

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.907 OF 2019
WITH
WRIT PETITION (ST.) NO.27297 OF 2019

Parmanand K. Mhatre and others ... Petitioners
Vs.
The Slum Rehabilitation Authority and others ... Respondents

Mr. Vineet Naik, Senior Advocate a/w. Mr. Ashish Kamat, Mr. Karl Tamboli and Ms Deepa Bisht i/b. Rukmini A. Thokal for Petitioners in both the Petitions.

Mr. Simil Purohit a/w. Mr. Chirag Kamdar, Mr. Nitesh Ranawat, Ms Disha Shetty and Mr. Akash Lodha i/b. Wadia Ghandy & Co. for Intervenor in WP(St.) No.27297 of 2019.

Mr. Jagdish G. Aradwad (Reddy) for Respondent No.1 in both the Petitions.

Mr. Pravin Samdani, Senior Advocate a/w. Mr. Mayur Khandeparkar i/b.

Mr. S. M. Suryawanshi for Respondent Nos.2, 4 to 8 in W.P.No.907/19.

Mr. Chirag Saraogi i/b. Mr. Tushar Goradi for Respondent No.3.

Mr. Vinod Mahadik a/w. Mr. Santosh Parad for Respondent No.12.

Mr. C. D. Mali, AGP for Respondents-State.

CORAM : UJJAL BHUYAN, J.

DATE : DECEMBER 02, 2019

P.C. :

This order will dispose of both the writ petitions.

2. Matter relates to non-inclusion of the petitioners in the impugned Annexure-II list thereby jeopardizing their claim to rehabilitation under the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971 (the Act, hereinafter).

2.1. There are altogether 11 writ petitioners common to both the writ petitions.

3. In Writ Petition No.907 of 2019, challenge has been made to the communication dated 20.11.2018 of the Slum Rehabilitation Authority, respondent No.1 directing Assistant Commissioner, G / South Ward, Municipal Corporation of Greater Mumbai i.e. respondent No.4 to issue

a fresh Annexure-II as well as the notice dated 15.01.2019 issued by respondent No.4 fixing date and time for conducting survey and biometric verification for deciding eligibility of the slum-dwellers for inclusion in Annexure-II list.

4. In Writ Petition (St.) No.27297 of 2019, the impugment is to the Annexure-II list dated 07.08.2019.

5. As would be evident from the above, the matter relates to rehabilitation of slum-dwellers in terms of the Act. The property in question bears plot No.75 (part) admeasuring 1570.57 sq.mtrs. situated at B. G. Kher Marg, Worli, Mumbai, briefly the property or land in question hereinafter. The property in question was declared as a slum area way back on 17.12.1997 and it was sought to be redeveloped by taking recourse to the Development Control Regulations for Greater Mumbai, 1991.

6. It is also not in dispute that the land in question belongs to Municipal Corporation for Greater Mumbai.

7. Petitioners are slum-dwellers of the said slum area and members of respondent No.2, which is a co-operative housing society of the occupants of the slum area.

8. It is stated that respondent No.4 had initially issued Annexure-II document on 04.03.1997 certifying that there were altogether 31 slum-dwellers residing or carrying on business in the property in question; out of which, 26 were declared eligible to rehabilitation. These included all the petitioners / predecessors-in-interest of some of the petitioners.

9. It is stated that the 1st Annexure-II list contained names of certain persons who were not eligible for inclusion under the Slum Rehabilitation Scheme. This led to litigation at the end of which the 2nd Annexure-II list was published on 16.11.2002. All the petitioners were held to be eligible slum-dwellers in this list too, except petitioner Nos.5

and 11.

10. Petitioner No.5 was declared eligible by this Court and petitioner No.11 was declared eligible by respondent No.1. Thus, all the petitioners were found eligible and included in the Annexure-II list dated 16.11.2002.

11. Though a number of orders were passed concerning eligibility to be included in Annexure-II list, management and affairs of respondent No.2, change of developer, etc. leading to multiplicity of litigations, it may not be necessary to refer to all such orders and facts, save and except those which are considered to be relevant for adjudication of the present two writ petitions.

