

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.10720 OF 2019

Anita Shrikrishna Ghodke ... Petitioner
Vs.
State of Maharashtra and others ... Respondents

WITH
WRIT PETITION NO.10721 OF 2019

Shivsharanappa S. Poojari ... Petitioner
Vs.
State of Maharashtra and others ... Respondents

WITH
WRIT PETITION NO.10722 OF 2019

Rekha Mohan Patil and another ... Petitioners
Vs.
State of Maharashtra and others ... Respondents

Mr. Angad Giri a/w. Mr. Sagar Batavia for Petitioners.
Mr. S. L. Babar, AGP for Respondent Nos.1 to 3-State in W.P.No.10720/19.
Mr. C. D. Mali, AGP for Respondent Nos.1 to 3-State in W.P.No.10721/19.
Mr. N. C. Walimbe, AGP for Respt. Nos.1 to 3-State in W.P.No.10722/19.
Mr. Shreepad Murthy a/w. Mr. Abhishek Patil for Respondent No.5.
Mr. Simil Purohit a/w. Mr. Sanjay P. Patankar for Respondent No.6.

CORAM : UJJAL BHUYAN, J.
DATE : NOVEMBER 21, 2019

P.C. :

This order will dispose of the three writ petitions being Writ Petition Nos.10720, 10721 and 10722 of 2019.

2. Since the issue raised in all the three writ petitions is identical i.e. entitlement of the petitioners to inclusion in Annexure II list for the purpose of rehabilitation as slum-dweller, the three writ petitions were heard together on 14.11.2019 and are being disposed of by this common order.

3. Heard Mr. Angad Giri, learned counsel for the petitioners; Mr.

Babar, Mr. Mali and Mr. Walimbe, learned Assistant Government Pleaders for respondent Nos.1 to 3-State; also heard Mr. Murthy, learned counsel for respondent No.5 and Mr. Purohit, learned counsel for respondent No.6.

4. Since facts of all the three writ petitions are identical, for the sake of convenience, facts projected in Writ Petition No.10720 of 2019 are referred to hereinafter.

5. Case of the petitioner is that she is in occupation of an independent hut at *Vithobachi Chawl* prior to the cut-off date, which area has since been declared to be a slum area by the Government under provisions of the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971.

6. It is stated that a slum rehabilitation scheme was sanctioned with regard to the plot of land at *Vithobachi Chawl* bearing C.T.S.No.5 of Village Chakala, Taluka Andheri. Respondent No.6 which is a co-operative housing society of the slum dwellers entitled to rehabilitation was favoured with the slum rehabilitation scheme and respondent No.5 has been given the work of redevelopment.

7. For the purpose of rehabilitation, the Competent Authority i.e. the Slum Rehabilitation Authority under the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971 (briefly 'the Act' hereinafter) had certified the Annexure II list of slum dwellers eligible and entitled to rehabilitation some time in the year 2001. The said Annexure II contained list of 189 slum-dwellers but did not include the name of the petitioner.

8. Petitioner preferred appeal before the Secretary of the Slum Rehabilitation Authority against her non-inclusion in Annexure II list. In the meanwhile, as per Government resolution dated 16.05.2015, the cut-off date for eligibility was changed from 01.01.1995 to 01.01.2000.

9. In view of change in the cut-off date, Annexure II was required to be prepared again. Therefore, petitioner made a fresh application on 09.09.2015 before respondent No.4 to decide her eligibility and inclusion in Annexure II. The said application of the petitioner was accompanied by a number of documents in support of her eligibility.

10. While the appeal was pending, respondent issued notice to the petitioner on 19.03.2016 under Section 3Z-2 of the Act calling upon her to handover possession of her hut to respondent No.6 failing which it was mentioned that necessary action would be initiated against her. It was alleged in the show cause notice that the structure claimed by the petitioner to be hers at Sr. No.86 was found to be under possession of one Shri Vithobe K. Shinde who was accordingly rehabilitated in flat No.20 in the year 2008 itself.

11. Petitioner replied to the show cause notice and contended that she was in possession of the independent hut prior to the cut-off date. She requested site visit and submission of site verification report. Respondent No.4 heard the petitioner and closed the matter for order on 03.05.2016.

12. After more than one year, respondent No.4 passed an order dated 30.06.2017 directing petitioner and others i.e. petitioners in the other two writ petitions to handover possession of their structure to respondent No.5 within 7 days, failing which it was stated that the huts would be demolished.

