

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLANT SIDE JURISDICTION

WRIT PETITION NO.7193/2019

Akhilesh Nishad and others

..V/s..

The Chief Executive Officer, Slum Rehabilitation Authority, Bandra (E),
Mumbai and others

AND WRIT PETITION NO.7192/2019

Dinesh Gupta and others

V/s..

The Chief Executive Officer, Slum Rehabilitation Authority, Bandra (E),
Mumbai and others

Shri A.A. Mirza i/b Jeet Gandhi, Advocates for petitioners (both petitions)
Shri Milind More, Advocate for respondent Nos.1 & 5 (both petitions)
Shri Girish Godbole, Ms Rujata Patil i/b Ms Nagandhi Shah &
Himayatullah, Advocates for respondent No.2 (WP7192/2019)
Shri Chetan Kapadia, Mayur Khandeparkar, Ms Rujata Patil i/b Ms
Nagandhi Shah & Himayatullah, Advocates for respondent No.2
(WP7193/2019)
Shri S.H. Kankal, AGP for respondent / State.

CORAM: N.W.SAMBRE, J.

DATE : 22.7.2019.

1] Since both these petitions are preferred by the similarly situated petitioners and very same orders of the Apex Grievance Redressal Committee (AGRC) and that of the subordinate authority thereby rejecting the appeals preferred by the petitioners and confirming the order of Deputy Collector thereby ordering eviction

of the petitioners are subject matter of challenge, these petitions are decided by a common order.

2] The facts, necessary for deciding both these petitions are as under:-

It is the case of the petitioners that they are occupying the structure on plot CTS No.845 part, village Malad, Dist. Mumbai herein after referred to as suit property. According to the petitioners, the said properties was encroached by the slum dwellers like petitioners and as such a slum scheme was proposed on the suit property.

It is the case of some of the petitioners that they having been declared as eligible slum dwellers by the Slum Rehabilitation Authority have continued to occupy the structures. According to them, the property in question was initially owned by a public trust which was later on transferred on 12th October and 20th February 2000 to another public trust.

It is further claimed that Deputy Collector, Encroachment declared the said property as slum on 14th December, 1995.

The respondent No.3 is a proposed society of slum dwellers whereas the respondent No.2 is a developer, who has agreed to develop the property in question.

It is also alleged that the development of the property in question is to be carried out in accordance with Regulation No.33(10) of the Development Control Regulation.

The petitioners alleging that as 70% of the structure owners have not consented for the floating of the slum rehabilitation scheme, enrollment of fraudulent members / structural owners was carried out property so as to suit the requirement of respondent no.2 is already notified as non-slum area, as such sought the petitioners also claimed that the suit quashing of eviction notices issued against them.

The eviction notice dated 3rd November, 2018 was duly resisted by the petitioners on the aforesaid ground, however, vide impugned order dated 17th - 18th January, 2018 the Deputy Collector ordered eviction. It is also the case of the petitioners that this Court had an occasion to consider the merits of the matter in favour of the petitioners in Writ Petition (Lodging) No.275/2019 wherein the aforesaid order of Deputy Collector was questioned as AGRC was not functioning. According to the petitioners, till the AGRC decides the appeal of the petitioners, the High Court stayed the effect and operation of the order of the Deputy Collector dated 17th - 18th January, 2018 as such High Court has already examined the prima facie validity of orders of Deputy Collector in favour of petitioners.

The petitioners in addition to aforesaid grounds, which were raised before both the Authorities, have claimed that out of total structures 109 are slum dwellers and there are two temples structures and one bathroom structure. According to the petitioners, once the area is notified not to be a slum, the order impugned are not sustainable as the area cannot be developed as a slum area. The petitioners have relied on the notification dated 28.10.1991 whereby according to them, the area was denotified as slum. It is further claimed that in the property in question the ineligible slum dwellers were added as members and artificial rise in 70% of the structure owners is shown so as to make the claim legal.

In the aforesaid background, it is claimed that both the orders impugned are liable to be quashed and set aside.

3] While countering the aforesaid submissions, Shri Godbole, learned Counsel appearing for the respondent No.2, Shri Milind More, learned Counsel for respondent No.1-SRA and Shri Chetan Kapadia, appearing for the Developer - respondent No.2 in Writ Petition No.7913/2019 would support the orders impugned. According to them, the petitioners have failed to demonstrate that there was denotification of the slum area. According to them, both the Authorities have concurrently held that denotifying the slum area in regard to which the petitioners have raised a dispute have

not been established, which the petitioners are duty-bound in law. It is further claimed that it is only petitioners, who are few in numbers, claiming to be structure owners have approached this Court so as to twist the arms of the respondents in implementing the scheme in question. According to the respondents, interests of the petitioners is already safeguarded as in addition to the structure owners 8 ineligible parties are offered rent at par with eligible structure owners who are lawfully entitled to the same in addition to offer of grant of permanent accommodation. As such, it is claimed that the petitions are liable to be dismissed.

4] Considered rival submissions.

5] From the record it appears that both the Authorities i.e. respondent - Deputy Collector so also the AGRC have rejected the claim of the petitioners after considering the alleged denotification of the slum area and the enrollment of such slum dwellers who are not owning any structure on the property in question.

6] The record *prima facie* depicts that Appeal No.33/1990 was decided on 16th June, 1997 in which CTS 610 (Part) has been denotified as slum. The documents in support of aforesaid

contentions are sought to be relied on by the petitioners so as to establish their case.

7] Perusal of the record depicts that the extract of the register maintained about aforesaid appeal, received under the Right to Information Act, speaks of denotification of *Kanyacha Pada* area at Malad (East) as is apparent from the record which are placed on record at page Nos.560 and 577. The record further depicts that CTS 610 (part) was declared as slum on 26.11.1991, 14.3.1996 and 26.11.1987. The aforesaid notification particularly notification of 26.11.1987 demonstrates that the property was declared as slum. The respondent Deputy Collector while dealing with the claim of the petitioners as to denotification of the property, has placed burden on the petitioners to demonstrate that the property in question is denotified as slum, which the petitioners have failed to. Before this Court also, petitioners have failed to discharge their burden in demonstrating that the property in question was denotified as slum area. That being so, in the wake of Government Gazette Publication notifying the area as slum area, no fault could be noticed with the impugned order of extending the provisions of Slum Act.

8] Apart from above, both the fact finding Authorities have noticed that the requirement for implementation of the slum rehabilitation scheme i.e. consent of 70% of the structure owners in the slum area has also been established. As a consequences on scrutiny of the project report submitted by the respondent no.2 developer LOI was issued on 27th November whereas IOA was issued on 19th January, 2018.

9] The hutment dwellers like the petitioners have no right except to claim rent, that too as per the statutory provisions. The petitioners, who are in minority cannot be permitted to prejudice the right of majority by attacking implementation of SRS scheme.

10] In para 7 of the order of the AGRC it has come on record that the developer Dynamics is ready and willing to pay rent at par with other eligible slum dwellers to the petitioners and others in accordance with Circular No.350 issued by the SRA. Shri Godbole and Shri Kapadia have still stood by the said stand before this Court.

11] In the aforesaid background, this Court hardly notices any illegality which would prompt me to exercise extraordinary jurisdiction so as to upset the orders impugned.

12] That being so, this Court is left with no other option but to dismiss both these petitions. However, it is clarified that it is open for the petitioners to approach the respondent no.2 developer with a prayer in response to the observations made above, in response to submission made by the counsel for respondent no.2 before AGRC about reimbursement of rent etc. which this Court expects the respondent developer to honour. With the above observations, both these petitions are **dismissed**.

JUDGE

Rvjalit