

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

WRIT PETITION NO.1432 OF 2018

Ramayan Hiralal Vishwakarma	...	Petitioner
versus		
The Chief Executive Officer, SRA		
and Ors.	...	Respondents

Mr. S.G.Kudle, for Petitioner.

Mr. A.P.Kulkarni, for Respondent No.1.

Mr. L.T.Satelkar, AGP, for Respondent Nos.2 and 3.

Mr. M.M.Vashi, Senior Advocate with Ms. A. Deokar I/by M/s. M.P.Vashi Associates, for Respondent Nos.4 and 5.

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

DATE: 10th JULY, 2019

P.C.:

1. The Petitioner has raised two fold grievances. His first grievance is that his entitlement of allotment of a residential unit admeasuring 269 sq.ft., as per the government policy is being denied by the builder-developer. His other grievance is that previously the SRA had held the Petitioner ineligible for allotment, which by the later order, was changed and the Petitioner was held eligible. The Petitioner therefore, expects that he should be paid rent/compensation for the entire period from the inception and not only from the date he was held eligible by the SRA by the later order.

2. In the context of the Petitioner's first grievance, learned Counsel for the Petitioner drew out attention to a Government Resolution dated 14th May, 2008 and a

Communication dated 26th December, 2017 issued by the SRA. In the said Government Resolution dated 14th May, 2008, the Government resolved to revise the entitlement of the displaced slum dwellers for allotment of the dwelling unit from the prevailing area of 225 sq.ft. to 269 sq.ft. In terms of this Government Resolution, the SRA in its Communication dated 26th December, 2017 took note of this revised policy for implementation. On the basis of these documents, the learned Counsel for the Petitioner strenuously argued that the Petitioner is entitled to be allotted the residential unit of 269 sq.ft., the developer is offering a unit of 225 sq.ft., which is not acceptable to the Petitioner.

3. In the context of the second grievance, learned Counsel for the Petitioner submitted that the Petitioner is entitled to rent from the inception, which the developer has not paid.

4. On the other hand, learned Counsel for the SRA submitted that the revised policy of the Government contained in the said Government Resolution dated 14th May, 2008 would apply prospectively. The Policy itself envisages that the revised area entitlement would not apply to schemes which are completed or in progress. He therefore, submitted that the SRA has taken the decision not to enforce such revised area requirement in cases where the construction was completed upto plinth level since it would be impossible to change the entire layout plans of the building. In the present case, substantial development had already taken place by the time the said

Government Resolution dated 14th May, 2008 was issued.

5. Learned Counsel for the Developer-Respondent Nos.4 and 5 submitted that the scheme envisaged 7 buildings, five of them were meant for rehabilitation of the existing dwellers. Substantial construction of all the towers was completed by the time the Government Resolution dated 14th May, 2008 came to be issued. He pointed out that the commencement certificate was issued by the SRA on 1st April, 2005. With respect to the rent entitlement of the Petitioner, he submitted that the issue can better be examined by the SRA authority, for which purpose, the Petitioner must be relegated to the said authority.

6. Having heard the Counsel for the parties, we find considerable force in the submissions of the learned Counsel for the Respondents in relation to the first grievance of the Petitioner. There is no quarrel that under the Government Resolution dated 14th May, 2008, the entitlement of the slum dwellers upon rehabilitation has been revised from residential unit of the area of 225 sq.ft. to 269 sq.ft. However, the such revision cannot be implemented where the scheme has made substantial progress. The Government Resolution itself envisages implementation of this revised area requirement not to apply to the schemes which are completed or in progress. Even otherwise, it can be seen that if the construction or substantial construction of a building is completed, it would be impossible to enforce the revised requirement which will require virtual demolition of the building and reconstruction

which obviously the Government would not have envisaged. The request of the Petitioner for allotment of larger area cannot be accepted. The learned Counsel for the developer had stated that the Petitioner was offered a unit of constructed area of 225 sq.ft., which even today if the Petitioner accepts, the developer would allot. We record this statement and expect the concerned Respondents to act accordingly.

7. With respect to the second grievance, the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971 contains sufficient machinery provisions, under which an aggrieved person can approach the appropriate authority who at the first instance, can examine the grievances. We therefore, do not foreclose the Petitioner's second prayer, but leave it to him to approach the appropriate authority. If such application is made within a period of four weeks from today, the same shall be entertained on merits without reference to limitation.

8. The Writ Petition is disposed of in above terms.

(S.J.KATHAWALLA, J.)

(AKIL KURESHI, J.)