13. Aggrieved by such order, petitioner preferred an appeal before respondent No.3, which was registered as Appeal No.1351 of 2017. Since the Appellate Authority did not call for a site visit and verification report, petitioner had filed writ petition before this Court being Writ Petition (L) No.127 of 2017 for a direction to respondent No.3 to decide appeal of the petitioner in a time bound manner.

13.1. A Division Bench of this Court disposed of the writ petition on 05.03.2018 directing respondent No.3 to decide the petitioner's appeal expeditiously but in any case not later than one month.

14. It is stated that petitioner had also filed a contempt petition alleging non-compliance of the Court's order.

15. Be that as it may; Respondent No.3 passed order dated 14.01.2019 allowing the appeal of the petitioner by setting aside order dated 30.06.2017 passed by respondent No.4, further directing respondent No.4 to take a fresh decision on petitioner's eligibility after verifying the documents produced by the petitioner and considering the recent Government resolution.

16. Against the appellate order dated 14.01.2019, respondent No.5 filed further appeal before the Grievance Redressal Committee, Mumbai Suburban, respondent No.2, which was registered as Appeal No.230 of 2019.

17. Respondent No.2 passed order dated 18.07.2019 setting aside order of respondent No.3 dated 14.01.2019.

18. Following the order passed by respondent No.2, respondent No.4 issued notice to the petitioner dated 01.10.2019 to vacate the premises within 48 hours.

19. Aggrieved, present writ petition has been filed seeking a direction to the respondents to re-scrutinize the documents of the petitioner and thereafter to take a fresh decision regarding eligibility of the petitioner for inclusion in Annexure II list.

20. Learned counsel for the petitioner submits that respondent No.4 did not examine the documents furnished by the petitioner in the proper perspective resulting in an erroneous finding. That apart, respondent

No.4 had failed to visit the site and submit report, which could have made it clear that petitioner was in possession of the structure since prior to the cut-off date and thus eligible for inclusion in Annexure II list.

20.1. Moreover, respondent No.4 had heard the appeal of the petitioner way back on 03.05.2016 but delivered its order after more than a year on 30.06.2017. He submits that any order passed after three months' of closure of hearing would be legally untenable and in this connection has placed reliance on a Division Bench judgment of this Court in *Gulmohar Area Societies Welfare Group Vs. Municipal Corporation of Greater Bombay*, **2018 (5) ALL MR 654**.

21. On the other hand, learned counsel for the respondents support the order of respondent No.4 as well as the order of respondent No.2. Submission is this that eligibility of the petitioner for inclusion in Annexure II list is a finding of fact and such finding of fact having been maintained by the fact finding authority, this Court in exercise of its writ jurisdiction under Articles 226 / 227 of the Constitution of India would not embark upon a fact finding exercise afresh.

21.1. Judgment delivered in **Gulmohar Area Societies Welfare Group** (*supra*) has been distinguished by taking the view that respondent No.4 is not a *quasi-judicial* authority and was merely exercising administrative powers regarding eligibility of the petitioner for inclusion in Annexure II list. He further submits that petitioner has filed a civil suit before the City Civil Court at Dindoshi being S.C.Suit No.92 of 2016 seeking permanent injunction against the defendants from demolishing the suit premises, which is nothing but the structure in question. In the said civil suit, petitioner had filed application for ad-interim injunction. However, the Civil Court vide order dated 15.02.2016 declined to grant injunction as sought for. This aspect of the matter has been suppressed by the petitioner while filing the writ petition.

22. Submissions made by learned counsel for the parties have been considered; also perused the materials on record.

23. Insofar order passed by respondent No.4 dated 30.06.2017 is concerned, the same was set aside by respondent No.3 vide order dated 14.01.2019. When the order dated 30.06.2017 was set aside by respondent No.3 on 14.01.2019 directing respondent No.4 to re-verify claim of the petitioner, petitioner cannot have any surviving grievance against the order dated 30.06.2017, the same having been set aside.

23.1. That brings us to the order passed by respondent No.2 in the appeal against the order dated 14.01.2019. When learned counsel for the petitioner again raised the issue of delay in passing the order dated 30.06.2017 and relied upon the decision in **Gulmohar Area Societies Welfare Group** (*supra*), respondent No.2 held as follows:

