

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 10217 OF 2019

Kokila Manu Waghela & 44 Ors. ... Petitioners.

V/s.

Apex Grievance Redressal Committee
Bandra, Mumbai & Ors. ... Respondents.

Mr. Akhilesh Dubey, Advocate, i/by Dharmesh S. Joshi,
Advocate, for the Petitioners.

Mr. Anoop Patil, Advocate for Respondent No. 2 (SRA).

Mr. Santosh Pathak, Advocate a/w. Prachi Patel,
Advocate for Respondent No.3.

CORAM : UJJAL BHUYAN, J.

DATE : OCTOBER 16, 2019.

PC :

1 Heard Mr. Akhilesh Dubey, learned counsel
for Petitioners; Mr. Anoop Patil, learned counsel for
Respondent No.2 and Mr. Santosh Pathak, learned
counsel for Respondent No. 3.

2 This petition is filed by 45 petitioners under Article 227 of the Constitution of India. These 45 Petitioners have joined together and have instituted the present common proceeding, assailing the legality and correctness of the order dated 29.08.2019 passed by Respondent No.1-Apex Grievance Redressal Committee, Government of Maharashtra, rejecting the application filed by the Petitioners against the order dated 15.02.2019 passed by Respondent No.2-Deputy Collector (Western Suburbs) / Slum Rehabilitation Authority (SRA) under sections 33 & 38 of the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971 (hereinafter referred as "Slum Areas Act").

3 Shorn of details, what is noticeable, is that an order was passed by the SRA on 15.02.2019, calling upon Petitioners and 7 others to hand over the vacant and peaceful possession of their respective premises occupied by them, to Respondent No.3-M/s. Pioneer India Developers, within a period of 10 days for implementation of Slum Rehabilitation Scheme of Daulat Nagar area.

4 Aggrieved by the said eviction order, Petitioners had moved the Apex Grievance Redressal

Committee by an application, which was registered as Application No. 47 of 2019. By impugned order dated 29.08.2019, said application was rejected and Petitioners were asked to vacate the premises.

5 Aggrieved thereby, present petition has been filed.

6 Learned counsel for the Petitioners submits that Petitioners are not unauthorisedly occupying any portion of D.P. Road, forming part of Daulat Nagar area. That apart, they are not causing any hindrance or obstruction to redevelopment of D.P. Road. Referring to section 43 (A) of the Slum Areas Act, learned counsel for Petitioners submits that procedure for allotment of tenements to slum dwellers has to be followed in case of the Petitioners, prior to their eviction. Report of the Executive Engineer relied upon by the Apex Grievance Redressal Committee was highly defective and collected behind the back of Petitioners. Therefore, such a report could not have been acted upon. In support of his submissions, learned counsel for the Petitioners has placed before this court a compilation of documents which he relies upon.

7 Per contra, learned counsel for Respondent No.3 has referred to averments made in paragraph 10(c) of the petition to contend that Petitioners themselves have admitted that their names are included in Annexure-II of the Rehabilitation Scheme and thus they are entitled to rehabilitation by Respondent No.3. Notwithstanding the same, on one pretext or the other, Petitioners are holding on to their occupation of present slum area, thereby frustrating the redevelopment scheme. He has referred to a decision of a Single Bench of this court dated 27.06.2019 passed in writ petition no. 7138 of 2019 (Mr. Kanaji Ranachhod Patel vs. Chief Executive Officer, Slum Rehabilitation Authority) whereby similar claim as that of Petitioners, was dismissed by the court. Special Leave Petition being SLP No. 18341 of 2019 filed by the said Petitioners before the Supreme Court against the judgment and order dated 27.06.2019, was dismissed by the Supreme Court by holding that no case for interference was made out. Therefore, the present writ petition should also be dismissed.

8 In reply, learned counsel for the Petitioners seeks to make a distinction between the case of Kanaji Ranchhod Patel (supra) and that of the present Petitioners. He submits that in Kanaji Ranchhod Patel's

case, Petitioners therein had acknowledged that they had encroached upon land earmarked for the development plan, which is not the case in the present petition.

9 Submissions made by learned counsel for the parties have been considered.

10 From the narration of facts, as above, what is noticeable is that present Petitioners have been included in Annexure-II list and are therefore entitled for rehabilitation at the cost of Respondent No.2. The rehabilitation scheme has already been approved by the competent authority. Regarding encroachment of D.P. Road, this matter was already gone into by a Single Bench of this Court in Kanaji Ranchhod Patel (supra), where this court took note of a previous Division Bench order of this court dated 12.10.2001 passed in writ petition no. 98 of 2019, directing State of Maharashtra and its authorities to ensure that they should remove all encroachments from the D.P.Road and footpaths in Daulat Nagar area. It was also observed that it was incumbent upon the authorities to have removed all the encroachments.

11 In view of above, interference by court in such eviction would mean violation of order of the Division Bench.

12. At this stage, order dated 29.08.2019 may be adverted to. Relevant portion of the order dated 29.08.2019 passed by the Apex Grievance Redressal Committee, Government of Maharashtra, is extracted here under :

“10. Considering the report submitted by Executive Engineer/SRA this Committee is of view that the proposed 18.30 mtrs wide DP Road is passing and abutting to sub plot-G Open space for gardens and sub plot-D. Applicant structures are situated on D.P. Road and are part of the S.R. Scheme viz. Final Plot No.16B. Therefore, the structures of Applicants are situated on the D.P. Road, sub plot-D (final plot-16B) and which is part of the S.R.Scheme of Daulat Nagar being implemented by Respondent No.2 M/s.Pioneer India Developers Pvt. Ltd.

Further this Committee is of view that the Applicants have been held eligible and as such the Applicants are required to be rehabilitated for Permanent Rehab Tenements under subject S.R. Scheme of Daulat Nagar CHS being implemented by Respondent No.2 M/s.Pioneer India Developers Pvt. Ltd. under Regulation 33(10) of DCR 1991. This Committee is also of

further view that relief as sought by Applicants is granted to Applicants more prejudice will be caused to the eligible slum dwellers who have been awaiting for Permanent Rehab Tenement for number of years.

In view of the said fact of the case and judgment of the Hon'ble High Court of Judicature at Bombay as enumerated herein above this Committee is of the opinion there is no substance in the present Application No.47 of 2019 filed by Applicants Smt.Kokila Manu Waghla and 44 Ors slum dwellers and as such the same stands dismissed."

13 Thus from the above, it is seen that Apex Grievance Redressal Committee found the Petitioners to be eligible to be rehabilitated. Structures of the Applicants have been found to be situated on D.P. Road, which is part of the Slum Rehabilitation Scheme of Daulat Nagar area being implemented by Respondent No.3.

13.1 Contention of Petitioners that they are not encroaching upon D.P. Road is a disputed question of fact which cannot be gone into in a proceeding under Article 227 of the Constitution of India. That apart, Court is of the view that the order impugned is not one

which is liable to be scrutinized by exercising powers under Article 227 of the Constitution of India.

14 No case for interference is made out. However, taking an overall view of the matter, Petitioners shall vacate the premises within a period of four weeks from today.

15 Subject to above, writ petition is dismissed. No order as to costs.

(UJJAL BHUYAN, J.)

.....