

psv

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

WRIT PETITION (L.) NO.1630 OF 2018

B.K. Patil & Ors.

..Petitioners

Vs.

The Grievance Redressal Committee,
Mumbai Suburb & Ors.

..Respondents

Mr.G.T. Kanchanpurkar for Petitioners.

Mr.Aspi Chinoy with Ms.Aziza Khatri, Mr.Prashant Kamble and
Mr.Shivam Bhagwati i/b. AAK Legal for Respondent No.5.

Mr.Manish Upadhye, AGP for Respondent Nos.2 and 3.

CORAM : G.S. KULKARNI, J.

DATE : 16th JANUARY, 2019

P.C.:

Heard Mr.Kanchanpurkar, learned Counsel for the petitioners,
Mr.Chinoy, learned Senior Counsel for respondent No.5, and
Mr.Upadhye, learned AGP for respondent Nos.2 and 3. Respondent
No.4 is not represented. It is informed that the respondent No.4 also did
not participate in the proceedings before the authorities below.

2. The challenge in this petition is to an order passed by the
respondent No.1 dated 1 March 2018 on an appeal filed by the
petitioners (Appeal No.419 of 2017) against the order passed by the
respondent No.2-Additional Collector (Encr/rem). By the impugned

order, respondent No.1-Committee has confirmed the orders dated 14 February 2017 passed by the Deputy Collector and the orders dated 27 July 2017 passed by respondent No.2-Additional Collector directing the petitioners eviction from their respective premises under Section 33 read with 38 of the Maharashtra Slum Areas (Improvement, Clearance And Redevelopment) Act, 1971.

3. The petitioners have several grievances as argued by the learned Counsel for the petitioner. They appear to be quite old. The first grievance is that a lottery was undertaken sometime in the year 2004 for allotment of the permanent alternate premises in the rehabilitation scheme undertaken by respondent No.5 and as per the result of the said lottery, tenements were not allotted. The second grievance is that the respondent No.5 ought to grant the petitioners an area of 269 sq. ft. instead of 225 sq. ft. although an area of 225 sq. feet per tenement which was approved by the SRA. This for the reason that in the subsequent years the respondent No.5 had become entitled to larger FSI benefits. The third grievance is that the respondent No.5 is not coming forward to execute an agreement with the petitioners as per the requirement of the rules and regulations. It is on the above grounds, the petitioners submit that the petitioners ought not to be called upon to vacate their existing premises and that eviction order passed against the

petitioners ought to be quashed and set aside.

4. Mr.Chinoy, learned Senior Counsel for respondent No.5, would submit that it is not in dispute that the redevelopment construction of the rehabilitation of the building in question is completed as far as back in 2005. It is submitted that in fact, 106 other slum dwellers have already executed agreement and they have already moved into their permanent alternate accommodation. It is submitted that the petitioners without valid reason are obstructing further development by not vacating premises in their possession. It is submitted that admittedly, permanent alternate premises are offered by respondent No.5 to the petitioners and that they are entitled to take possession of the said permanent alternate accommodation. It is submitted that the contention as urged on behalf of the petitioners that the respondent No.5 is not cooperating in entering into an agreement is also not correct and in fact, respondent No.5 at all material times was ready and willing to execute an agreement as per the rules and has already offered the possession of the premises.

5. Having heard learned Counsel for the parties and having perused the impugned order, I am not persuaded to accept the submissions as urged by learned Counsel for the petitioners. In regard to the grievance

of the petitioners in regard to the lottery, it is clear that this grievance was never espoused in the original complaint as made before the Additional Collector-Respondent No.2. Mr.Kanchanpurkar would submit that there are some grounds which is taken in the appeal memo before the Grievance Redressal Committee and my attention is drawn to that effect to the grounds (L) and (M) which read thus:-

“(L) It is pertinent to note that there was no allotment as per the SRA Rules and regulations. The allotment was made according to the wills and whims of the Respondent No.4.

(M) It is pertinent to note that the Respondent No.4 is consistently submitting that there was allotment of the tenements on 10/06/2004. In that case why again on 17/04/2017, the competent authority has sent notice for allotment of the tenements. It clearly shows that there is something fishy in the allotment of the tenements.”

6. A perusal of the above grounds clearly indicates that this cannot be accepted to be the case of the petitioners that the allotment of the tenements is not as per the lottery which was undertaken by the authority in the year 2005. If at all individual petitioners had any grievance, it was open for these petitioners to agitate the said grievances at the appropriate time. It definitely cannot be a collective issue. This apart this contention is being asserted after almost 15 years of the lottery. Further there is no material on record to support the case of the petitioners as placed before the authorities as also before this Court. Moreover, this cannot now be a ground to stall the eviction.

7. As regards the second contention that the respondent No.5 ought to grant the petitioners a larger area of 269 sq. ft., in the facts and circumstances of the case, the respondent No.5 has allotted 225 sq. ft. area per tenement for the slum dwellers, as also rehabilitation project is already completed. It is too late i.e. almost about more than 15 years for the petitioners to contend that they are entitled to a larger area. Such contention in any event at this stage, in the facts of the case, is not acceptable in law.

8. As regards the third contention that the respondent No.5 is not coming forward to execute an agreement between the petitioners as per the requirement of the rules and regulations, Mr.Chinoy, learned Senior Counsel for respondent No.5, has clarified that at all material times, respondent No.5 had requested the petitioners to come forward and take possession of their respective tenements by entering into agreements. A perusal of the impugned order also shows that the Grievance Redressal Committee has held that the petitioners should vacate their premises and take possession of their respective permanent alternate tenements by entering into agreements with respondent No.5.

9. In the above circumstances, the petitioners are not entitled for any reliefs as prayed in the writ petition. Suffice it to observe that the

petitioners and the respondent No.5 shall execute necessary agreements as expeditiously as possible and within a period of 15 days from today and the petitioners shall take possession of the respective premises.

10. It is clarified that once the agreements are executed within the period as directed, the petitioners shall not be entitled to remain in possession of the existing premises and they shall forthwith vacate the premises, failing which it shall be open to the respondents to execute the eviction orders passed against the petitioners.

11. The petition is disposed of in terms of the above observations. No costs.

12. At this stage, Mr.Kanchanpurkar, learned Counsel for the petitioners, submits that the petitioners may have other remedies to espouse the cause of the petitioners for a larger area for which the petitioners intend to pursue appropriate proceedings. If such remedies are available, this order shall not come in the way of petitioners to espouse such remedies, if so permissible in law. Needless to observe that all contentions of the respondent No.5 in that regard are expressly kept open.

[G.S. KULKARNI, J.]