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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION (L) NO. 3432 OF 2018

Satyanarayan Chandrao Gaddam & Ors. ... Petitioners
 vs.
 The State of Maharashtra & Ors. ... Respondents.

Mr. Anand i/b. Vaibhav V. Ugle for the Petitioner.
 Mr. S. G. Surana i/b. Rajesh M. Yadav for Respondent No. 5.
 Mr. Manish Upadhye, AGP for Respondent / State.

CORAM : A.K. MENON, J.
DATE : 31st OCTOBER, 2018

P. C.

1. The challenge in this petition is to impugned orders dated 28th July, 2017, 7th February, 2018 and 19th July, 2018 passed by respondent nos. 4, 3 and 2 respectively and to the impugned notice dated 26th September, 2018 proposing to take action under section 33 and 38 of the Maharashtra Slum Area (Improvement, Clearance and Redevelopment) Act, 1971 ("the Slum Act") issued by respondent no. 4. Respondent no. 4 is the Deputy Collector (ENC). The notice is issued pursuant to the order dated 19th July, 2018 passed by respondent no. 2 Grievance Redressal Committee ("GRC") in Appeal No. 654 of 2018 filed by the present petitioners. The appeal sought stay of enforcement and implementation of order dated 7th February, 2018 and 28th July, 2017 which were passed by respondent nos. 4 and 3 respectively. They have also sought setting aside of the order dated 28th July, 2017.

2. The GRC has in the impugned order observed that the appellant had not challenged the judgment and order passed by the Appellate Authority through the committee, although the appellant had annexed copy of the order dated 7th February, 2018 they have not sought quashing of the order, but they had sought setting aside of the order dated 28th July, 2017 passed by the Deputy Collector(ENC). The authority has passed eviction orders under section 33 and 38 of the Slum Act directing them to vacate the premises which are stated to be obstructing the slum scheme implementation known as Aman Shanti SRA Co-operative Housing Society Limited.

3. Learned counsel for the petitioner submits that the said society consists of 700 to 750 slum dwellers and original land ad-measuring 15,986.8 sq.mtrs belonged to one Mr. Umesh Jashbhai Patel which was sold by him by registered Conveyance deed dated 15th November, 2006. The said land was conveyed to respondent no. 5 who were to develop the land under the slum scheme. A power of attorney was also executed in respect of the said area of land. The conveyance was executed in favour of 15,219.818 sq.mts and leaving balance of 767.31 sq.mts which is said to be vesting in the said Mr. Umesh Jashbhai Patel.

4. The contention of the petitioner is that in the Letter of Intent ("LOI") which came to be issued in favour of respondent no. 5 the slum plot is reflected as the entire area of 15,986.80 sq.mts and therefore the respondent no. 5 was claiming benefit of the additional area of 767.31 sq.mts as well. This was said to be a fraudulent act and which was committed as a result of execution of deed of

rectification dated 25th February, 2013 rectifying the area of the conveyance. The deed of rectification is a registered document. However it is contended that the said Mr. Patel has lodged an FIR alleging that the deed of rectification is illegal. The original owner has since filed a Civil Suit in this Court challenging the action of respondent no. 5. In addition, the original owners also filed an application before the Higher Power Committee constituted and that is also pending. Lis-pendens has also been registered. It is contended that the property has still not been transferred to the respondent no. 5 who has not commenced redevelopment work allegedly because of want of funds although the LOI was issued in 2012.

5. It is contended that the petitioners have since received notice dated 12th March, 2018 from respondent no. 5 asking them to vacate structures and offering them six months rent. However, they have since returned the cheques sent to them and have contended that they are entitled to be declared as eligible for permanent alternate accommodation. They relied upon a circular dated 22th July, 2014 in this respect. It is contended by the learned counsel for the petitioner that they have been in possession of the premises prior to the cut off date from 1st January, 1995 and 1st January, 2000 and are entitled to be considered as eligible.

6. It is further submitted that without considering documentary evidence respondent no. 2, viz the GRC has dismissed their appeal vide order dated 19th July, 2018. Subsequently they have been served with notice directing them to vacate the premises. For all the aforesaid reasons the petitioners are aggrieved and state that

the impugned orders are liable to be set aside. The only prayer in the petition is that the order dated 19th July, 2018 passed by the GRC be quashed and set aside and that respondent no. 4 be directed to decide petitioner's eligibility afresh and for stay of further proceedings seeking dispossession and demolition.

7. On behalf of the respondent an affidavit in reply has been filed opposing the petition. Mr. Surana on behalf of the respondent no 5 states that the petitioners had already applied to respondent no. 4 to consider them as eligible persons and therefore submitted to the slum scheme. LOI had been issued on 14th December, 2012 and plan of the rehab building had been approved on 12th February, 2013. Permission for construction of 503 transit tenements was granted on 10th January, 2017 and that the petitioners had not been found eligible. A total of 683 occupants were found on the suit property and structures of the petitioners are on the land on which the scheme is being implemented. However, the structures are now coming in the way of further development and the petitioners have no locus to challenge orders passed by the authorities. The petitioners only seek rehab tenements since they have no right to the suit property. They have applied for considering their eligibility and in the meantime respondent no. 5 is required to provide for 683 occupants and construction of transit tenements is being pursued in a phased manner. 35 occupants are stated to have accepted rent and vacated but the petitioners have not been found eligible as on date.

8. Concurrent findings of the authorities have held that the premises of the petitioners are required to be demolished. More than 70% have stated to have

given their consent. Moreover, though the petitioner is ineligible as on date, respondent no. 5 had offered rent and compensation for transit accommodation and requested them to vacate, but to no avail. Even today respondent no. 5 is ready and willing to pay compensation @ Rs.10,000/- per month to all the petitioners for a period of 12 months and in the meantime respondent no. 5 has agreed to allot transit tenements to such of the petitioners who are found eligible.

9. In these circumstances the petitioners in my view cannot expect to derive any further benefit by challenging the impugned orders. If the petitioners are found eligible, respondent no. 5 will be bound by the offer made by them and which forms part of their affidavit in reply, which is incorporated in the affidavit in reply filed on behalf of the petitioners. The order of the GRC which is impugned in this proceeding correctly holds that the appellate authority had already directed the competent authority to carry out video photography at the time of removal of the structures and while recording the panchnama. This in my view ensures that the petitioners right will stand protected if they are eligible. Furthermore since 12 months rent is being paid to the petitioner, in my view their rights, if any, are sufficiently safeguarded for the present.

10. No interference is called for in the writ jurisdiction of this Court, save and except respondent no. 5 shall be bound by the offer to pay rent for a period of 12 months and provide permanent alternate accommodation, if they are eligible and continue to pay rent till the petitioners are put into occupation of permanent alternate accommodation.

11. Accordingly, I pass the following order :

(i) Respondent no. 5 shall pay rent to the petitioners' for a period of 12 months and if found eligible to provide permanent alternate accommodation and till then continue to pay rent.

(ii) The respondent no. 5 through its sole proprietor shall file an undertaking in this Court to the effect that he will pay rent @ 10,000/- per month to each of the petitioner for a period of 12 months from the date that they vacate the premises or their eviction and to allot permanent rehabilitation tenement in lieu thereof, if they are found eligible and in such event to continue to pay rent for such time the petitioner are put in possession of permanent alternate accommodation after obtaining occupation certificate.

(iii) In the meantime respondent no. 4 shall decide the eligibility of the 9 petitioners within a period of 8 weeks from today.

(iv) Writ petition disposed of in the above terms.

(v) No costs.

(A.K. MENON, J.)