Atul

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION (L) NO. 1831 OF 2019

Sarfaraz Ramzan Ali Amiri ...Petitioner
Versus
The Additional Commissioner & Anr ...Respondents

WITH

WRIT PETITION (L) NO. 1853 OF 2019

Aguiar Domnic Sabastin ...Petitioner
Versus
Municipal Corporation of Greater Mumbai ...Respondent

WITH

WRIT PETITION (L) NO. 1854 OF 2019

Ingnatius Mascarenhas ...Petitioner
Versus
Municipal Corporation of Greater Mumbai ...Respondent

WITH

WRIT PETITION (L) NO. 1855 OF 2019

Rosie Ronney Gracias ...Petitioner
Versus
Municipal Corporation of Greater Mumbai ...Respondent

WITH

WRIT PETITION (L) NO. 1856 OF 2019

Abida Usman Chougle ...Petitioner
Versus
Municipal Corporation of Greater Mumbai ...Respondent

WITH

WRIT PETITION (L) NO. 1857 OF 2019

Zakir Hussain Akbarali Talajawala ...Petitioner
Versus
Municipal Corporation of Greater Mumbai ...Respondent

WITH

WRIT PETITION (L) NO. 1858 OF 2019

Anwar Badshah Abdul Rehman ...Petitioner
Versus
Municipal Corporation of Greater Mumbai ...Respondent

WITH

WRIT PETITION (L) NO. 1859 OF 2019

Devalon Arnold Dsouza ...Petitioner
Versus
Municipal Corporation of Greater Mumbai ...Respondent

WITH

WRIT PETITION (L) NO. 1860 OF 2019

Ismail Khan Sarguro ...Petitioner
Versus
Municipal Corporation of Greater Mumbai ...Respondent

WITH

WRIT PETITION (L) NO. 1861 OF 2019

Meraj s/o Bismilla Ibrahim Shaikh ...Petitioner
Versus
Municipal Corporation of Greater Mumbai ...Respondent

Mr Amog Singh, *i/b Jeet Gandhi, for the Petitioner in WPL/1831/19.*
Mr Virendra T Dubey, *for the Petitioner in all Petitions except WPL/1831/19.*
Mr Javed Shaikh, *with Mrs Vandana Mahadik, for the MCGM.*
Mr Bipin Surve, *Sub-Engineer, Maintenance, "L" Ward, MCGM, is present.*

CORAM: S. C. DHARMADHIKARI &
G.S. PATEL, JJ
DATED: 28th June 2019

PC:-

1. On the earlier occasion, we had given opportunity to Mr Singh to speak to his clients. The present order is in continuation of the order passed on the earlier occasion.

2. Today, Mr Singh and Mr Dubey says that their instructions are neither to withdraw these petitions nor to accept the offer of the Municipal Corporation to rehabilitate these petitioners at Mahul. Both would submit that having found some of the petitioners to be eligible for permanent alternate accommodation or a rehabilitation package, then, they should not be evicted summarily from the present premises. Mr Singh and Mr Dubey, therefore, say that neither do the petitioners wish to withdraw these petitions nor do they desire to approach the Municipal Corporation with any request. They are pressing the writ petitions on merits.

3. We have already found that the petitioners have mixed up different issues. The structures which they claim they are occupying may allegedly stand on privately-owned lands, but we are not concerned with the petitioners' right, title and interest for there is none in so far as the land, or perhaps even the structure are concerned. We are concerned only with the petitioners' occupancy. Some of the petitioners are stated to have occupied the structures in question prior to a stipulated cut-off date. Some petitioners may have been extended the benefits of a rehabilitation package. However, the rest could not prove that they are in lawful occupation of the structures. These structures may have been constructed on private property by the predecessors of the petitioners, but there are no valid documents of title. The petitioners cannot be allowed to occupy these structures having found them bereft of any right therein.

4. It cannot be disputed that the petitioners and these structures both pose a clear and present danger to a vital public utility that serves the city. This utility is the Tansa water pipe line that runs some 160 kms, part of it over ground while the rest of it is underground. This pipeline carries drinking water to the residents of Mumbai. It must be kept clean, secure, free of pollution, garbage and filth. It does not matter whether the pipeline is underground or over ground at any particular stretch along its length. Either which way, unauthorized structures and illegal occupants such as these present enormous difficulties in accessing the pipeline itself. In other places, there are shanties and squatters *on the pipeline itself*. Clearly, the over-riding public interest demands that the pipeline and a reasonable margin around it be kept clear of encroachments so

that it can be kept safe from ruptures (accidental or deliberate) and, when necessary, easily accessed for routine maintenance and repairs.

5. This a complex problem. The marginal distance decided is 10 mtrs on either side of the running length of the pipeline. This is the minimum need to keep the pipeline safe and accessible. The 10-mtr marginal width along the length of the pipeline is not entirely public land. Some privately-owned lands are within this 10-metre Tansa Pipeline safety zone, which we will henceforth call the TAPS zone for convenience. Where lands in the TAPS zone are publicly held, there is no difficulty in recovering possession. Those who fit the eligibility criteria will get the benefits of a rehabilitation package. Where any land in the TAPS zone is privately held or owned, however, the municipal authorities are required to follow a two-step process. First, they must evacuate all structures that fall within the TAPS zone. Second, they must then take the necessary steps in accordance with law to acquire those lands from private ownership. This sequence is important, because it is not the nature of ownership of the land itself that presents any danger or threat to the pipeline, but the occupancies of structures thereon. Therefore, it logically follows that all such occupancies within the TAPS zone must be cleared first.

