

Shephali

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 1976 OF 2019

Sanghvi Premises Pvt Ltd ...Petitioner
Versus
The State of Maharashtra, through its Secretary ...Respondents
& Ors

WRIT PETITION ST NO. 2589 OF 2019

Park View Developers & Ors ...Petitioners
Versus
The Slum Rehabilitation Authority & Ors ...Respondents

Mr Sanjay Jain, *with Mayur Khandeparkar, Raj Sanghvi & Ulka Khandekar, i/b Lex Services, for the Petitioner in WP/1976/19.*
Mr Pravin Samdani, *Senior Advocate, with Santosh Pathak, for the Petitioners in WPL/2589/2019.*
Mr LT Satelkar, *AGP for the State in WP/1976/2019.*
Mr YR Mishra, *with PM Bharat, for Respondent No. 4 in WPL/2589/2019.*
Mr Neel Helekar, *with Mayuresh S Lagu, for National Commission for Schedule Tribe, Respondent No. 3 in WP/1976/2019 & Respondent No. 2 in WPL/2589/2019.*
Mr P Mishra, *i/b Kunal Chheda, for Respondent No. 5 in WP/1976/2019.*
Mr Santosh V Bagrania, *Respondent No. 3, present in person in WPL/2589/2019 & Respondent No. 5.*
Ms Vrushali L Maindad, *i/b Abhijeet A Desai, for Respondent No. 2-SRA in WPL/2174/2019.*

**CORAM: S. C. Dharmadhikari &
G. S. Patel, JJ.**

DATED: 9th September 2019

PC:-

1. The National Commission for Scheduled Tribes has passed an order, a copy of which is at pages 185 to 187 of the paper-book, which is under challenge in this petition on several grounds. The principal ground of challenge is that the National Commission for Scheduled Tribes has exceeded its statutory and constitutional powers and went far beyond its jurisdiction in concluding that the Scheduled Tribe applicant before it has been a victim of atrocity and harassment. It has 'recommended' that the construction activity on the land in question should be stopped, the District Collector, Mumbai Suburban District and the Commissioner, Municipal Corporation for Greater Mumbai should ensure that no construction activities and no sale/purchase of the constructed portion should be made as the matter is under consideration before the Commission. A comprehensive report was ordered to be submitted by the Revenue Officials and thereafter it was said the matter would be taken up in the next sitting. An Action Taken Report in terms of the directions in the operative para of the impugned order was ordered to be forwarded within thirty days of the date of this order. This order is dated 26th March 2019.

2. The argument before us is that if the tribal was indeed aggrieved by what has been done at site including a construction activity and the alleged rights created in favour of the petitioner thereunder, then, he, the tribal in question, Chandrakant Babu

Dhondi (Patel), Respondent No. 5, had adequate remedies in law available to him which he could availed of, and the Commission could not have made such an order given the factual and particularly title dispute. The Slum Rehabilitation Authority ought, therefore, to have taken no cognizance of this order of the National Commission for Scheduled Tribes. It could not have directed the petitioner before this Court not to continue any activity at site.

3. Pertinently the SRA's communication, a copy of which is at page 188 of the paper-book, in clearest terms refers to the order of the National Commission for Scheduled Tribes and says that when the National Commission met again on 15th July 2019 for a further hearing, it directed orally the SRA to affix a notice board at a prominent visible location at site intimating the public at large regarding the directions. The display of that board at site is pursuant to these oral directions. That is also challenged as being overstepping the limits for the Slum Rehabilitation Authority could not have taken any cognizance of any such oral directions.

4. At the root of this, therefore, is the question of the powers, authority and jurisdiction of the National Commission for Scheduled Tribes. We caused a notice to be issued to it and Mr Neel Helekar appeared on this Commission's behalf before us.

5. At his request, the matter was placed today.

6. At today's hearing, Mr Helekar on instructions says that the National Commission acted in terms of the status under Article 338-

A of the Constitution of India to perform its duties. Reliance is placed on sub-clause (b) of Clause 5 to urge that it is the duty of the Commission to enquire into specific complaints with respect to the deprivation of rights and safeguards of the Scheduled Tribes. Therefore, it is submitted, the Commission has the necessary powers, authority and jurisdiction. It can pass a binding order in that behalf. Reliance is also placed on Clause (a) of Article 338-A of the Constitution of India to urge that the Commission while investigating any matter referred to it under sub-clause (a) or enquiring into any complaint referred to it under sub-clause (b) of clause 5 possesses all powers of the Civil Court to try the suit and in particular in respect of the matters enumerated therein.

7. We have also been taken through the scheme of the National Commission for Scheduled Castes and Specification of Other Functions Rules 2005.

8. These Rules are made in exercise of the powers conferred by sub-clause (f) of Clause (5) of Article 338-A of the Constitution. True it is that to enable the Commission to perform its duties in relation to the protection, welfare and development and advancement of the Scheduled Tribes, as the President may, subject to the provisions of any law made by the Parliament by rule, specify, these Rules are traceable to the constitutional provision, but when there is an enquiry to be made in a specific complaint with respect to deprivation of rights and safeguards of the Scheduled Tribes, that enquiry depended on whether the Commission in the facts and circumstances of the present case could have gone into these disputed issues.

9. It is conceded now by Mr Helekar that the Commission has merely made a 'recommendation' in terms of its impugned order and directions and has not taken over entirely the functions of a Civil Court to determine and decide a title suit.

