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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 7138 OF 2019**

Mr. Kanaji Ranchhod Patel
and Others

.... Petitioners.

V/s

The Chief Executive Officer,
Slum Rehabilitation Authority
New Administrative Building,
Anant Kanekar Marg, Bandra (E)
Mumbai – 400051 and Others

....Respondents.

Mr. Jagdish N. Jayale for the Petitioners.
Mr. S.H. Kankal, AGP for Respondent No. 27.
Mr. Santosh Pathak a/w Ms. Prachi Patel for Respondent No.4.
Mr. Abhijit Kulkarni for Respondent Nos. 1 to 3.

CORAM: NITIN W. SAMBRE, J.

DATE: 27th June, 2019

P.C.:-

1] The order passed by the Apex Grievance Redressal Committee, thereby directing eviction of the Petitioners, is subject matter of challenge. It is not in dispute that names of all these Petitioners are included in Annexure-II and as such, they are qualified for benefits

under the Slum Rehabilitation Scheme. In an order dated 23/10/2018, pursuant to the Scheme of the Government, Respondent No.4-Developer was already put to condition that he shall deposit an amount of rent for a period of one year @ Rs 12,000/- to be passed on to the Petitioners.

2] The learned Counsel for Respondent No.4 has informed that the said amount has already been deposited by him. The learned Counsel, on instructions, would submit that a Bar Chart produced at Exhibit-B to the Petition at page No.94 will be adhered to and the Rehabilitation Scheme will be completed for shifting all the beneficiaries by 29th March, 2020.

3] In the aforesaid background, if the case of the Petitioners is appreciated, it is claimed by them that their encroachments relegate back to 40 years before. It is also claimed by the Petitioners that the encroachments made by them is on recreation/playground as shown in the development plan.

4] In the aforesaid background, Writ Petition No.98 of 1999 alongwith Notice of Motion No.375 of 2000 came to be filed in this Court and in an order dated 12/10/2001 passed in Writ Petition No.98 of 1999, this Court in para 21 has observed as under:-

“Para 21. In the circumstances, we dispose of this writ petition with the following directions:-

(1) The State of Maharashtra and its authorities shall remove all encroachments from the D.P. Roads and footpaths in Daulat Nagar area. The road shall include its flanks and the entire width as shown in the Development Plans.

(2) Any plot under reservation having an area of less than 1000 square meters shall also be cleared of all encroachments, without exception.

(3) In respect of plots under reservation having area of 1001 square meters or more, all encroachments shall be removed, if encroachment over the plot is over an area less than 25% of the total area of the plot.

(4) It is open to the petitioners to challenge the validity of Development Control Regulation 33(10) and the General Slum Rehabilitation Scheme formulated by Respondent No.9 in a duly constituted proceeding.

(5) The State of Maharashtra and its authorities are further directed to see to it that the area from which encroachments are removed are not again encroached upon by anyone. If it is brought to the notice of the Court that areas having been cleared of encroachments have again been usurped by encroachers, the Station House Officer of the Police Station within whose jurisdiction that area falls, shall be held personally responsible and answerable to the Court. We direct that the Station House Officer of each Police Station shall take appropriate steps to see to it that no further encroachments take place on public lands or plots under reservation, and that encroachments should not re-appear on plots and areas from where they have already been removed, or may be removed, pursuant to this judgment and order.”

5] As a consequence of aforesaid order passed by Division Bench of this Court, it was incumbent on the part of the authority to immediately remove the encroachments of the Petitioners. However, Petitioners, in spite of order passed in 2001 by this Court, continued

with their encroachments. On one hand, the authorities who were directed by Division Bench to remove encroachment had not complied with the order as a consequence, the Petitioners continued their encroachments and on the other hand after the Scheme under the Slum Area (Improvement, Clearance & Redevelopment) Act, 1971 (For short "the Act") was evolved on the land in question, in the survey, Petitioners' encroachments were noticed and the Petitioners applied for being beneficiaries under the said redevelopment Scheme. Accordingly, their names are also included in Annexure-II, as prescribed under Development Control Regulation No.33(10). The said inclusion of the names of the Petitioners under the SRA Scheme is pursuant to their own voluntary participation. Under the said Scheme, Petitioners are entitled to monthly rent of Rs 12,000/- till they are put into possession in the redeveloped premises or an alternative accommodation at the cost of the developer. As such, interest of the Petitioners is very much safeguarded being beneficiaries in the Scheme in question pursuant to inclusion of their names in Annexure-II.

6] However, taking disadvantage of the non-compliance of the order of removal of encroachments passed by Division Bench in Writ Petition No.98 of 1999, the Petitioners continued on public land as encroachers and further intend to continue by submitting that the place occupied by them is a part of recreation/playground. In either of the cases viz. pursuant to implementation of the order of Division Bench of this Court in Writ Petition No.98 of 1999 or being beneficiaries under the SRA Scheme, Petitioners are liable to be evicted being encroachers.

7] The aforesaid position has prevailed before the authority viz. Apex Grievance Redressal Committee while confirming the order of the Collector and while rejecting the claim of the Petitioners.

8] That being so, if this Court permits the Petitioners to continue with their encroachments, we will be ordering violation of the order of Division Bench passed in Writ Petition No.98 of 1999 or else,

directing the authorities to conduct themselves contrary to very legal Scheme framed under the provisions of the Act.

9] The learned Counsel for the Petitioners invited attention of this Court to the fact that a remand order was passed by this Court in Writ Petition (Stamp) No.8947 of 2019 on 19/06/2019. It is worth noting here that the said order of remand was passed on two counts viz (a) that, concession was given to parties to reappear before the Apex Grievance Redressal Committee and (b) that, the learned Counsel for the Petitioners, in the said case, was unable to attend the hearing and request for short adjournment was turned down by the Apex Grievance Redressal Committee. However, in the case in hand, it does appear that the Apex Grievance Redressal Committee has decided the claim of the Petitioners on merit and that being so, the said contention is also rejected.

10] In the result, Petition stands dismissed.

11] At this stage, learned Counsel for the Petitioners submits that

notice of eviction ordered under Sections 33/38 of the Act may be stayed for a period of four weeks. The learned Counsel for developer raised an objection to the said submission on the ground that Petitioners should furnish undertaking that, in case, if they fail before Supreme Court, they will vacate the premises within six weeks from today. The learned Counsel for the Petitioners, on instructions, submits that all the Petitioners undertake to vacate the premises within six weeks from today, subject to outcome of their SLP. Undertaking is accepted.

12] In view of the above undertaking, no coercive steps be taken against the Petitioners pursuant to notice issued under Sections 33/38 of the Act for a period of six weeks from today. To be more precise, for a period of six weeks from today, Petitioners should not be evicted.

(NITIN W. SAMBRE, J.)