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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION (STAMP) NO. 7923 OF 2019**

Shree Harsahd Ravindra Dalvi & Others Petitioners.

V/s

The State of Maharashtra and Others Respondents.

Mr. Amarnath R. Bhatt for the Petitioners.

Mr. S.H. Kankal, AGP for Respondent No.1.

Mr. Rishikesh Soni a/w Ms. Raveena Yadav i/b Mr. Ashok Purohit &
Co. for Respondent No.2-SRA.

Mr. G.W. Mattos for Respondent No.3.

Mr. Shakeeb Shaikh a/w Mr. Aftab Diamondwala a/w Ms. Ketaki
Mishra i/b Diamondwala & Co. for Respondent No.4.

CORAM: NITIN W. SAMBRE, J.

DATE: 9th July, 2019

P.C.:-

1] By consent, Petition is taken up for final disposal at the admission stage.

2] The Additional Chief Secretary, Housing Department, an Ex-Officio Chairman of the Apex Grievance Redressal Committee, by the order impugned, has refused to grant protection to the Petitioners, who are facing eviction under Sections 33/38 of the Maharashtra Slum Areas (Improvement, Clearance And Redevelopment) Act, 1971 (For short, “the Act”). As such, this Petition.

3] Heard learned Counsel for respective parties.

4] The submissions of the learned Counsel for the Petitioners are that the Petitioners, since 1969, are the members of Shri Sainath Co-operative Housing Society Ltd, in whose favour, Indenture of the land bearing Survey No.105, Hissa No.1 (Part) admeasuring 920.25 sq. meters, came to be registered. It is further claimed by the Petitioners that the Collector has declared the said area as slum, as is reflected in the Notification dated 25th June, 1996 and the names of the Petitioners or their blood relatives through whom they are claiming succession, are listed therein as protected slum dwellers. For the said purpose, Petitioners have relied upon the documents produced at

pages 60 and 61 of the Petition. Further, the contention of the Petitioners is, pursuant to the false promises given by the Respondent-developer, Petitioners have entered into agreement whereby, they have given up their claim to the illegal structures/encroachment carried out by them and agreed that, in case, if found to be eligible under the Act, they would be entitled for developed residential tenement. According to the Petitioners, the Respondent-Slum Authorities, bypassing the aforesaid lawful claim of the Petitioners, have declared them not eligible for the said benefit, as is apparent from publication of Annexure-II on 13th January, 2017 under the DCR and Act. The learned Counsel for the Petitioners would urge that the Petitioners had no occasion to question they being held ineligible under Annexure-II, as the said communication was never made over to them. He then would urge that the Respondent-developer, on his own, on 30th May, 2018, has admitted that he is not carrying out any development on the land bearing Survey No.231-A (Part) and as such, order refusing to protect the structures of the Petitioners is liable to be quashed and set aside. Further submission of the learned Counsel for the Petitioners is, the Society of which the

Petitioners are members, vide communications dated 29th November, 2016 and 22nd June, 2018 has already informed the developer not to carry out any development in the property in question. As such, according to him, the order impugned is liable to be set aside, thereby quashing and setting aside the notices issued pursuant to the provisions of Sections 33/38 of the Act.

5] The learned Counsel for the developer, the learned Counsel for the Apex Grievance Redressal Committee and SRA would support the order impugned. The submissions are, unless the Petitioners question their ineligibility, it is not open for the Petitioners to stall the project in question. It is further claimed that it is a case of acquiescence, as the Petitioners have already entered into a tripartite agreement with the developer and the claim of the Petitioners that such agreement was entered into by misrepresentation, cannot be appreciated in writ jurisdiction. As such, it is prayed that the Petition is liable to be dismissed.

6] Having considered the rival submissions, what is required to be

noticed is, the Indenture of 21st November, 1969, which is claimed to be in the name of the Proposed Shri Sainath Co-operative Housing Socieity Ltd., nowhere reflects the names of the Petitioners as its members or beneficiaries under the said Indenture. Of course, the Petitioners are right in pointing out that the Collector has declared the Petitioners as protected slum dwellers, as is reflected at pages 60 and 61 of the Petition. However, the said declaration in favour of the Petitioners will hardly of any consequence, particularly when the Petitioners have entered into tripartite agreement with the developer. Apart from that, ineligibility of the Petitioners under the Act for entitlement in SRA Scheme, was published on 13th January, 2017, which order, till date, is not questioned by the Petitioners before the competent forum. Though the learned Counsel for the Petitioners has invited attention of this Court to the fact that land survey was not carried out by the Slum Authorities before declaring the Petitioners as ineligible, the fact remains that the said ground can be raised by the Petitioners in case the Petitioners choose to question the said order of ineligibility before the competent forum.

7] In the aforesaid background, in my opinion, apart from the fact that the Petition involves disputed questions of facts on the issue of alleged agreement entered into by the Petitioners with developers, this Court cannot stall the project in question, which is in the interest of around 84 members who have already consented for implementation of the same. As such, there is no substance in the Petition. Petition fails and the same is dismissed.

8] It is clarified that it shall be open for the Petitioners to question their ineligibility as declared by SRA, before the Appellate Authority and, in case, such issue is raised, the same be decided without being influenced by the finding recorded hereinabove.

9] At this stage, learned Counsel for the Petitioners submits that the Petitioners intend to question the order of dismissal of this Petition before the Hon'ble Apex Court. He has therefore sought stay to the order of dismissal of this Petition, which prayer is opposed by all the learned counsel appearing for respective respondents.

10] Considering the fact that the issue is as regards displacement of the Petitioners from their residential accommodation, the order dismissing the Petition is stayed for a period of two weeks from today.

(NITIN W. SAMBRE, J.)