10. In the light of this conceded position, we do not think that the Commission could have directed furnishing of reports or should have also indulged in the further exercise attributed to it. Particularly, we do not think that the facts and circumstances of this case warranted such an exercise.

11. The Commission had before it in the two matters some specific complaints. In the first case, the Complainant was one Dhodi whereas in the second was one Santosh Vishnu Baglaniya (Dhodi) & others. In the first case, the complainant had alleged that property City Survey No. 31/D and 31/F corresponding to Final Plots No. 22B and 22C of the Town Planning Scheme bearing old Survey No. 6 and 6A are situate in Village Kanheri, Taluka Borivali. The original property card was opened in 1966 and the name of one Mansibai Rami Dhodi and Babul Narsi Dhodi were entered in the Other Rights column on 6th March 1972. The name of M/s. Parag Construction was entered in the year 1986 as holder/owner. The property was subject matter of Urban Land Ceiling proceedings. It came to be acquired and the name of Government of Maharashtra was entered as the holder of 7475.00 sq mtrs vide Mutation No. 175 dated 10th October 2007. However, a separate property card was not opened in the name of the Government. The Government's name appeared as the holder. The name of M/s. Parag Construction was retained as the holder. The names of Mansibai and Babul were

retained in the Other Rights column for the balance area of 1414.9 sq mtrs. These are the contents of the report of the District Superintendent of Land Records, whereas the complainant had alleged that the property of a tribal has been usurped illegally and contrary to the provisions of at least two laws, namely, The Maharashtra Land Revenue Code 1966 (Section 36 and 36-A) and its predecessor legislation as also the Bombay Tenancy and Agricultural Lands Act 1948. The names of the applicants/complainants were never entered as protected tenants in the 7/12 extracts on or before the Tillers Day, namely, 1st April 1957.

12. We do not think that on mere reports of the nature submitted before the Commission, the Commission could have taken over the powers conferred on Competent Authorities by the Bombay Tenancy and Agricultural Lands Act 1948 and in Maharashtra Land Revenue Code 1966. More so, when there are intervening proceedings under two different statutes, namely, the Maharashtra Regional and Town Planning Act 1966 and the Urban Land (Ceiling and Regulation) Act 1976, now repealed.

13. Once the Commission has only made recommendations as conceded before us, then in the facts and circumstances of the present case any larger or wider issue of the Commission's power, authority and jurisdiction need not be decided. In the facts and circumstances peculiar to this case, the Commission could not have assumed these adjudicatory powers. If that is the clear position, then its order are merely recommendatory in nature. They could not be taken as binding and conclusive. On the basis of the same, the Slum Rehabilitation Authority could not have directed the petitioners to

abide by the notice displayed at site. That notice could not have resulted in stoppage of work at site as well.

14. By leaving open all such remedies as are available to the alleged Tribal and other parties claiming through him and keeping open all objections and contentions to the contrary, we dispose of these writ petitions.

15. We accept the statements of Mr Helekar as undertakings to this Court.

16. Needless to clarify that no proceedings before the Commission in relation to the rights claimed in the lands would now be held and the Commission need not decide any issues, particularly arising from the reports submitted/furnished before it. All proceedings before the Commission stand concluded with the above clarification.

17. As regards the notice issued by the Slum Rehabilitation Authority dated 10th July 2019 to M/s. Sanghvi Premises Pvt Ltd, the work of the scheme under reference and the direction or intimation that no further approvals would be granted to it until the Commission settles the matter, all would not survive. The request to grant part occupation certificate is also to be processed in accordance with the applicable Rules, Regulations and legal provisions. The petitioners are free to proceed with the work of the scheme under reference.

18. In the case of M/s. Park View Developers, the companion petition which is also disposed by this common order, we direct that apart from the stop work notice dated 15th May 2018, the notice dated 18th June 2019 displayed at site and the letter refusing to grant full occupation certificate for the sale building dated 25th July 2019 would not survive. Curiously, the complainant in that case, Santosh Vishnu Baglania alias Dhodi is stated to be a beneficiary under the Slum Rehabilitation Scheme implemented at site. His name has been included in the records of the Slum Rehabilitation Authority and he has obtained a benefit in the form of full rights in a component/unit styled as a rehab building. The petitioners in the writ petition have specifically stated that he was declared to be an eligible occupant. There is a copy of Housing Society register of the slum-dwellers at site of which he is a member. The mother of this respondent had filed Suit No. 1573 of 2008 in the City Civil Court at Dindoshi, Goregaon, Mumbai against the 4th respondent-Maharashtra Housing and Area Development Authority and the proposed society of slum-dwellers seeking various reliefs. An application was filed for interim injunction therein but that came to be dismissed on 9th September 2008. The suit itself was also dismissed thereafter on 29th June 2009. None of these orders have been challenged in further legal proceedings by the mother, Manjula Vishnu Dhodi. In the circumstances, and when these facts as narrated are not disputed (but, on the contrary, are noted by the Commission), all the more the Commission could not have assumed the powers it purported to assume in this case.

19. Let the Slum Rehabilitation Authority/Competent Authority process the application for grant of full occupation certificate.

20. The writ petitions are disposed of in the above terms.

21. Although we take on record a copy of communication of 4th September 2019 of the National Commission for Scheduled Tribe, we expect it to drop all further proceedings in the complaints of the two persons/complainants before it. We expect Mr Helekar to apprise the Commission of all legal consequences which will arise from the orders passed today. All proceedings before the National Commission in both matters stand closed.

(S. C. DHARMADHIKARI, J)

(G. S. PATEL, J)