

Jsn

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

WRIT PETITION (L) NO. 2988 OF 2017

Nilofer Salim Qureshi & Ors.

... Petitioners

Versus

State of Maharashtra & Ors.

... Respondents

Mr. Mathew Nedumpara, i/b Mr. R.R. Nair for the Petitioners.

Mr. Milind More, Addl. GP for Respondent No.1.

Mr. A.Y. Sakhare, Senior Counsel with Ms. Pallavi Thakar for the
Respondent – Mumbai Municipal Corporation.

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

DATED: 27TH FEBRUARY 2018.

PC:-

1. Heard learned counsel appearing for the Petitioner. This Petition is filed by six Petitioners. The prayers in the Petition proceed on the footing that the subject structures of the Petitioners are likely to be demolished on the basis of directions issued by this Court in PIL No.140 of 2006. The prayer (a) in this Petition seeks exemption to the Petitioners from complying with the procedural rules. The prayer (b) seeks a declaration that the Petitioners' 'Shantis' are not liable to be demolished without following due process of law. The prayer (c) is for a declaration that the Petitioners are entitled to be provided with the electricity and water connection. The prayer (d) is for a declaration that

Section 314 of the Mumbai Municipal Corporation Act, 1888 (for short “**the MMC Act**”) should be struck down. The prayer (e) has many blank spaces and therefore it is not possible for us to understand the same. The prayer (f) is for referring the matter to a larger bench. The prayer (g) is declaration about illegality of various notifications dealing with rehabilitation of slum dwellers classifying slum dwellers into different categories. In prayers (h), (i) and (j), the declaration is sought as regard certain sections of the MMC Act. However, the sections have not been mentioned and have been kept blank. The prayer for ad-interim relief proceeds on the footing that the structures of the Petitioners have not been demolished.

2. This Petition was placed before a Division Bench of this Court on 2nd November 2017. The order passed on 2nd November 2017 records a statement of the learned counsel appearing for the Mumbai Municipal Corporation (MMC) that all the Shanties have been removed from the site on 30th October 2017 and the site is fully clear and there are no structures thereon. The correctness of the said statement was disputed by the learned counsel appearing for the Petitioners as recorded in the said order. However, we find from the Petition and in particular the paragraph 24 that the Petition itself records that on 30th

October 2017, the Petitioners' structures were demolished. The relevant part of paragraph 24 reads thus:-

“30. On 30.10.2017 the officials of the BMC with a large posse of police, without any notice whatsoever, marched into the slum and employing brutal force, bulldozed their shanties and destroyed everything they possessed; their utensils, clothes, books and other study materials of the school going children. The Petitioners compelled to institute the instant Writ Petition in extreme hurry since the slum dwellers, who have nowhere else to go as their shanties were reduced to rubble, are forced to live in the open with no roof over their heads. The Petitioners could not have been evicted without providing them alternate accommodation. The Petitioners with infants and toddlers in their arms, have no place to go. The questions as to whether or not the land in question is public premises and whether the Petitioners are encroachers etc., are required to be decided and that could done in a judicial adjudication. The order passed by this Hon'ble Court based on which the Petitioners are dispossessed is a nullity and it is required to be so declared in the present Petition because while deciding a Writ Petition this Hon'ble Court is not bound to follow the strict rules of procedure inasmuch as Courts in India need not be oppressed by the limitations under which English Courts have exercised jurisdiction while granting prerogative writs (see T.C. Basappa v. T. Nagappa, AIR 1954 SC 440). The Petitioners state that the Petitioners were caught unawares by the BMC and the Police when they barged in to demolish their homes. As the Petitioners had to remain at the site in order to safeguard whatever little belongings they could lay their hands on, it was practically

impossible to move this Hon'ble Court on 30.10.2017."

