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

WRIT PETITION (L) NO.1151 OF 2018

Sangam Janseva S.R.A. CHS Ltd ... Petitioner.

V/s.

State of Maharashtra and ors ... Respondents

- Mr. Jabbar Shakti, i/b Rajesh P. Khobragade, for the Petitioner.
- Mr. A. L. Patki, Additional Government Pleader, for respondent Nos. 1 & 2.
- Priscilla Samuel for respondent No.4.
- Ms. Gayatri Nayak, for respondent No.5.

CORAM : G. S. KULKARNI, J.

DATE : 14th FEBRUARY, 2019.

P.C. :

1] Heard Mr. Jabbar Shakti, learned counsel for the petitioner, Mr. A. L. Patki, learned Additional Government Pleader for respondent Nos. 1 & 2, and Ms. Priscilla Samuel, for respondent No.4 and Ms. Gayatri Nayak, learned counsel for respondent No.5. None appears for respondent No.3.

2] This petition filed under Article 226 of the Constitution of India, challenges the order dated 19.06.2017, passed by the Additional Collector (Encroachment and Removal), Western Suburbs, whereby the appeal as filed by Respondent No.4 the General Secretary of United Congress Party

has been partly allowed to the extent that the complaint filed by respondent No.4, has been remanded to the Competent Authority - the Deputy Chief Officer (Marketing), MHADA, for enquiry. The Competent Authority is directed to hear the complaint of respondent No.4 and all other concerned parties and take decision considering the letter dated 27.09.2011 of the Additional Secretary (Housing), as referred in paragraph No.3 of the impugned order.

3] The challenge of the petitioner to the impugned order passed by the Additional Collector (Encroachment and Removal), is on the ground that the Additional Collector has no jurisdiction to entertain the complaint as made by respondent No.4, in as much as respondent no.4 is a third party and has no concern with the slum project and thus the provisions of Section 35 of the Maharashtra Slum Areas (Improvement, Clearance And Redevelopment) Act, 1971 (for short, "the Slums Act") cannot be invoked. Learned counsel for the petitioner submits that the law in this regard is well settled.

4] On behalf of the petitioner, attention of the Court is drawn to the order dated 19th August, 2014 passed by the Division Bench of this Court in Public Interest Litigation No.68 of 2014 filed by one Tekchand Gopaldas

Khanchandani. It is contended that said Public Interest Litigation, on the slum project in question was not entertained as the Competent Authority and High Power Committee (HPC), was seized of the matter. It is submitted that the complaint of respondent No.4 is nothing different than what was asserted in the said Public Interest Litigation.

5] Learned counsel for the petitioner would submit that apart from the fact that respondent No.4 is a rank third party and would not have any locus *qua* the slum project in question, Additional Collector also has not considered as to whether the complaint of respondent No.4 should be acted upon. In this regard the Court's attention is also drawn to the legal opinion as rendered by the Chief Legal Consultant/SRA, Shri. A.L. Alaspurkar, on the complaint made by respondent No.4 (Exhibit 'H' to the petition), who in his opinion dated 3.11.2017, has recorded that it is not necessary to entertain a third party interference in the S.R. Scheme and such person can approach this Court by way of Public Interest Litigation. The relevant paragraph of the opinion given by Chief Legal Consultant (SRA) reads thus :-

"In view of the aforesaid facts and circumstances of the case, the judgment of the Hon'ble High Court is self explanatory. Even the similar issues were decided in the Complaint No.20

filed before the Hon'ble HPC. Therefore, it is not necessary to entertain the third party interference in the S.R. Scheme. They can approach Hon'ble High Court by way of PIL. If they so desire. But the SRA cannot exercise the powers of Hon'ble High Court. However, it is for SRA to comply the order passed by the Hon'ble HPC as referred to above."

6] Learned counsel for petitioner would submit that in view of this legal opinion, it is quite clear that any enquiry in the proceeding cannot be initiated at the behest of a third party and, thus, the Competent Authority/Deputy Chief Officer, ought not to act upon the impugned order passed by the Additional Collector (Encroachment and Removal).

7] On the other hand Mr. A.L. Patki, additional Government Pleader, would not dispute the legal opinion as given by Mr. A. L. Alaspurkar, Chief Legal Consultant /SRA. The learned additional Government Pleader would also not dispute the previous public interest litigation and same were not entertained and disposed of *qua* the Slum project in question.

8] Learned counsel for respondent No.4, however, would submit he being the complainant has genuine grievances which ought to be looked

into/enquired as directed by the impugned order, passed by the Additional Collector,(Encroachment and Removal). Learned counsel for respondent No.4 would refer to the complaint of respondent No.4 (Exhibit "D" to the petition), to submit that there are substantial issues which are raised by respondent No.4 *inter alia* showing gross illegality in depriving the project affected persons of their entitlement for allotment of tenements. It is submitted that, therefore, it is imperative that these grievances are looked into by the competent authority.

9] Learned counsel for respondent No.5 Developer would submit that already 114 tenements are allotted to the Slum Dwellers in rehab building and respondent No.5 is in the process of construction of balance 276 tenements, out of total 462 tenements.

10] I have heard learned counsel for the parties. Having perused the record, in my opinion, the petitioner would be correct in contending that a third party's complaint ought not to have been directly entertained qua the S.R.A. Scheme in question and when more particularly an order is already passed by the High Power Committee in regard to allotment of tenements and there are rights created in favour of the slum dwellers, and other legitimate allottees. Respondent No.4, thus, was not correct in

persuading the Additional Collector (Encroachment and removal), to pass an order directing the Competent Authority of the SRA, to make an enquiry into the allotment and consider issues in regard to the Slum Rehabilitation Scheme. This for the reason that any person who has a legal right and legitimate claim for allotment of a tenement necessarily has to invoke the provisions of the Slums Act by invoking the specific grievance redressal mechanism as contemplated under the Act, in asserting such rights, if any. The method so adopted by respondent No.4, being a third party, approaching the authority is not proper.

11. If such intervention of a third party is entertained, it has two fold perils, firstly persons who have legitimate and vested rights are unnecessarily dragged into such complaint proceedings. Secondly, entertaining of such complaints creates an extra legal mechanism of redressal of grievances which is not recognized by law. The Slums Act provides for sufficient hierarchy of remedies for redressal of grievances, as would arise.

12. This apart, if such complaints are entertained at the department level, then there would be no end to such complaints being made by variety of persons for variety of reasons and whether bonafide or

not causing serious prejudice to the smooth and effective implementation of the SRA Schemes. There is a possibility that such complainants would intend to avoid invoking the PIL jurisdiction of the Court as there are number of pre-requisites before a PIL is entertained and a given litigant may not pass muster when tested on such requirements to pursue a bonafide PIL.

13] For all these reasons, the Additional Collector, in my clear opinion, was not correct in passing the impugned order, which has the effect of creating a remedy not provided by law. It, thus, needs to be observed that if respondent No.4 has any, legitimate and justifiable grievance or any substantial material, it would be open for him to take recourse to appropriate remedy as permissible in law. All contentions in that regard are required to be kept open.

14] Resultantly the petition needs to be allowed by setting aside the impugned order dated 19.06.2017, passed by the Additional Collector, however subjected to above observations. No cost.

[G. S. KULKARNI, J]