12. Two writ petitions came to be filed before this Court being Writ Petition No.3035 of 2015 and Writ Petition No.83 of 2016. The first writ petition was filed by M/s. Chunilal Velji Patel i.e. respondent No.3 as the developer and the second writ petition was filed by respondent No.2. In both the writ petitions, common relief sought for was to set aside and quash an order dated 01.01.2015 passed by the High Power Committee, which was contended to have set at naught the slum rehabilitation scheme itself. A Division Bench of this Court by a common order dated 16.03.2016 disposed of both the writ petitions by quashing the order dated 01.01.2015 and directing Chief Executive Officer of Slum Rehabilitation Authority to ascertain from the original record whether those whose names were set out in Annexure-II were occupants or not, and thereafter to take an appropriate decision. Relevant portion of the order dated 16.03.2016 is extracted hereunder:

“18. In the light of the broad agreement reached to quash and set aside the order dated 1st January 2015, we direct the Chief Executive Officer of the Slum Rehabilitation Authority to ascertain from the original record and particularly the Annexure-II, whether those whose names are set out therein are occupants or in occupation of the tenement / rooms at site or whether those who are inducted in and occupying the premises

possess proof of their alleged legitimate and legal occupancy. The Chief Executive Officer shall take the requisite decision and in accordance with law after ascertaining the views of the Municipal Corporation of Greater Mumbai as well. The Writ Petitions are disposed of with the above directions. The Chief Executive Officer shall carry out and implement this order within a period of two months from the date of receipt of a copy of this order.”

13. According to the petitioners, in terms of the directions of this Court and after conducting necessary verification and joint survey, the 3rd Annexure-II list dated 21.10.2016 was issued. Petitioners were held to be eligible slum-dwellers and their names were included in the 3rd Annexure-II list.

14. Respondent No.2 filed objection dated 09.11.2016 against the 3rd Annexure-II list dated 21.10.2016 before respondent No.1. It is alleged that the said move of respondent No.2 was at the instance of the minority group of members i.e. respondent Nos.4 to 10 in Writ Petition No.907 of 2019, backed by rival developer.

15. Respondent No.1 issued directions / communication dated 20.11.2018 to respondent No.4 to issue fresh Annexure-II following which respondent No.4 issued notice dated 15.01.2019 fixing date and time for conducting survey and bio-metric verification for deciding eligibility of the slum-dwellers.

16. The above communication dated 20.11.2018 and notice dated 15.01.2019 are the subject matter of challenge in the first writ petition i.e. Writ Petition No.907 of 2019.

17. On 28.01.2019, petitioners had raised an objection against bio-metric survey for preparation of fresh Annexure-II as the 3rd Annexure II was in existence, having been issued following order of this Court.

18. Petitioners could come to know that during the pendency of Writ

Petition No.907 of 2019, a notice dated 30.04.2019 was issued by respondent No.4 circulating a draft Annexure-II list. In the draft Annexure-II list dated 30.04.2019, petitioners have been held to be ineligible and thereby excluded. Thereafter, on 07.08.2019, the 4th Annexure-II list was published wherein petitioners have been held to be ineligible and not included.

18.1. This Annexure-II list dated 07.08.2019 is under challenge in the second Writ Petition i.e. W.P.(St.) No.27297 of 2019.

19. Before proceeding further, it would be relevant to refer to a couple of orders passed by this Court in various writ petitions.

20. One Writ Petition being Writ Petition (L) No.680 of 2019 was filed by the petitioners assailing an order dated 18.01.2019 passed by the Chief Executive Officer of the Slum Rehabilitation Authority whereby he had accepted appointment of a new developer i.e. respondent No.3. The said writ petition was disposed of vide order dated 27.03.2019 by setting aside the order dated 18.01.2019; but while doing so, it was made clear that the order of the Court dated 27.03.2019 would not contain any restriction on the processing of Annexure-II by the Competent Authority.

21. When the draft Annexure-II list was circulated on 30.04.2019, Writ Petition No.907 of 2019 was moved before the Court during the Vacation. On going through the order dated 10.05.2019 passed by the Vacation Bench, it is seen that this Court had taken note of the previous order dated 27.03.2019 alluded to herein above and took the view that the Corporation i.e., Municipal Corporation of Greater Mumbai as the Competent Authority had prepared the draft Annexure-II list. Being at the stage of draft annexure, it could only be finalized after considering the objections and relevant documents, which were to be tendered. While granting liberty to the petitioners to submit their objections and documents, it was directed that the Competent Authority should consider

the same and thereafter only finalize the Annexure-II list. Ultimately, the following order was passed on 10.05.2019:

- “i) The Petitioners are directed to forward their objections and suggestions as well as relevant documents to the Respondent-Corporation by 29th May, 2019;
- ii) The Respondent-Corporation shall consider the objections and suggestions and relevant documents prior to finalizing the draft annexure-II in accordance with law. In the event, the Petitioners do not submit the relevant documents and their objections and suggestions by 29th May, 2019, then the Respondent - Corporation shall be free to continue with the process of finalizing annexure II.
- (iii) It is made clear that this order has been passed without prejudice to the rights and contentions of the parties and that the finalization of annexure II shall be subject to orders passed in this Petition and the companion Petitions.
- (iv) The Respondents are granted liberty to file their Affidavit-in-Reply.
- (v) This Petition and the other companion Petitions which are to be heard together shall be placed before the Regular Court on 10th June, 2019.”

