

Atul

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 3941 OF 2011**

Jhaira Bhanu Sheikh & Anr	...Petitioners
<i>Versus</i>	
State of Maharashtra & Ors	...Respondents

Mr Amritpal Singh Khalsa, i/b MJ Nedumpara, for the Petitioners.
Mr Vinod Mahadik, for the Respondent-MCGM.
Ms Neha Bhide, "B" Panel Counsel, for the Respondent-State.

**CORAM: S.C. DHARMADHIKARI &
G.S. PATEL, JJ**
DATED: 17th June 2019

PC:-

1. The petition has been pending in this Court from 2011.

2. We have been noticing that in many petitions filed in this court and pending for many years, there has been no protection which would enable any of the petitioners to continue to reside in their shanties/structures. Today none of their structures are existing at site. A petition claiming an omnibus relief must focus on the

grievances of pavement dwellers or those residing in shanties or slums.

3. The present petition has been filed in this Court on behalf of one Jhaira Bhanu Sheikh. The other petitioner is one Akil Khan. The petitioners are stated to be residents of a slum that falls in Coastal Regulation Zone and is situated at Ganpat Patil Nagar, Dahisar, Mumbai 400 068. The 1st Petitioner has been claiming to have resided in this slum for nearly 12 years prior to the institution of the petition. There are about 2000 or 3000 slum dwellers, and it is claimed that the petitioner is residing along with them.

4. The petition does not set out any particulars of structures with their sizes and dimensions. It does not say whether any such shanty or slum as claimed to be is censused. In the petition, an affidavit has been filed. In the affidavit it has been stated that the owner, one Kamlakar Samant, was not removing the unauthorized construction but complaining to the authorities. An unauthorized slum styled as Ganpat Patil Nagar existed at CTS No. 532 (part) and 590 (part) of Village Eksar. The officers of the Respondents visited

the premises at Gully No. 14, GP Nagar, Dahisar (West), Mumbai 400 068. When it was detected that there was unauthorized construction of structure with GI Sheet wall and AC Sheet roof, 350 notices dated 19th October 2010 were issued under Section 55 of the Maharashtra Regional and Town Planning Act 1966. The addressees were informed to remove themselves and to remove the temporary unauthorized development within the time specified in these notices, failing which they would not only be liable for prosecution but the unauthorized development would be removed by the respondents without any further notice. The nature of the unauthorized development was shown on the reverse page of this notice. This whole slum pocket is spread on privately owned land, but the plot itself is under a no-development zone in the sanctioned revised development plan of R/North Ward. It is also affected by the Coastal Regulation Zone. The land is not declared as a slum. In the past slum dwellers filled the plot with debris, earth etc and constructed the illegal structures. A mass demolition was carried on 4th March 2009 and 13th January 2010. In the first demolition drive, 287 structures were removed, and in the second such drive,

132 temporary structures were demolished. There are other actions initiated. Further, some notices were challenged on the Original Side of this Court in Writ Petition (L) No. 2494 of 2010. It is claimed that the Municipal Corporation has not committed breach of any order passed in the PIL Petition.

5. Thus we have an affidavit which categorically says that these structures are affected by the Coastal Regulation Zone. They are not a declared slum. Anybody who is familiar with the scheme of the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971 would understand that there is a concept of 'protected occupier' occupying a slum constructed before the cut-off date. There are also Development Control Regulations for Greater Mumbai which enable the slum dwellers to derive benefits provided they are in a censused and declared slum and residing therein before the cut-off date. Once it is found that these are not the structures of that nature but clearly temporary unauthorized development which must be removed, then we do not think we can entertain this petition.

6. The petition is dismissed.

(S.C. DHARMADHIKARI, J)

(G. S. PATEL, J)