3. This Petition was affirmed on 31st October 2017. There is an Affidavit in Reply filed by Shri Ashish Bhoir working as Assistant Engineer, H/E Ward. To the Affidavit in Reply, copies of the notices served upon the Petitioners on 1st September 2015 and notices dated 25th October 2017 served upon the Petitioners on the same day have been annexed. According to the Affidavit, the notices dated 25th October 2017 bear acknowledgements of the Petitioners. The stand taken in the reply and in the notice dated 25th October 2017 is that the Petitioners are ineligible for grant of alternate accommodation in terms of Government Resolution dated 16th May 2015. There is a rejoinder filed by the first Petitioner. In the rejoinder, the factual aspects stated in reply about the service of aforesaid notices have not been specifically disputed.

4. The first submission of the learned counsel for the Petitioners is that, it is true that the Petitioners' structures have been demolished, but the Petitioners continue to stay at the site of their structures. The second submission of the learned counsel appearing for the Petitioners is that the directions issued under the judgment and order dated 14th October 2009 in PIL 140 of 2006

are nullity in as much as even at that time, it was noticed that 15,000 structures will be affected by the implementation of the order, but no notice was served to any of them before passing the order directing demolition of the said structures. He submitted that those who are affected by the said judgment and order were not represented before the Court and therefore, the directions issued in PIL No. 140 of 2006 are nullity. He submitted that as per the amendment to the Maharashtra Regional and Town Planning Act, 1966 and as per the policy of the State Government, the slum dwellers whose structures were in existence on 31st December 2015 are entitled to rehabilitation in the event of their structures being demolished.

5. He invited our attention to the documents of some of the Petitioners annexed to the Petition. He submitted that no record is produced by Mumbai Municipal Corporation to show that the said documents were considered. He submitted that the notices dated 25th October 2017 are in a preconceived format which itself shows non-application of mind especially when the original record is not produced.

6. He submitted that only the six Petitioners could approach the Court, but there are similarity situated persons who are entitled to the same reliefs. He submitted that a direction be

issued to supply water and electricity to the Petitioners who continue to occupy the land on which their structures were situated.

7. When we invited attention of the learned senior counsel of MMC to the statement made in paragraph 6 of the Affidavit in Reply of Shir Ashish Bhoir, wherein he stated that an appeal is maintainable before the MMC itself against the order by which the Petitioners are held to be ineligible for grant of alternate accommodation.

8. We have given careful consideration to the submissions. As a matter of fact, when the Petition was affirmed, the subject structures of the Petitioners were demolished. Notwithstanding, the statement made in paragraph 24 of the Petition that the structures were completely demolished, as noted in order dated 2nd November 2017 passed by a Division Bench, the contention of the learned counsel appearing for the Petitioners was that on that day the Shanties were still in existence. Apart the from clear statement in paragraph 24 that the Shanties were demolished on 30th October 2017, in the rejoinder filed by the first Petitioner to the Affidavit in Reply of Shri Ashish Bhoir, it is not contended that the Shanties of the Petitioners were in existence any time after 30th October 2017. Therefore, we have to proceed on the footing

that when the Petition was filed, the Shanties (the subject structures) were already demolished. The prayers made in the Petition proceed on the footing that Shanties were in existence.

9. To the Affidavit of Shri Ashish Bhoir working as Assistant Engineer, H/E Ward, photocopies of the notices addressed to the Petitioners on 1st / 2nd September 2015 have been annexed. The said notices record that the structures were falling within the 10 meters of main water supply lines supplying water to the city of Mumbai and the same are required to be removed. The Petitioners were called upon to produce the documents to show their eligibility for rehabilitation. Notices record that if the Petitioners are held to be eligible for allotment of alternate accommodation, they will be rehabilitated either at Mahul or at any other place. The notices record that if the Petitioners are held to be ineligible, action of demolition will be taken within a period of 15 days. In the rejoinder filed by the first Petitioner it is not the case made out that the notices dated 1st / 2nd September 2015 were not served upon the Petitioners. The second set set of notices were served on the Petitioners which are dated 25th October 2017. From pages 148 to 153, there are copies of the said notices, which according to the case of the Corporation, bear the signatures of the Petitioners. The said notices specifically