“13. The last issue for the consideration of this Committee, is regarding the challenge to the validity of the impugned order dated 30.06.2017 of the Competent Authority, on the ground of delay in passing said order. In this regard, the learned advocate of the contesting respondents have cited a judgment given by the Hon’ble Bombay High Court in the case of ‘Gulmohar Area Societies Welfare Group’ (*supra*). The Committee has gone through the copy of the said order of the Hon’ble Bombay High Court. In that case, Hon’ble Bombay High Court had set aside the order passed by MHADA after six months from date of hearing of the matter on the reasoning that the law laid down by the Apex Court in Anil Rai’s case [2001 ALL MR (Cri) 1930 (S.C.)] requires High Court’s to decide matter within three months of date of hearing, same would also be applicable to Judicial or Quasi-Judicial authority exercising judicial or quasi-judicial powers. It is seen that the facts of that case wherein said order came to be set aside, are not identical with that of the case in the proceeding under section 3Z-1, however learned advocates of the contesting respondents have stressed on the application of said principle to the order dated 30.06.2017 by submitting that said order is passed after the period of three months was over from the date of hearing of matter. In that regard, it is seen that there is no allegation of any bias or deliberation on the part of the Competent Authority. It is also pertinent that the statutory provisions of section 3Z-1, is requiring the noticees to show cause within twenty four hours, and is requiring the Competent Authority to pass order to direct the demolition within twenty four hours

from the date of order. Thus, contesting respondents, in fact, were benefited by said delay occurred in passing of the order dated 30.07.2017 after hearing of that matter, as the subject unauthorised constructions were indirectly protected during that period, far from causing any injury or harm or hardship or inconvenience to them by said delay. In that position, it is not befitting in the mouths of the contesting respondent to say that the delay in passing of the order has caused them legal injury or hardship or convenience. Therefore, the Committee is of the view that the learned Appellate Authority has erred in setting aside the demolition order dated 30.07.2017 on the ground of delay in passing said order.”

24. During the hearing, learned counsel for the respondents have produced a copy of order dated 15.02.2016 passed by the City Civil Court at Dindoshi (Civil Court) rejecting the prayer of the petitioner for ad-interim injunction. While declining relief, Civil Court held as under:

“5. Heard respective sides. Present Plaintiff claims to be in use and occupation of structure over C.T.S.No.5, Survey No.119, Mahakali Caves Road, Andheri (East). According to Plaintiff, her structure is in existence much prior to 1/1/2000. She seek reliance on Assessment Bill, Electricity Bill, Ration Card etc. Admittedly, Plaintiff’s name is not appearing in Annexure-II, which was prepared in 2000 itself. Scrutiny of the same shows that Plaintiff has learnt in 2004 that her name is not included in Annexure-II and she has already approached SRA Authorities questioning the same and has made appeal to consider her eligibility. The said proceedings are not yet decided. Moreover, it is seen that as pointed out by learned Advocate for Defendant No.2 that in the cause title, Plaintiff has given her address as House No.3, Vithobachi Chawl, Rambaug, Mahakali Caves road, Chakala Naka, Andheri (West) whereas in plaint para 1, such address is not provided. The document rough sketch map annexed to the plaint cannot be relied. The second document which is issued by the Corporation appears to be assessment bill but that appears to be addressed to one K.S. Shinde. According to Plaintiff, he is her grandfather. Statement is made across the bar by the learned Advocate for Defendant No.2 that another sister of Plaintiff is beneficiary of permanent alternate accommodation in lieu of such structure. Similarly, address given on Electricity bill is different than the description given in plaint para 1. Such bill is of 2003. Similarly, address given on Ration Card is also different than that what is stated in plaint para 1 which is said to be description of the suit premises. Therefore, for above reasons, no case is made out for grant of relief as prayed:”

25. From the above it is evident that the Civil Court found claim of the petitioner of occupying the structure in question to be questionable.

26. As already discussed above, question as to whether petitioner is eligible to be included in Annexure II list is a question of fact. The fact finding authorities have come to the conclusion that petitioner's claim to inclusion in Annexure II list is not justified. This Court exercising its writ jurisdiction under Articles 226 / 227 of the Constitution of India cannot venture into an exercise of re-determination on facts, more so when no perversity is pointed out.

27. But the crucial point is that petitioner did not mention in her writ petition regarding filing of the civil suit and prayer of the petitioner for ad-interim injunction which was rejected by the Civil Court on 15.02.2016. This is a material fact which ought to have been placed on record by the petitioner. It is a well recognized proposition that a party seeking invocation of equitable jurisdiction under Article 226 of the Constitution of India must approach the Court with clean hands. Withholding or suppression of material facts from the Court is unacceptable. On this ground alone, petitioner is not entitled to seek any relief from the Court.

28. However, not only on the ground of suppression of material facts but otherwise also for the reasons discussed above, Court finds no merit in the writ petitions. All the writ petitions are accordingly dismissed.

(UJJAL BHUYAN, J.)

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