

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

WRIT PETITION NO.1359 OF 2018

Ashok Narayan Tambe and Ors. ... Petitioners
versus
The State of Maharashtra and Ors. ... Respondents

Mr. Sanjeev Sawant with Mr. B.K.Barve, Mr. Santosh Wagh, Ms. Laxmi Ingale i/by B.K.Barve and Co., for Petitioners.
Mr. Shankar P. Thorat, for Respondent Nos.2 and 3.
Mr. Mandar Bangale i/by The Law Point, for Respondent No.4.
Mr. Karl Tamboly with Mr. S. Sigamporia i/by Mr. Ali Bubere, for Respondent No.7.

**CORAM: AKIL KURESHI &
S.J. KATHAWALLA, JJ.**

DATE: 18th SEPTEMBER, 2019

P.C.:

1. The petitioners who are about 23 in number seek directions to the respondents for allotment of permanent accommodation in the SRA scheme which is under construction.
2. Having heard learned Counsel for the parties and having perused the documents on record, what emerges is that the petitioners were occupying a plot of land which was required for construction of eastern free way. For such purpose, they were evacuated. At such time, the petitioners were granted allotment of permanent accommodation subject to certain conditions, a copy of

one such allotment letter dated 26th September, 2011 issued by the Mumbai Metropolitan Regional Development Authority ('MMRDA' for short) is produced along with the affidavit in reply filed on behalf of respondent No.7. This allotment letter would show that the allottee one Shri Ashok Narayan Tambe was staying on a plot of land which was a part of the road project. He was, in order to ensure his eviction, allotted alternate tenement at Ghatkopar, subject to terms and conditions mentioned therein. Clause (1) of the conditions provides that the allottee will not sell, lease, rent or transfer the said premises for 10 years from the date of allotment.

3. Clause 6 of the allotment letter reads as under :

"6. PAP is at his liberty to join the S.R.A. Scheme if any, subject to condition that PAP has to intimate MMRDA in writing before he join the SRA Scheme and he is bound to return the vacant possession of the allotted alternate tenement to MMRDA before shifting to Tenement under SRA Scheme."

4. As per this allotment, two things become clear. Firstly, that this was not in nature of transit accommodation or temporary allotment, but meant to be a permanent rehabilitation of a project affected person. Second thing which becomes clear is that the

allottee had an option to join the SRA Scheme if any, subject to the condition that he would intimate his option to MMRDA in writing and thereupon shall be obliged to return the vacant possession of the allotted premises before shifting to the tenement under the SRA Scheme.

5. This arrangement was principally between the allottees and the MMRDA. The remainder of the plot was being developed as SRA Scheme by the developer. To ensure enforcement of the said understanding between the allottees and the MMRDA as per the letter of allotment, the developer was asked to give an undertaking to the authorities, a copy of which is produced at Exhibit E to the petition. The petitioners as well as the respondent No.7 have provided the translations of this document which is in Marathi and is dated 14th March, 2011. On all material aspects, both the translations are similar. We may therefore, reproduce the relevant portion from the translation provided by the petitioners, which reads as under :

"You are being requested on the above subject that the 120 sq.ft. Wide road of Mumbai Metropolitan Region Development Authority (M.M.R.D.A.) is being affecting the plot of Panchsheel Ekta S.R.A. Co-operative Housing Society (Ltd.). Your office has

assured to shift them and give protection. Similarly, with reference to the land mentioned under the subject, as per the Slum Rehabilitation Authority (S.R.A.) scheme, after the work of the building of the slum dwellers on the on the said plot is completed, the slum dwellers of Panchsheel and Ekta Society who are shifted to your building will be given possession in the earlier proposed building and the office bearers of both the societies and M/s. Lakdawala Developers Pvt. Ltd., and will vacate the flats of the slum dwellers in the transit camp.

As per the letter dated 4th March, 2011 issued to the Society, the terms and conditions mentioned therein will be binding on us. Similarly, the flat given for use will be returned to the authority, for which I give my assurance."

6. As per this undertaking given by the developer to the Municipal Commissioner, the project affected slum dwellers would be rehabilitated after completion of rehabilitation work of rehab buildings of slum dwellers in the said SRA Scheme.

7. Pursuant to this tripartite arrangement, the petitioners also formally became part of the SRA scheme and the agreements were individually executed between the petitioners and the developer. Copy of one such agreement is produced at Exhibit A to the petition.

This agreement however, does not throw any further light on the controversy at hand, namely at which point of time, the developer would be obliged to rehabilitate the petitioners by allotting them permanent accommodation in the SRA scheme which is under construction. According to the petitioners, they must be given priority over other allottees. According to the developer, the petitioners would be allotted permanent accommodation after resettlement of all other allottees.

8. According to the developer, 424 units have already been constructed and allotted to eligible slum dwellers. Another building housing 189 units is completed but occupation certificate is not yet granted. Be that as it may, according to the Counsel for the developer, the present petitioners and other similarly situated project affected persons can be accommodated in the SRA scheme only after the resettlement of all other slum dwellers. He pointed out that on the portion of the land under development, there are several slum dwellers who are still residing. They would have to be shifted elsewhere by either providing temporary accommodation or rent for the interregnum period before they can be permanently resettled in the building being constructed under the SRA scheme.

9. We do not find that the petitioners can claim any priority

over the other slum dwellers who are eligible for allotment. There is a slight distinction between the case of the petitioners who are project affected persons viz-a-viz the other slum dwellers who are part of the SRA scheme and who would have to be resettled as per the terms of the scheme. We may recall, all the petitioners have been given permanent accommodation as part of the scheme for resettlement of the project affect persons. They were of course granted an option to opt for the units to be constructed under the SRA scheme by joining the SRA scheme and handing over vacant possession of the present premises at the time of the allotment. Nevertheless, they cannot claim any priority over other eligible allottees. In so far as the developer is concerned, it had only undertaken to the authorities to resettle the petitioners and other project affected persons after completion of rehabilitation of the slum dwellers under the SRA scheme. We cannot expand this undertaking and insist that the developer gives the priority to the petitioners over other slum dwellers, that too in absence of any other documents, circulars or agreement between the petitioners and developer.

10. Before closing, we record that the developer does not dispute the entitlement of the petitioners, nor the question of the

petitioners being reluctant to vacate the present premises being a hindrance for allotment of the units in the SRA scheme should come in their way, since the learned Counsel for the petitioners has always shown willingness to abide by the terms of the agreement and handover the vacant peaceful possession of the allotted premises as soon as the petitioners are given possession of the SRA units. The disposal of the petition would also not enable the developer to indefinitely linger the issue, delay the completion of SRA scheme and thereby delay the resettlement of the petitioners.

11. Subject to the above observations, the Writ Petition is dismissed. Interim relief stands vacated.

(S.J.KATHAWALLA, J.)

(AKIL KURESHI, J.)