

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

WRIT PETITION (L) NO. 3284 OF 2019

Vishnagara Deviben Hargovind & 2 Ors.	...Petitioners
Versus	
State of Maharashtra & 5 Ors.	...Respondents

**WITH
WRIT PETITION (L) NO. 3368 OF 2019
WITH
INTERIM APPLICATION NO. 1 OF 2019 IN W.P. NO. 3368 OF 2019**

Bibi Allarakha Jogia & 7 Ors.	...Petitioners
Versus	
State of Maharashtra & 5 Ors.	...Respondents

Mr. M.M.Vashi, Sr. Counsel i/b. Angad Giri, Advocate for Petitioner in both Writ Petitions.

Mr. Cyrus Ardeshir a/w. Mr. Anil Jaryal i/b. Legal Associates, Advocate for Respondent No.5 in both Writ Petitions.

Mr. S.P. Thorat, Advocate for Respondent No.6 in Writ Petition(L) No. 3284 of 2019 and for Respondent No.7 in Writ Petition(L) No. 3368 of 2019.

Mr. Yahya Ghoghari i/b. Mr. Ajay Satalkar, Advocate for Respondent No.4 in both Writ Petitions.

Mr. Yogesh Patil i/b. Mr. Vijay D. Patil, Advocate for Respondent No.2 in both Writ Petitions.

Mr. Manish Upadhye and Mr. Sukanta Karmakar, AGP's for Respondent No.1 State.

CORAM : UJJAL BHUYAN, J.

DATE : DECEMBER 19, 2019

P. C.:

This order will dispose of both Writ Petition(L) No. 3284 of 2019 and Writ Petition (L) No.3368 of 2019.

2. Heard Mr. M.M.Vashi, learned Senior Counsel i/b. Mr.Angad Giri, learned counsel for the petitioner; Mr. Manish Upadhye alongwith Mr.Sukanta Karmakar, learned AGP for respondent No.1 State; Mr.Yogesh Patil i/b. Mr. Vijay D. Patil, learned counsel for respondent No.2; Mr.Cyrus Ardeshir a/w. Mr. Anil Jaryal, learned counsel for respondent No.5; and Mr. S.P. Thorat, learned counsel for respondent No.6.

3. Subject matter of both the Writ Petitions being identical those were heard together and are being disposed of by this common order.

4. However, for the sake of convenience facts and documents referred to in Writ Petition (L) No. 3284 of 2019 are being adverted to hereunder.

5. Petitioners are aggrieved by order dated 08.11.2019 passed by the Apex Grievance Redressal Committee i.e. respondent No.2 dismissing their appeal and upholding the order dated 11.01.2019 passed by the Deputy Collector, Western Suburbs, Slum Rehabilitation Authority i.e. Respondent No.6.

6. It is stated that petitioners are slum dwellers residing in the plot of land bearing CTS Nos. 62, 62/1 to 18, 63, 63/81 to 217, 64 and 64/1 to 12, Village : Akurli, Taluka : Borivali, Mumbai Suburban District.

7. Though the pleadings are sketchy and details have not been properly pleaded, however it appears that the said area was declared as a slum area where-after respondent No.4 was set up by

the slum dwellers as the proposed cooperative housing society. Petitioners being the slum dwellers of the said area are naturally members of respondent No.4. Respondent No.4 in turn has appointed respondent No.5 as the developer to implement the redevelopment scheme in the declared slum area under the provisions of “The Maharashtra Slum Areas (Improvement, Clearance & Redevelopment) Act, 1971” (briefly the “Slum Act” hereafter). Such decision can be taken only if 70% of the members of the proposed cooperative housing society are in favour.

8. Thereafter, competent authority prepared the annexure II list of eligible slum dwellers entitled to rehabilitation on 20.11.2010. It is stated that names of some of the petitioners have been included in the eligibility list where-as others have not been included.

9. On application of respondent Nos.4 and 5, Slum Rehabilitation Authority (SRA) issued letter of Intent on 09.03.2012. Thereafter, SRA also granted intimation of approval on 26.07.2012.

10. Respondent No.3 issued notice dated 25.10.2018 to the petitioners under Section 33 and 38 of the Slum Act directing them to hand over possession of their premises to respondent No.5. Petitioners submitted their reply. After hearing the matter, respondent No.3 passed an order dated 11.01.2019 directing the petitioners to hand over possession of their respective premises to respondent No.5 within a period of 10 days.

