

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

WRIT PETITION (L) NO.1739 OF 2019

Mohd.Shagaf Shaikh and Ors. ... Petitioners

Vs

**Assistant Engineer, Assistant Municipal
Commissioner Office, Mumbai ... Respondents**

Mr.Shubham Kaushal a/w Mr.Niranjana M.
Deshpande, Mr.Sangram Chinnappa,
Mr.Kaustubh Gidhi, Mr.Kartikeya
Bahadur for the Petitioners.

Mr.J.F.Reis, Senior Advocate a/w
Ms.Rupali Adhate for MCGM.

Mr.Hament Haryan, AGP for State.

Mr.J.G.Aradwad for Respondent No.5.

**CORAM :- S. C. DHARMADHIKARI &
G.S.PATEL, JJ.**

DATE :- JUNE 14, 2019

P.C. :-

1. This petition alongwith other two was placed before us on the previous occasion.
2. This was stated to be a different matter and that is why did not get partially disposed of by our order.

3. However, the grievance is identical, in the sense, a 48 hours eviction notice was served way back on 27th January, 2017 to the occupants of the slum on Chamadavadi Nala, Bandra (E), Mumbai -400 051.

4. The recipients of this notice are before us and the complaint is that though the structures may be affected by the widening of this Nala, still, the petitioners had been told to shift to Mahul, Chembur which is unfit for human habitation. The area is pollution prone and those who have already shifted there and residing suffer from several diseases, particularly respiratory diseases.

5. On instructions, Mr.Reis, learned senior counsel appearing on behalf of the Municipal Corporation states that presently the petitioners cannot be held to be eligible for any rehabilitation package that is devised for those who are found to be eligible. Such eligible persons would be shifted to permanent rehab areas or tenements. The petitioners have not been found to be eligible for extension of such package or benefit. However, they have requested for being declared as eligible and the dispute in relation thereto is pending.

6. Mr.Reis, on further instructions, states that pending the decision on the point or issue of eligibility, only temporarily, the petitioners would be shifted from their existing location to Mahul and in rehab tenements and as and when they establish and prove their eligibility, they would be extended the benefit of the rehabilitation package on par with similarly situated slum dwellers.

7. Both the statements of Mr.Reis, on instructions, are accepted as undertakings given to this Court.

8. Once we have negatived the request of the similarly placed slum dwellers to allow them to reside in the existing structure and found no merit in the challenge to the eviction notice, then, a different result cannot follow in the present matter.

9. The petitioners cannot be allowed to squat on a Nallah and in unhealthy, insanitary conditions and particularly when because of their residence, this Nala gets blocked year after year in monsoon. It is to clear that Nala and to allow the rain water to flow smoothly that the clearance operations have been commenced and as a part thereof the eviction notices are served. We do not find any right in favour of the petitioners which could

be enforced by our writ jurisdiction and particularly by writ of mandamus. The writ petition to that extent is dismissed.

10. However, to ensure that the petitioners are not deprived of the benefit of any rehabilitation package devised by the Municipal Corporation, we direct that in the event the petitioners make any application for declaring them as eligible for the benefit, that application or request be decided as expeditiously as possible and, in any event, within a period of eight weeks from today.

11. The competent authority shall take necessary decision and communicate it to the petitioners.

12. Pending such decision and purely for a temporary period, the petitioners may be shifted to Mahul and whosoever is ready and willing to shift on his own, the expectation is that the Municipal Corporation will allow him or her to shift their belongings and articles from the existing structure and thereafter demolish them. Post removal, if such a benefit is not availed of, then, the petitioners would meet the same fate as set out in the notice. The notice then can be enforced in accordance with law.

13. Place this petition alongwith other matters on 18th June, 2019.

14. We are not impressed by the argument that the Division Bench of this Court has found the whole of the Mahul area unfit for residence of human beings and the tenements, though constructed and offered, should then not be utilised even for temporary housing.

15. The benefit that is sought to be derived from the judgment of Division Bench of this Court in Public Interest Litigation No.140 of 2006 in the matter of *Janhit Manch and Ors. Vs. Brihanmumbai Municipal Corporation and Anr.* decided on 2nd & 3rd April, 2019 cannot be extended to the petitioners. Firstly, there, the Division bench found that the State cannot evict a person forcibly from his residential premises, who has the right to rehabilitation by way of allotment of residential tenements and accommodate in a area where the quality of air is not pure. There is a perceptible threat to the human beings if they reside in such accommodation.

16. The petitioners have not proved their eligibility. We, do not think that therefore this order is of any assistance.

17. There is another order to which our attention is invited and that is dated 8th August, 2018. We are unimpressed by the submission that the National Green Tribunal in some proceedings has found that the air quality in Mahul is poor. It is so poor that it is potentially health hazardous and all the residents of village Mahul, therefore, may suffer.

18. Reliance is placed on paragraph 11 in order of Writ Petition (L) No.874 of 2018 and connected matters, including the Public Interest Litigation of *Janhit Manch* (supra). That order was passed on August 8, 2018 on prior occasion. We have referred to the later order and more recent one in the very proceedings.

19. We have not found that ineligible slum dwellers or occupants of slums were granted any relief by this Court. The petitioners' case cannot be equated with that projected in *Janhit Manch* (supra) and connected matters. We are not forcing the petitioners to remove themselves from their structures nor we have issued the directions to the Municipal Corporation to necessarily move them to Mahul. If at all they wish to move elsewhere and in temporary structures, the option, according to the Corporation, is that pending the consideration of their eligibility or pending the decision on that issue, they can reside at

rehab tenements located at Mahul. As and when the issue is decided, they are going to be shifted to some other location. If this offer is acceptable to the petitioners, we allow them to avail of all the benefits of such an offer, else, they would suffer eviction and forcibly. Once we are not in agreement with the petitioners' counsel on core issue, then, it is only for the remaining issue of their rehabilitation that we post this matter alongwith other matters on 18th June, 2019.

(G.S.PATEL, J.)

(S.C.DHARMADHIKARI, J.)