6. These difficulties were presented to the Court earlier. In that context, a Public Interest Litigation was taken on record and elaborate directions were issued from time to time therein. We cannot defeat these directions merely because the petitioners before us contend that only their structures have been chosen for

evacuation but others have not. We also cannot countenance their argument that the land acquisition process must be completed first before any occupier can be evacuated.

7. We do not think that this can ever be the correct position in law. Those unauthorizedly and illegally occupying structures, with no proof of their eligibility can never argue that some other unauthorized or illegal occupant is not been evicted and he alone is singled out. That pre-supposes that there is an admission that the person before this Court is an illegal and unauthorized occupant. If that be so, then he has no right to occupy the structure which is being demolished by the Municipal Corporation or removed from the TAPS zone site so as to secure, safeguard and maintain the pipeline. That other structures and occupants thereof are presently not touched is, therefore, no ground to resist eviction notices.

8. The other ground of attack canvassed today by Mr Singh and Mr Dubey is that there are several such projects of public importance in Mumbai being implemented by the Municipal Corporation. The Municipal Corporation has, after undertaking these projects and identifying the project-affected structures, evolved a rehabilitation package. The persons in occupation of these structures — for example, road widening, fly-over construction etc. — have agreed to shift from their existing premises into other premises offered to them under the rehabilitation package. These were offered to them free of cost. But according to Mr Singh and Mr Dubey an issue in relation to relocation or rehabilitation site, which is said to be in a highly polluted part of the city, has resulted in the frustration of the rehabilitation package itself. The plight of those

already moved to such locations is the cause for the apprehension of the petitioners that they may be suffer similarly. If they agree to move to Mahul or accept re-accommodation at Mahul even as a transit accommodation, it is quite likely that they will never be permanently rehabilitated. It is in these circumstances Mr Singh and Mr Dubey would submit that we should take note of an order dated 9th November 2017 passed by this Court in Public Interest Litigation No. 68 of 2017 and similar other orders, including some observations in a contempt petition.

9. First of all, the petitioners cannot rely on these orders to perpetuate their occupation. Once their occupancy is found to be illegal and unauthorized, they cannot fall back on the alleged plight of some other project-affected persons and the directions concerning their rehabilitation issued by this Court. This is precisely what we termed a mixing up of issues. The whole attempt in pointing out these alleged difficulties of rehabilitated slum-dwellers or occupants of old chawl-type structures is to perpetuate and continue the occupancy at the present site. The occupation of the structures by the petitioners having been found to be illegal and unauthorized, we cannot accede to the request of Mr Singh and Mr Dubey. We do not think that it is the duty of this Court and in every such matter, and particularly when it is enforcing its own directions, to ensure permanent alternate accommodation free of cost to parties like the petitioners. With open eyes and with knowledge of all consequences including legal proceedings, such parties pay money and enter into structures which are either already constructed at site or existing for decades together or squat on open land without any title and construct a structure thereupon. When the eviction notices

are issued for their removal and the public bodies arrive at the site to remove them, at the last minute they rush to Court and seek the Court's protection. If the Court refuses to protect them and their occupancies, then, the request alternatively made to the Court is to issue directions to the Municipal Corporation or public body to provide for alternate accommodation to the petitioners or parties like them, as if it is the duty of this Court and as if its writ jurisdiction is meant to be exercised in this manner and this manner alone.

10. We do not think that the latter obligation has ever been taken over by the Court, and particularly when we find that the person who has brought the petition has no pre-established or pre-existing legal right much less any right to occupy public property or even private property. It is only when public projects affect lawful structures and occupants lawfully and authorizedly placed therein that this Court, depending upon other facts and circumstances, and particularly the resources at the disposal of the public bodies issue directions of the nature sought by Mr Singh and Mr Dubey. We, therefore, cannot equate the plight of such persons with that of the petitioners.

11. In our view, the concept or promise of 'free housing' is fundamentally flawed and needs to be re-examined. The emphasis must be on the obligation of the State to provide *affordable* housing, and to devise methods and schemes to make reasonable housing affordable. The promise of 'free housing' may be little more than a political gimmick. We believe it to be wholly alien to the concept of planned and orderly development mandated by the Maharashtra

Regional & Town Planning Act, 1966. Such a promise of 'free of cost' housing encourages illegal encroachments and sheer trafficking in land occupancies.

12. In the present batch of cases, will this be self-contradictory? if an authorised structure's occupant is found "eligible" he (a) gets free housing and (b) cannot be sent to Mahul. Therefore, if any of these Petitioners fall in the same class of "eligible" occupants, are they not also entitled to (a) and (b) above? In our view, this is a matter between the petitioners and the public body, like the Mumbai Municipal Corporation. We have already, in the foregoing paragraphs, clarified that we are not taking up that issue for consideration at the instance of the present petitioners.

13. We must and continue to be moved by the plight of the Mumbaikars for whose benefit the directions in PIL No. 140 of 2006 have been issued. That Tansa pipeline and its maintenance has to be taken over urgently for saving the life of Mumbaikars and to assure them clean and pure drinking water. This is the underlying principle based on which the directions in the PIL has been issued. The assurance of clean potable water by the Municipal Corporation is meant to protect the life and liberty of the residents of Mumbai. To fulfil that duty and to perform that obligation, the Municipal Corporation says it must constantly safeguard, maintain and repair the pipeline. It is that aspect which has been given prominence by us. Everything else is secondary. That is why we do not think that we should entertain these petitions.

14. All the writ petitions are dismissed.

(S. C. DHARMADHIKARI, J)

(G. S. PATEL, J)