

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

WRIT PETITION (L) NO.3475 OF 2018

Sunitha Sahadev Satam and others

..Petitioners

Versus

Executive Engineer

E-1 Division, MBR & R Board

Building No.34, Ground floor, Abhuday

Nagar, Kala Chowki, Mumbai-400 033

and others

..Respondents

Mr. Y. E. Mooman a/w Ms. Manisha B. Gawde, Advocate for the Petitioners.

Mr. Prabhakar Jadhav a/w Mr. V. P. Savant, Advocate for Respondent Nos.1 to 4.

Ms. Trupti Puranik, Advocate for Respondent No.5 – MCGM.

Mr. Mayur Khandeparkar a/w Mr. Sanjay Kadam, Ms. Apeksha Sharma, Mr. Sanjeel Kadam, Ms. Saylee Rajapurkar I/by M/s. Kadam & Co., Advocate for Respondent No.6.

Mr. Ankit Bharat Gala – partner of Respondent No.6 – present.

CORAM : B. R. GAVAI &

M. S. KARNIK, JJ.

DATE : 9th OCTOBER, 2018

P.C.

1] The present Petition is nothing else, but an abuse of process of law.

2] The Petitioners have approached this Court praying for a writ, order or direction under Article 226 of the Constitution of

India quashing and setting the order dated 1st October 2018 passed by Respondent No.1 - MHADA and further for a order of injunction restraining them for proceeding further in any manner with the execution of eviction mentioned in order dated 1st October 2018.

3] Learned counsel appearing on behalf of the Petitioners submits that, the impugned orders are passed without giving an opportunity of being heard to the Petitioners and therefore, are non-est in law. It is further submitted that notices are issued to the dead persons in spite of the details about the legal heirs of dead persons being informed to the authorities. It is therefore submitted that the impugned order is liable to be quashed and set aside.

4] The Petitioners are tenants of Respondent No.6. Respondent No.6 has undertaken a redevelopment of the project under Section 33(7). There are total 223 tenants. It is the contention of Respondent No.6 that out of 223 tenants, 130 tenants have already shifted to the permanent alternate accommodation. It is submitted that in so far as the present Petitioners are concerned, though permanent alternate accommodation is available, however, on one pretext or other the Petitioners are not shifting to the

alternate premises.

5] There are several rounds of litigation between the parties. Recently, Writ Petition No.1811 of 2017 came to be filed by the Madhyavarti Samiti, which is an association representing the tenants like the Petitioners. In the said Writ Petition, the following prayers were made by the Petitioners :-

“[a] this Hon'ble Court be issue a writ in the nature of certiorari quashing and setting aside permission granted and plan sanctioned by the Respondent No.6 on 16th November, 2016 in respect of rehab building Nos.1, 2 and 3 situated and lying at C.S. No.1/A, 782, 2/783, 783, 784, 785 and 786 of Mazgaon Division known as Doctor's compound, being situated at D.L. Marg, Chinchpokli (E), Mumbai-400 012;

[a-1] this Hon'ble Court be issue a writ in the nature of certiorari and cancel occupation certificate issued by the Respondent No.6 in the month of April 2017 in respect of rehab building Nos.1, 2 and 3 situated and lying at C.S. No.1/A, 782, 2/783, 783, 784, 785 and 786 of Mazgaon Division known as Doctor's Compound being situated at DL Marg, Chinchpokli (E), Mumbai-400 012.”

6] The Court considered the rival contentions in details. This Court found that in earlier round of litigation i.e. in Writ Petition No.1029 of 2015 and Writ Petition No.1187 of 2014, the

Court had specifically directed that tenements of minimum 300 sq.ft. Carpet area should be provided to the tenants. The Court has also considered other litigation between the parties in detail in order dated 13th August 2018. The Court has also specifically referred to order passed in Writ Petition No.912 of 2012, wherein vide order dated 8th March 2013, this Court observed that 225 occupants were benefited by the scheme and as such Court should not entertain the Petition on behalf of unregistered association.

In paragraph 9, this Court further observed that after dismissal of the said Petition, again another Petition i.e. Writ Petition No.1811 of 2017 was filed by the tenants alleging the rehab tenements do not admeasure 300 sq.ft. carpet area.

7] While considering the said submission, the Division Bench referred to the affidavit filed by Arvind Shankar Joshi, Resident Executive Engineer, MBRRB, wherein he had stated that the Respondent No.6 had submitted amended plans, wherein carpet area was as per the required area of 300 sq.ft. It is further observed that the Corporation had given approval to the amended plans, wherein carpet area of 300 sq.ft. area was provided. In paragraph

11, the Court further observed that it was not disputed by the Petitioners that the Respondent No.8 therein (Respondent No.6 herein) had constructed the tenements having area of 300 sq.ft. per tenement. After considering the rival submission, this Court came to a considered conclusion that the construction was not in breach of modified DCR or any of the conditions of NOC. The Court further observed that the Petitioners therein were receiving transit rent and refused to occupy the premises which were ready in all respects since the year 2013.

8] It could thus be seen that every attempt has been made on behalf of the Petitioners or the said Madhyavarti Samiti representing the Petitioners to stall the project. We find that when majority of the tenants have already shifted, entertaining the present Petition would amount to permitting a party to approach this Court every now and then, even after the issues are foreclosed.

9] The only ground, on which the present Petition is pressed by the learned counsel for the Petitioners is that the Petitions, which are dismissed are not dismissed on the grounds, which are sought to be raised in the present Petitions. We find that

in view of Order II Rule 2 of the CPC, all such points which were available to a party ought to have been raised by the party when the earlier Petitions were decided. However, the Petitioners or their Samiti have indulged into filing Petitions after Petitions.

10] We are therefore, not inclined to entertain the present Petition in the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India. The Petition is dismissed.

11] Mr. Mayur Khandeparkar, learned counsel appearing on behalf of Respondent No.6 on instructions of Mr. Ankit Bharat Gala submits that if the Petitioners immediately vacate the premises, Respondent No.6 is willing to hand over possession of permanent rehab accommodation to the them even today. The said statement is accepted.

[M. S. KARNIK, J.]

[B. R. GAVAI, J.]