain present for a sitting of the said Committee. However, if a Member, for reasons of being deputed or

> away for Compulsory Training, Election Duty, Foreign Tour, etc., or such any other urgent official work or for any personal reasons is unable to attend a sitting of the said Committee, shall inform the same, in advance, to the Chairperson.
>
> (4) The quorum in any siting of the Grievance Redressal Committee shall be constituted by a majority of the Members including the Chairperson of the respective Grievance Redressal Committee".

He submitted that Rule-5(3) lays down that all members of the Grievance Committee shall remain present for a sitting of the said Committee. However, if a Member, for reasons of being deputed or away for Compulsory Training, Election Duty, Foreign Tour, etc., or such any other urgent official work or for any personal reasons is unable to attend a sitting of the said Committee, shall inform the same, in advance, to the Chairperson. Rule-5(4) lays down that the quorum in any siting of the Grievance Committee shall be constituted by a majority of the Members including the Chairperson of the respective Grievance Committee.

13. In the present case, the Grievance Committee consisted of three Members. Out of that, one Member was absent. Chairperson and other person Kiran Achrekar were present that constituted majority. They have signed the impugned order. He, therefore, submitted that reliance placed on Rule-8 and decisions does not advance the case of the petitioners.

14. Mr. Surana also invited my attention to sections 33 and 33-A of the Act. Section 33 deals with power of eviction to be exercised by only the Competent Authority against the occupants from the building after hearing the concerned occupants. Section 33-A deals with procedure for

allotment of tenements to those occupants who are not willing to join the scheme or project. He submitted that the Authorities below have followed the procedure under section 33 by issuing show cause notice and after hearing the occupants. That apart, procedure under section 33-A was followed and after hearing the occupants, the Authorities below have passed the impugned orders. He submitted that the Petitions raising identical grievance were dismissed by the learned Single Judge [Coram: A.K. Menon, J.] on 18th September, 2018. He, therefore, submitted that no case is made out for interfering with the impugned orders.

15. I have considered rival submissions advanced by learned Counsel for the parties. I have also perused the material on record. Though Mr. Sawant submitted that the impugned order is a forged and fabricated order, no material is produced for substantiating the said contention. A perusal of the impugned order shows that the same is signed by Chairperson, Bansi Gawli and Kiran Achrekar. Third member Dr. Avinash Gote was not present. In other words, out of three members of the Grievance Committee, two members were present which constituted majority and that they have signed the impugned order.

16. Mr. Sawant relied on Rule-8 (1) (a) of the Rules which reads thus;

> **8. Orders and directions of Grievance Redressal Committee**._(1)*Orders of the Grievance Redressal Committee*._(a)The orders of the Grievance Redressal Committee shall be signed and dated by the Chairperson and all Members. Where the order of the said Committee is by majority, it shall be similarly signed an dated by the Chairperson and the Members forming the majority and the dissenting Chairperson or Member, as the case may be, shall record his opinion on the findings on which he dissents and thereafter with its inclusion, the copy of the

> order in an appeal may be sent to all the parties and shall be displayed on the notice board of the concerned grievance redressal committee.

17. In my opinion, Rule-5 and Rule-8 will have to be harmoniously construed so that neither of them is rendered otiose. If Rule-5 and Rule-8 are harmoniously construed, it cannot be said that the order passed by majority is without jurisdiction and/or is a nullity as it is not signed by all the persons. In view of Rule-5(4) extracted hereinabove, I do not find any merit in the submission of Mr. Sawant that the impugned order is without jurisdiction and is a nullity. Reliance placed by Mr. Sawant on Rule-8 as also decisions does not advance case of the petitioner.

18. As noted earlier, notice under section 33A of the Act was issued on 13th October, 2017 to the petitioners. The preliminary hearing was fixed on 12th October, 2017 and 13th October, 2017. Ultimately, the matter was fixed for final haring on 30th October, 2017. The petitioner challenged the show cause notice dated 13th October, 2017 by filing Appeal No.54 of 2017 on 23rd November, 2017. By order dated 28th December, 2017, the Additional Collector dismissed the appeal. Aggrieved by this decision, the petitioner preferred Appeal No.15 of 2018 before the Additional Collector. That appeal was dismissed by the Additional Collector on 17th March, 2018. Against that order, the petitioner instituted Appeal No.536 of 2018 before the Grievance Committee.

19. From perusal of the material on record, it is evident that after hearing the parties finally on 30th October, 2017, Competent Authority passed order on 1st January, 2018. By that order, the Competent Authorities directed 20 hutment dwellers to demolish their structure and

hand over vacant possession to the Society/Developer, among other directions. Aggrieved by that order, the petitioner preferred Appeal No.15 of 2018 before the Additional Collector. By order dated 17th March, 2018, the Additional Collector dismissed the appeal and confirmed the order dated 1st January, 2018 passed by the Competent Authority. Aggrieved by this decision, the petitioner preferred Appeal No.657 of 2018. By the impugned order, Grievance Committee dismissed Appeal No.536 of 2018 as also Appeal No.657 of 2018. Thus, the Authorities below have followed procedure before passing the impugned orders.

