

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 684 OF 2019

Khalik Husain Liyaqat Khan

(Deleted since deceased)

Mrs.Kamarjahan K.Khan & Ors.

..... Petitioners

VERSUS

State of Maharashtra & Ors.

..... Respondents

Ms.Sadhna Kumar for the Petitioners.

Mr.Amit Shastri, Assistant Government Pleader for the State –
Respondent nos. 1 and 2.

Mr.Mayur Khandeparkar, a/w. Mr.Susmit Phatale for the Respondent
no.3.

Ms.Aditi Yadav, i/b. M/s.Ashok Purohit & Co. for the Respondent
no.4.

CORAM : R.D. DHANUKA, J.

DATE : 3rd JUNE, 2019

P.C.

By this petition filed under Article 226 of the Constitution of India, the petitioners have impugned the order dated 29th April, 2017 passed by the appellate authority dismissing the appeal preferred by the petitioner on various grounds.

2. The authorities have already approved the rehabilitation scheme in respect of 540 hutments and has appointed the respondent no.3 developer. It is not in dispute that the Annexure II was prepared by the authorities. Insofar as these 13 structures are concerned, admittedly

the names of the petitioners in respect thereof are not recorded in Annexure II. The petitioners have not applied for eligibility certificate in respect of these 13 structures.

3. It is the case of the developer that these 13 structures have been constructed by the petitioners illegally after preparation of the Annexure II by the authorities and thus the names of these petitioners were not recorded in Annexure II. Since the structures have come up after preparation of Annexure II, notice under section 3(z)(2) of the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971 was issued to the petitioners.

4. The competent authority rejected the objections filed by the petitioners on the ground that the structures of the petitioners were within the boundary of the slum area and the petitioners have not proved the existence of the structure prior to cut off date. Being aggrieved by the said order, the petitioners preferred an appeal before the appellate authority under section 35(1) of the Act before the appellate authority. The appellate authority has passed a detailed order rejecting the appeal filed by the petitioners on 29th April, 2017.

5. Learned counsel for the petitioners invited my attention to some of the documents annexed to the additional affidavit annexed to the petition in support of her submission that these documents would clearly indicate that the authorities have now admitted that the structures of the petitioners did not fall within the slum area and thus entire action initiated by the authority against the petitioners is without

jurisdiction. She submits that these documents could not be produced by the petitioners before the authorities when the notice under section 3(z)(2) was issued against the petitioners.

6. It is submitted by the learned counsel that since the entire proceedings initiated against the petitioners was without jurisdiction, both the authorities ought to have set aside the action initiated by the slum authority and ought to have granted the protection to the petitioners.

7. Mr.Khandeparkar, learned counsel appearing for the respondent no.3 developer on the other hand would submit that these structures were constructed after issuance of Annexure II by the authorities. The names of the petitioners were admittedly not included in Annexure II. He submits that the petitioners have not even applied for their eligibility to the authorities till date.

8. It is submitted by the learned counsel that since these structures were constructed after issuance of Annexure II, the question of the names of the petitioners in Annexure II did not arise and thus rightly not included.

9. Insofar as the issue raised by the petitioners that the structures of the petitioners did not fall within the slum area is concerned, learned counsel invited my attention to the decree passed by the City Civil Court impugning the notice issued by the Municipal Corporation under section 314 of the Mumbai Municipal Corporation Act (L.C.Suit No.

831 of 2018) and would submit that the said notice issued under section 314 of the Mumbai Municipal Corporation Act was challenged by the predecessors of the petitioners on the ground that the Municipal Corporation had no jurisdiction to issue such notice since the structures of the petitioners were on the slum area and thus the jurisdiction to take action against the petitioners was only under the Slums Act and not under the provisions of the Mumbai Municipal Corporation Act. This argument of the petitioners was specifically recorded in paragraph (10) of the said decree passed by the City Civil Court and was accepted. Even in the oral evidence led by the petitioners before the City Civil Court, it was clearly deposed that the structures of the petitioners were declared slum besides the road. These submissions and the evidence laid by the petitioners to the effect that the structures of the petitioners were on the slum area was accepted by the City Civil Court in the said decree dated 2nd December, 2010, while declaring the notice dated 25th February, 2008 issued by the Municipal Corporation bad in law and without jurisdiction and granting a decree in favour of the petitioners.

