

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL WRIT PETITION NO. 1610 OF 2019

Sangeeta Sunil Chourasia. ..Petitioner.

V/s.

Ashish Developers Limited & ors. ..Respondents.

WITH

CIVIL WRIT PETITION NO. 1611 OF 2019

Lalchand Surajbali Chourasia. ..Petitioner.

V/s.

Ashish Developers Limited & ors. ..Respondents.

Mr. Yogesh Sonawane I/b. Kumar and Associates, advocate for petitioners.

Mr. Milind More, advocate for respondent No. 5 SRA.

Mr. Siddharth Sumant ray I/b. Mr. Amit Kanani, advocate for Respondent No. 2.

Mr. Dinesh Shinde, advocate for respondent No. 3.

Mr. C.D. Mali, AGP for State in WP 1610/2019.

Mr. S.D. Rayrikar, AGP for State in WP 1611/2019.

CORAM : SMT. SADHANA S. JADHAV,J.

DATE : FEBRUARY 7, 2019.

P. C. :

1 Heard the learned Counsel for the petitioners and the respective learned Counsel for the respondents.

2 Rule. Rule made returnable forthwith with the consent of the parties.

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3 The prayer in the Petition No. 1610 of 2019 is as follows :

- “(a) That this Hon'ble Court be pleased to issue Writ of Mandamus or any other appropriate writ thereby calling upon the records and proceedings of the Order dated 29.01.2019 in Case No. OW/2019/5251 before Respondent No. 5.
- (b) That this Hon'ble Court after checking the legality and validity of the order dated 29.01.2019 be pleased to set aside and quash the same.
- (c) That pending the hearing and final disposal of the present petition the permanent execution and operation of the impugned order dated 29.01.2019 may be stayed.
- (d) Interim and ad-interim reliefs in terms of prayer clause (c).
- (e) Any other and further reliefs as this Hon'ble Court may deem fit and proper.”

4 The order dated 29/1/2019 is under challenge. The order dated 29/1/2019 is passed by the Deputy Collector (SRA). The Deputy Collector had issued a notice to the Petitioners directing them to vacate the house within 48 hours voluntarily or else they would be constrained to demolish the house as contemplated under 33/38 of Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971, as per amended ordinance dated 24/10/2018. It was further contemplated that the expenses for demolition would be borne by the petitioners.

5 The matter was circulated for 4/2/2019. On 4/2/2019 this

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Court (Coram : Anuja Prabhudesai, J) had observed that the petitioners have challenged the notice dated 29/1/2019 which is not a quasi Judicial Authority and therefore, the Registry was requested to place the matter before the appropriate bench.

6 On 6/2/2019 the matter was circulated in the morning session and since it was urged by the learned Counsel for the petitioner that there is imminent urgency, the matter was taken up for hearing at 3 p.m. In the course of hearing, the learned Counsel for the Petitioner submits that in fact, they wanted to challenge the order of the Apex Grievance Redressal Committee, Government of Maharashtra in Appeal No. 7 of 2018 dated 7/12/2018. However, there is no reference to the same nor there was a prayer clause to that effect. The copy of the order was tendered in the course of the hearing upon a query made by the Court as demonstrated by the learned Counsel for the respondent. Clause (6) of the Order reads as under :

6) Advocate for Appellant submitted that Appellant Shri Lalchand Surajbali Chourasia in Appeal (L) No. 7 of 2018 have been held eligible at Serial No. 178 of Certified Annexure – II issued by concerned Competent Authority for Shri Vagheshwari Sahakari Grihnirman Sanstha Ltd. Situated at CTS No. 620 (Part), Village Malad, Taluka Borivali, Mumbai.”

7 It is admitted position that the authorities have held

Lalchand Surajbali Chourasia as eligible. However, the appellant Smt. Sangita Chourasia's eligibility has not yet been decided. It was specifically observed that the advocate for the respondent No. 2 New One Constructions Pvt. Ltd. had also agreed and offered cheques of rent to both the appellants. The same was refused by their advocates Smt. Dubey.

8 It is pertinent to note that there are total 204 residents of the said Wagheshwari Sahakari Grihnirman Sanstha Ltd.. The learned Counsel for the respondent submits that 199 people had vacated the premises voluntarily. Out of remaining 5 premises, two premises are owned by the present petitioners. The respondent has got possession of the remaining 3 premises.

9 It is also mentioned that since there was imminent threat, the respondent No. 2 has also availed services of the police more particularly, lady police constable in order to get the premises vacated. As on today, the machinery is on the spot in order to demolish the said premises. Since Lalchand Chourasia has been held eligible, there is no difficulty in demolishing his premises and 48 hours notice would take effect as he has not vacated since 29/1/2019.

10 In the course of hearing the learned Counsel for the

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respondents have submitted that he is offering cheques towards rent of one year i.e. to the amount of Rs. 1,20,000/- in the names of the petitioners. Since the project is stalled because of non-eviction of the present petitioners, the payment is being made unconditionally. The learned Counsel for the petitioners has shown willingness to accept the cheques unconditionally. Since the machinery is deployed, the effect and implementation of the notice dated 29/1/2019 cannot be stayed.

11 In fact, it is concerning the development of an area under the Slum Rehabilitation Act and the same cannot be kept pending only because of the whims of the present petitioners. This Court has noticed that the petitioners have made a frail attempt to mislead the Court as they were seeking stay to the implementation of the notice dated 29/1/2019 by stating before this Court that the mother-in-law of the Petitioner in Writ Petition No. 1610 of 209 has expired just four days ago and therefore, they cannot leave the premises. However, it is brought to the notice of this Court that the deceased mother-in-law was residing at Mira Road.

12 Be that as it may, the authorities shall proceed with the implementation and execution of the notice dated 29/1/2019. The cost for the same shall be borne by the respondent No. 2. The two cheques bearing Nos. 000914 and 000915 dated 6/2/2019 for Rs. 1,20,000/- each

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drawn on HDFC Bank are handed over to the learned Counsel for the Petitioners. The same are accepted by the learned Counsel for the Petitioners unconditionally.

13 In view of the above observations, both the Petitions stand dismissed in limini.

The parties to act on the authenticated copy of this order.

[SMT. SADHANA S. JADHAV, J.]