refer to earlier notices of 1st September 2015. It is stated that the Petitioners were held as ineligible for allotment of alternate accommodation on the basis of documents submitted by them. Further notices were served on 25th October 2017 informing these Petitioners that they should remove their structures within a period of two days failing which the Municipal Corporation will demolish the same. At this stage, the learned counsel appearing for the Petitioners submitted that even going by the Affidavit in Reply of the Municipal Corporation, the structures were demolished on 27th October 2015. This contention is not correct for two reasons. In paragraph 24 of the Petition, the Petitioners have themselves stated that the structures were in existence till 30th October 2017. In fact, there is a specific statement to that effect in lines 10 and 11 of Clause (d) of paragraph 4 of the Affidavit of Shri Bhoir. We must note here that it is not the case of the Petitioners that notices of September 2015 and 25th October 2017 were not served upon them. The fact that, the notices were served to them in has not been disclosed in the Petition.

10. The learned counsel appearing for the Petitioners submitted that the Petitioners are poor and illiterate people who do not have legal assistance available. However, that does not mean that they should suppress the material facts. The statement made on 2nd

November 2017 before the Court is contrary to the fact stated in the Petition that the structures were demolished on 30th October 2017.

11. In any event, one day before the Petition was affirmed, the structures of the Petitioners were admittedly demolished. There is no prayer made in this Petition for reconstruction.

12. The decision recorded in the notices dated 25th October 2017 as regards eligibility for rehabilitation is not final as stated by the learned senior counsel appearing for the MMC. The Petitioners can prefer an appeal before the appropriate authority of the MMC. As a remedy of appeal is available, it is not necessary for us to decide in this Writ Petition as to which is the cut off date. The Petitioners can raise the contention that the cut off date is 31st December 2015 and not 1st January 2000 while preferring appeals.

13. Therefore, considering availability of a remedy of appeal, we are not deciding the issue as to which is the cut off date. The Petitioners can always raise proper contentions before the appropriate authority. If ultimately, the appellate authority decides against the Petitioners, they can file appropriate proceedings for challenging the order of appellate authority in which the same

contentions can be raised.

14. We propose to grant time of two weeks to the Petitioners to prefer appeals. It will be open for the Petitioners to produce the documents along with the appeal which were produced by them earlier and even the documents which were not produced by them earlier. We propose to direct the Municipal Corporation to decide the appeals in a time bound manner.

15. Hence we pass the following order:-

(a) We decline to entertain the Petition under Article 226 of the Constitution of India. However, the issue whether the Petitioners are eligible for rehabilitation is kept open;

(b) It will be open for the Petitioners to prefer appeal before the Mumbai Municipal Corporation within a period of 15 days from the date which this order is uploaded. It will also be open for the Petitioners to produce all relevant documents along with the appeals;

(c) We make it clear that it will be open for the Petitioners to raise the contention before the appellate authority that the cut off date for grant of rehabilitation is 31st December 2015. Appellate Authority shall consider the said contention. The appellate authority shall also consider the documents which will be

produced by the Petitioners;

(d) We direct the appellate authority to decide the appeals which may preferred by the Petitioners as expeditiously as possible and in any event within a period of two months from the date on which appeals are preferred by the Petitioners. An opportunity of personal hearing be granted by the appellate authority to the Petitioners;

(e) Needless to add that in the event the decision of the appellate authority is adverse to the Petitioners, it will be always open for the Petitioners to challenge the said decision in accordance with law;

(f) We made it clear that it will be also open for the similarly placed persons to prefer appeals in aforesaid manner.

(f) The Petition is disposed of.

(RIYAZ I. CHAGLA J.)

(A.S. OKA, J)