10. Insofar as the discrepancy about city survey no.161 Part is concerned, learned counsel invited my attention to the original notification published by the State Government in the Government Gazette and also the corrigendum clarifying that there was inadvertent error in describing CTS No.161 Part instead of survey no.161 Part. He submits that the petitioners have been taking advantage of the said inadvertent error which is already corrected.

11. Insofar as the additional documents relied upon by the petitioners in the additional affidavit before this court is concerned, it is submitted by the learned counsel that those documents were neither produced before the two authorities below nor would even otherwise indicate that the structures of the petitioners were outside the slum area. He submits that the petitioners cannot be allowed to make submissions contrary to the submissions already made before the City Civil Court in the suit which is already decreed in favour of the petitioners by the City Civil Court.

12. Learned counsel appearing for the developer further submits that in the proceedings before the authorities below, pursuant to an order passed, a Panchanama was drawn which clearly indicates that these 13 structures fell in the slum area.

13. It is submitted by the learned counsel that the two of the structures were constructed by the petitioners within the boundary line and have been surrendered to the developer for redevelopment. It is submitted that out of 540 occupants who are required to be rehabilitated under the slum scheme sanctioned by the authorities, 535 occupants have already surrendered their structures. Since the structures of the petitioners are on the DP Road, the developer is unable to handover the said plot for the purpose of redevelopment.

14. Learned counsel appearing for the petitioners in rejoinder would submit that since her clients are innocent and uneducated, such statement came to be made before the City Civil Court to the effect that

the structures of the petitioners fell in the slum area. She further submits that it was for the authorities to correct the wrong statement, if any, made by the petitioners before the City Civil Court that the structures did not fall in the slum area.

15. A perusal of the statement made by the petitioners before the City Civil Court in the L.C.Suit No. 831 of 2018 impugning the notice issued by the Municipal Corporation under section 314 of the Mumbai Municipal Corporation Act clearly indicates that it was the case of the petitioners that these 13 structures fell in the slum area and thus the notice issued by the Municipal Corporation under section 314 was without jurisdiction. Not only the petitioners made such statement before the City Civil Court in the said suit filed by the petitioners but also led oral evidence in that direction to demonstrate that the structures of the petitioners were in the declared slum. The statements made by the petitioners and the oral evidence led by the petitioners were accepted by the City Civil Court in the decree passed on 2nd December, 2010 declaring the said notice dated 25th February, 2008 issued by the Municipal Corporation as bad in law and without jurisdiction.

16. It is not the case of the petitioners that the statements made by the petitioners and the pleadings and the evidence led by the petitioners in the City Civil Court in the L.C.Suit No.831 of 2018 was a false and misleading statement made before the City Civil Court. I am not inclined to accept the submission of the learned counsel for the petitioners that the petitioners being innocent and uneducated made

such statement before the City Civil Court.

17. Admittedly, the names of these petitioners are not reflected in Annexure II. I am inclined to accept the submissions of Mr.Khandeparkar, learned counsel for the developer that since these structures were constructed by the petitioners after preparation of Annexure II, the names of the petitioners were not reflected in Annexure II. The documents sought to be relied upon by the petitioners at this stage would obviously not indicate the structures of the petitioners within the slum area since those structures are constructed after preparation of Annexure II. Though these documents are relied upon belatedly, these documents would also not advance the case of the petitioners.

18. Both the authorities have recorded detailed reasons while rejecting the objections raised by the petitioners and making the notice issued under section 3(z)(2) absolute and by dismissing the appeal preferred by the petitioners. The findings rendered by the authorities are not perverse. In my view, the petition is devoid of merits and is accordingly dismissed with cost quantified at cost of Rs.25,000/- which shall be paid by the petitioners to the developer within two weeks from today.

19. Learned counsel appearing for the petitioners at this stage applies for stay of the operation of the order passed by this court and for continuation of the interim protection granted by this court. The application for stay is vehemently opposed by the learned counsel

appearing for the developer. Since this court is of the view that the stand taken by the petitioners before this court is false and inconsistent with the stand taken before the City Civil Court, I am not inclined to continue any interim protection granted in favour of the petitioners. Application for stay is accordingly rejected.

20. The parties to act on the authenticated copy of this order.

[R.D.DHANUKA, J.]