22. On a civil application filed by the petitioners in Writ Petition No.907 of 2019, this Court again passed an order dated 01.08.2019 recording that applicants (petitioners) had agreed to tender written notes of arguments on 02.08.2019 by 4:00 p.m. before Assistant Municipal Commissioner. Assurance given by learned counsel for the parties was recorded to the effect that the said written notes, if tendered by 4:00 p.m. of 02.08.2019, would be considered while passing final order in the matter.

22.1. Thereafter, impugned Annexure-II list dated 07.08.2019 came to be issued.

23. While learned Senior Counsel for the petitioners has vehemently argued that issuance of impugned Annexure-II list which is the fourth Annexure-II list is wholly illegal and uncalled for, he further submits that eligibility of the petitioners had already been decided by the authorities consequent upon which they were included in the 1st, 2nd and

3rd Annexure-II lists. Therefore, their non-inclusion in the impugned list is totally unjustified besides being perverse.

23.1. He further submits that the 3rd Annexure-II list was prepared following order passed by this Court on 16.03.2016 and the same, therefore, could not have been nullified by respondent No.4. His further submission is that names of 9 ineligible persons have been included in the impugned Annexure-II list.

24. On the other hand, learned Senior Counsel for respondent No.2 submits that Annexure-II list is not a static document. It is not final for all times to come. It is a dynamic document amenable to inclusion and exclusion subject to satisfactory evidence being tendered by the concerned slum-dweller and accepted by the competent authority. He has referred to a Division Bench decision of this Court in *Lokhandwala Infrastructure Private Limited Vs. State of Maharashtra*, **2011 (3) Mh.L.J.469** to contend that Municipal Corporation of Greater Mumbai is the competent authority responsible for certification of Annexure-II list since it is the owner of the land. The 3rd Annexure-II list dated 21.10.2016 was not prepared by the Competent Authority.

24.1. Referring to Government of Maharashtra notification dated 23.08.2016, he submits that respondent No.4 is the Competent Authority whereas respondent No.5 i.e. Additional Collector, Mumbai City would be the Appellate Authority. Under Section 35 of the Act, appeal lies to the Additional Collector from the decision of respondent No.4. Therefore, petitioners should avail the remedy of appeal.

25. Submissions made by learned counsel for the parties have been considered.

26. As already noted above, because of multiple litigations, facts have become very cumbersome. However, after separating the grain from the

chaff what is discernible is that the bone of contention is finalization of Annexure-II list of slum-dwellers, eligible to rehabilitation. While petitioners were included in all the three previous Annexure-II lists, one even as per the directions of this Court, in the impugned Annexure-II list, they are not included. Though it is contended that the 3rd Annexure-II list was not prepared by the Competent Authority, it cannot be contended now that the earlier lists were not prepared after considering the relevant record, more particularly the 3rd Annexure-II list dated 21.10.2016, which was prepared on the direction of this Court to consult the original record and then only to determine eligibility. Therefore, non-inclusion of the names of the petitioners in the last Annexure-II list is quite surprising.

27. Section 35 of the Act provides for appeal by an aggrieved person against any notice, order or direction issued or given by the Competent Authority. Of course, such appeal has to be preferred within a period of 30 days from the date of issue of such notice, order or direction.

28. Inclusion or non-inclusion in Annexure-II list is an exercise which would require a detailed factual examination which exercise was carried out a number of times. In the context of the impugned Annexure-II list which is at variance with the earlier three lists in so far petitioners are concerned, further examination may be required. But such detailed examination or re-examination may not be possible in a proceeding under Article 226 / 227 of the Constitution of India. Since the Statute itself provides an alternative remedy, Court is of the view that it would be just and proper if the petitioners are relegated to the forum of alternative remedy. As the petitioners have pursued their challenge before this Court, delay should not come in the way in adjudicating the appeal on merit. Moreover, having regard to the fact that petitioners were included in the previous three Annexure-II lists, it would be in the interest of justice if their names are tentatively included in the impugned Annexure-II list dated 07.08.2019, which would be subject to final

order(s) that may be passed by the Appellate Authority after hearing the parties.

29. Accordingly, petitioners are given liberty to file appeal before respondent No.5 within a period of 30 days from today and if the appeal is filed within the said period, the Appellate Authority shall hear and decide the appeal on merit in accordance with law within a period of 3 months from the date of filing the appeal. During this period, respondents may proceed with the redevelopment exercise by treating the petitioners as being tentatively included in the Annexure-II list dated 07.08.2019, which would be subject to such order that may be passed by the Appellate Authority. However, if the appeal is not preferred within the period as indicated above, protection of this order will not be available to the petitioners after the period of 30 days.

30. Status-quo order passed earlier stands vacated.

31. Both the writ petitions are disposed of.

(UJJAL BHUYAN, J.)

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