

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**ORDINARY ORIGINAL CIVIL JURISDICTION****WRIT PETITION (L) NO.1104 OF 2019**

Chandrabhas Shetty & Ors.Petitioners

vs

The State of Maharashtra & Ors. ...Respondents

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Mr. Vivek V. Salunkhe, for the Petitioners.

Mr. Sukanta Karmakar, AGP, for Respondent No. 1.

Mr. Rishikesh Soni, a/w. Ms. Raveena Yadav, i/b. Ashok Purohit & Co.,
for Respondent Nos. 2 and 3.

Mr. Dipen Furia, i/b. Shah and Furia Associates, for Respondent Nos. 4 to
6.

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CORAM : S.C. GUPTE, J.

DATED: 18 APRIL 2019

P.C.:

. Heard learned Counsel for the parties and learned AGP for the State. This writ petition challenges an order passed by the Deputy Collector (SRA), Western Suburbs, Mumbai, in an application for eviction under Sections 33 and 38 of Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971 ("Act").

2. By the impugned order, the Deputy Collector rejected the Petitioners' objection to his jurisdiction to pass orders under Sections 33 and 38 of the Act. By the impugned order, the Deputy Collector also

rejected the Petitioners' application for adjournment and closed the matter for orders, directing the Petitioners to file their written submissions. The application for adjournment was on the ground that the Petitioners did not have copies of the original application under Sections 33 and 38 of the Act.

3. So far as the Petitioners' objection to the powers and authority of the Deputy Collector to pass an order under Section 33 of the Act is concerned, though the order does not disclose reasons for rejecting it, the objection itself is clearly untenable in view of the recent amendments to the Act. The Act, as it stood, before the amendment (i.e. before Maharashtra Act No.XXXVIII of 2018), provided for power of eviction under Section 33 of the Act, as it originally stood, to be exercised by the Competent Authority in place of the Chief Executive Officer of Slum Rehabilitation Authority (CEO, SRA) as provided after the amendment. The modified Section 33 was available only for implementation of slum rehabilitation schemes in respect of lands declared as 'slum rehabilitation areas' under Section 3C(1), as it originally stood; once any land was declared as such slum rehabilitation area, further provisions concerning slum rehabilitation schemes under Sections 3D onwards were applicable to it. Section 3D provided for a modified Section 33 giving the power of eviction to CEO, SRA (or his nominee) in place of the competent authority. After its modification by Maharashtra Act No.XXXVIII of 2018, Section 3C(1) does not contemplate declaration of a slum rehabilitation area before publication of any slum rehabilitation scheme as a necessary pre-requisite. In other words, the declaration of slum rehabilitation area may now follow

publication of a slum rehabilitation scheme. The publication of slum rehabilitation scheme may accordingly be now made even in respect of other slums, including censused slums, which are not already declared as slum rehabilitation areas under Section 3C(1), and the modified provisions of Section 33 of the Act, which are made applicable in case of slum rehabilitation schemes can be applied to such slums. There is nothing wrong, accordingly, with the Deputy Collector (Respondent No.3) exercising powers under Section 33 in the present case, as a nominee of CEO, SRA, in respect of the subject slum rehabilitation scheme. There is, accordingly, no merit in the petition.

4. So far as the second submission of learned Counsel for the Petitioners is concerned, namely, want of a proper opportunity to the Petitioners to show cause to the eviction proposed under Section 33 of the Act on account of non-service of copies of the original application, the demand for copies of the application, to which the Petitioners have to show cause, clearly appears to be in order. The Petitioners had demanded such copies and sought an adjournment on the ground that the copies were not made available to them. Learned Counsel for Respondent Nos. 4 to 6, who are the developers and chief promoter of the society of slum dwellers, offers to supply copies of the original applications made under Section 33 of the Act to the Petitioners. Such copies shall be made available within a period of one week from today. The Deputy Collector shall, thereupon, allow the Petitioners to file their reply to the application and also file their written submissions and hear the parties before passing any order for eviction under Section 33 of the Act. That part of the impugned order, which closes the application for

orders, is, accordingly, quashed and set aside and the Deputy Collector is directed to hear the parties as provided hereinabove. The petition is disposed of in the above terms.

(S.C. GUPTE, J.)