

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION (ST) NO. 26606 OF 2019

Mrs.Kumbhar Lakshmi Rajaram }
and Ors. } Petitioners

versus

Shivshakti Nagar SRA Co-op. }
Housing Society Ltd. And Ors. } Respondents

Dr.Abhinav Chandrachud i/b. Mr.Sudhir S. Pawar
for the petitioners.

Mr.S.G.Surana for respondent no.2.

Mr.A.P.Kulkarni for respondent no.3.

Ms.Ashwini A. Purav-AGP for respondent no.5.

CORAM :- S. C. DHARMADHIKARI &
G. S. PATEL, JJ.

DATED :- SEPTEMBER 30, 2019

P.C. :-

1. This writ petition was mentioned when the court assembled in the morning and it was submitted that there is extreme urgency because an eviction is forced upon the petitioners in terms of an order, which is confirmed in appeal, but a copy of which appellate order is not provided to the

petitioners so as to enable them to challenge it by raising appropriate grounds.

2. We have heard Dr.Chandrachud appearing for the petitioners, Mr.A.P.Kulkarni appearing for respondent no.3 and we have heard Mr.Surana appearing for respondent no.2.

3. The petitioners were aggrieved and dissatisfied with an order passed by the competent authority directing them to vacate and hand over their premises so that they are demolished for the smooth and expeditious implementation of a slum rehabilitation scheme. The petitioners are not disputing that the slum rehabilitation scheme was drawn up after all the necessary procedures and formalities were completed, and that the same is being implemented. It has been pointed out to us that the non-cooperating slum dwellers at site are making it impossible for the developer to bring down the existing structures and erect the new rehab building. That is how the competent authority was requested to exercise its powers under sections 33/38 of the Maharashtra Slum (Improvement, Clearance and Rehabilitation) Act, 1971.

4. We have perused that initial order, copy of which is at page 208 of the paper book. That records all the facts and circumstances in necessary detail, including the rival versions. Thereafter, the competent authority concludes that in the present case, there is a Letter of Intent (LOI), which has been issued on 6th April, 2017. There is also a mandate flowing from the same, inasmuch as, the developer will be allowed to avail of all the benefits attached to the land only if it fulfils all obligations by rehabilitating the eligible slum dwellers. In the present case, the statement of the developer has been recorded that it is ready and willing to pay 22 months' advance transit rent to the slum dwellers at site. He is unable to provide transit accommodation, but in lieu thereof, this compensation is offered in advance. The persons concerned, who are presently ineligible to take benefit of the scheme, have to prove their eligibility.

5. In the instant case, the record indicates that there were 1335 occupants. Of these, 350 persons have already been shifted from the existing location and granted the permanent rehabilitation package. They are provided with tenements as their permanent accommodation on ownership basis. These

350 slum dwellers have been accommodated at the very site. Another 520 slum dwellers have taken the transit rent after vacating their premises and they are residing elsewhere. There are 600 other slum dwellers yet to be accommodated and rehabilitated. Each one of them will be provided with 300 square feet independent unit/ tenement with attached toilet. It is in these circumstances that the petitioners' presence at site is an obstacle in implementation of the scheme. That is how a request in writing was made for their eviction. On that request, the admitted facts have been noted and the competent authority has concluded that so long as the benefit of the scheme has to be enjoyed and availed of by the slum dwellers, including the present lot which is before us, by an in situ rehabilitation, then, all the more they must co-operate and if they are unwilling to shift on their own, the necessary force will have to be used to secure their eviction. That is not to oust them permanently, but only to require them to temporarily relocate themselves so that the construction activity is possible at the very site. It is in these circumstances that the competent authority passed the initial order on 20th July, 2019.

6. Such an order was challenged before the appellate authority and the appeal has been dismissed.

7. We do not think that the appellate authority could have taken any other view in the peculiar facts and circumstances of the case. Had the matter been before us as it was before the appellate authority, we would have taken the same view for the same reasons. These are persons who are not going to be ousted permanently or deprived of a decent housing accommodation. All that has happened is that temporarily they have to be shifted. It is that inconvenience which has been projected throughout.

8. Today, it is also said that these persons are offered a meagre monthly compensation of about Rs.10,000/-, in which it will be impossible for them to secure temporary alternate accommodation for their transit residence. They will be thrown on the street.

9. Mr.Surana appearing for respondent no. 2 submits that if the others, who have vacated the premises on their own and handed over peaceful possession to the developer, have

accepted this very amount as transit rent, then, additional benefit or preferential treatment cannot be extended to the petitioners.

10. We see substance in this complaint of Mr.Surana. There can be no preferential treatment to these petitioners. They must receive the same benefits as all others, nothing less but equally, nothing more either. The submission that the petitioners are entitled to more compensation, or that they should be given Rs.20,000 per month [prayer (a) in the petition] is to be stated to be rejected. Similarly, the demand that the agreement requires the developer to give physical temporary or transit accommodation and not compensation in lieu thereof is also liable to be rejected. That has not been followed in regard to any of the others who are identically placed with the petitioners. The condition cannot be read with absolute or iron-clad rigidity for it would make the entire rehab project impossible. It is perfectly legitimate to read the requirement as being 'as far as possible', and to provide a reasonable and viable alternative. The same condition applied to all others similarly situated, and all others in the same class or classification as the petitioners,

viz., the class of eligible slum-dwellers, have accepted it. There cannot be, without sufficient basis and an established nexus or rationale, a further sub-classification of the petitioners as being entitled to preferential or differential and more favourable treatment. In fact, had the authorities allowed either of these demands, namely, higher transit accommodation compensation or a transit accommodation and not compensation, then the action would have been susceptible to an Article 14 challenge.

11. On instructions, Mr. Surana says that all the eligible petitioners will get identical monthly compensation, identical permanent rehab tenement and all the benefits will accrue to them. It is in these circumstances that Mr. Surana also says that a permanent alternate accommodation agreement will be duly executed with such slum dwellers who have proved their eligibility. Once these statements were recorded even by the competent authority as also the appellate authority, then, all the more we are disinclined to exercise our writ jurisdiction. That will only perpetuate the occupation of the existing premises, but not removing the existing premises themselves will result in a large section of eligible slum

dwellers being deprived of the rehabilitation package in the form of construction of another rehab building. In these circumstances, if the petitioners are facing some inconvenience, but temporarily, that is not enough for us to interfere in writ jurisdiction.

12. The writ petition is devoid of merits and it is dismissed.

13. We accept Mr.Surana's statements, made on instructions, as undertakings given to this court.

(S.C.DHARMADHIKARI, J.)

(G.S.PATEL, J.)