20. Section 33 of the Act lays down that power of eviction shall be exercised only by the Competent Authority and reads thus;

> "33. **Power of eviction to be exercised only by the Competent Authority**.
>
> Where the Competent Authority is satisfied either upon a representation from the owner of a building or upon other information in its possession that the occupants of the building have not vacated it in pursuance of any order or direction issued or given by the Authority, the Authority shall, by order, direct the eviction of the occupants from the building in such manner and within such time as may be specified in the order, and for the purpose of such eviction, may use or cause to be used such force as may be necessary:
>
> Provided that, before making any order under this section the Competent Authority shall give a reasonable opportunity to the occupants of the building to show cause why they should not be evicted therefrom".

21. Section 33A lays down the procedure for allotment of tenements to slum dwellers not willing to join the Scheme or project and reads thus;

33A. Procedure for allotment of tenements to slum dwellers not willing to join the Scheme or Project.

In respect of the slum dwellers, who are in possession or occupation of the building or structure which is part of the Slum Rehabilitation Scheme or Slum Redevelopment Project and who are held eligible for permanent alternate accommodation by the Competent Authority and who do not join such Scheme or Project willingly, the Competent Authority shall,-

(a) ensure that provision for permanent alternate accommodation for all such slum dwellers is made in the buildings to be constructed for rehabilitation component of the Scheme or Project;

(b) communicate in writing to such slum dwellers that tenement would be given to them by way of allotment by drawing lots on the same basis as communicated by the Developer to those who have joined the Scheme or Project;

(c) communicate to such slum dwellers that the transit tenement of 120 square feet would be alloted to them on the amount of rent fixed by the Slum Rehabilitation Authority.

(d) cause the Chief Executive Officer, or any officer designated by him, to direct the eviction of such slum dwellers from the structure under their occupation and effect demolish of such structure or any part thereof in such manner and within such time as may be specified in the order, and for the purpose of such eviction, may use or cause to be used such force as may be necessary.

(e) communicate in writing to such slum dwellers, against whom action under clause (d) is proposed that, after such action they shall not be eligible for transit tenement or for the reconstructed tenement by lots, but, shall be entitled only to what is available after others have chosen their tenements in the Scheme or Project;

(f) communicate in writing to such slum dwellers that, if they do not join till the building permission to the first building of the Scheme or Project is given, they shall lose the right to any built-up tenement, and their tenements shall be taken over by the Slum Rehabilitation Authority, and used for the purpose of accommodating other slum dwellers who cannot be accommodated in-situ, and they shall be entitled to only pitch of about 3 mtrs. X 3.5 mtrs. elsewhere, if and when available, and construction therein shall have to be done by such slum dwellers on their own.]"

22. From the material on record, it is evident that the Competent Authority has complied the requirement of section 33 of the Act by issuing show cause notice to the petitioner and after hearing the petitioner has passed order of eviction. In so far as compliance of section 33A is concerned, a perusal of the order dated 1st January, 2018 passed by the Competent Authority shows that the Competent Authority has complied clause (d) of section 33A by directing eviction of the petitioner from the structure under their occupation and has also directed handing over possession. The Competent Authority has also complied requirement of clause (e) of Section 33A by communicating in writing to the petitioner against whom action under clause (d) is proposed that, after such action they will not be eligible for transit tenement or for the reconstructed tenement by lots, but shall be entitled only to what is available after others have chosen their tenements in the Scheme or Project. The Competent Authority has also complied requirement of clause (f) of Section 33A by communicating in writing to the petitioner that if they do not join till the building permission to the first building of the Scheme or Project is given, they will lose the right to any built-up tenement, and their tenements shall be taken over by the S.R.A and used for the purpose of accommodating other slum dwellers who cannot be accommodated in-situ, and they will be entitled to only pitch of about 3 mtrs. X 3.5 mtrs., elsewhere, if and when available, and constructions therein will have to be done by such slum dwellers on their own.

23. Even otherwise, this is not a fit case for invocation of powers under Article 226 of the Constitution of India. A perusal of record shows that Writ Petition No.2569 of 2018 and Writ Petition (L) No.2467 of 2018 raising identical controversy were dismissed by the learned Single Judge of this Court (Coram: A.K. Menon, J.) on 18th September, 2018. That apart, a

perusal of the record shows that out of 269 hutment dwellers, 215 dwellers have vacated their structures by accepting compensation. Respondent No.12-Developer was ready and willing to pay compensation even to the petitioners, however, they did not extend co-operation. Even, on this ground, no case is made out for invocation of powers under Article 226 of the Constitution of India. Hence, the Petitions fail and the same are dismissed.

[R.G. KETKAR, J.]