11. Aggrieved by the said order dated 11.01.2019, petitioners preferred appeal before Respondent No.2 alongwith an application for stay. Respondent No.2 passed an order dated 19.01.2019 staying the order of respondent No.3 dated 11.01.2019. It is stated that before the matter could be finally heard, respondent No.2 had passed an order dated 29.07.2019 vacating the stay order dated 19.01.2019. It appears that petitioners had approached this Court by filing Writ Petitions being Writ Petition No. 9028 of 2019 and Writ Petition (Stamp) No. 23237 of 2019. Both the Writ

Petitions were taken up together and on 16.08.2019 an order was passed that *status quo* be maintained till the next date in the appeal preferred by the petitioners before respondent No.2.

12. The appeal was heard on 09.08.2019 and after hearing the appeal the same was kept reserved for necessary order. Ultimately, respondent No.2 passed the order dated 08.11.2019 dismissing the appeal filed by the petitioners and upholding the order dated 11.01.2019 passed by respondent No.3.

13. Aggrieved by the aforesaid, present Writ Petition came to be filed.

14. An additional affidavit has been filed by the petitioners in Writ Petition (L) No. 3284 of 2019.

15. According to Mr.Vashi, petitioners were not afforded reasonable opportunity of hearing before passing the impugned

order and that the entire action was taken at the instance of the new builder by the name of M/s. Poddar Housing and Development Ltd. He also submits that *status quo* order passed by this Court was vacated by respondent No.2 which is unacceptable.

16. On the other hand, learned counsel for respondent No.5 while placing reliance on several decisions of this Court has also placed on record the development agreement entered into on 06.04.2017 between respondent No.4, respondent No.5 and M/s. Poddar Housing and Development Ltd. by introducing the said M/s. Poddar Housing and Development Ltd. as a co-developer. When the development agreement was executed by respondent No.4 being the collective body of all the slum dwellers, petitioners cannot raise individual grievance, that too, at this belated stage which is nothing but an attempt to stop the redevelopment process. He also submits that due opportunity of hearing was granted to the petitioners.

17. Submissions made by learned counsel for the parties have been duly considered.

18. From a perusal of the impugned order dated 8.11.2019 it is seen that respondent No.2 had duly considered the submissions made on behalf of the petitioners who were represented by their lawyers. Not only oral submissions were made, even written argument was submitted which was considered. Respondent No.2 had minutely examined the record and found from the record that slum dwellers residing in the said plot of land admeasuring 6746 sq.mtrs. had formed respondent No.4 and appointed respondent No.5 as the developer for redevelopment of the slum area. Thereafter, Additional Collector (E/R), Mumbai had issued certified Annexure -II on 20.11.2010. Out of 118 eligible slum dwellers 108 gave consent for implementation of the rehabilitation scheme which was found to be more than 90%. On the basis of the certified annexure-II dated 20.11.2010 SRA issued LOI on 23.12.2010 and subsequently issued revised LOI on 9.03.2012. Architect on behalf of respondent Nos. 4 and 5 had submitted application to issue LOI for the proposed slum rehabilitation scheme which was duly approved,

consequent upon which fresh LOI was issued on 21.06.2019 on the basis of the application submitted by the architect which has been found to be beneficial to the eligible slum dwellers as they are entitled to be provided Permanent Residential Rehabilitation Tenements admeasuring 300 sq.ft. After referring to several judgments of this Court respondent No.2 came to the conclusion that there was no substance in the appeal filed by the petitioners. Accordingly, such appeal was dismissed. It was clarified that this Court vide order dated 16.08.2019 had directed maintenance of *status quo* till the next date in the appeal preferred by the petitioners before respondent No.2.

19. Section- 33 of the Slum Act provides that where the competent authority is satisfied either upon a representation from the owner of a building or upon other information in its possession that the occupants of the building have not vacated it in pursuance of any order or direction given by the authority, the authority shall, by order, direct the eviction of the occupants from the building in such

manner and within such time as may be specified in the order. For the purpose of such eviction the competent authority is empowered to use or cause to be used such force as may be necessary. However, as per the proviso, before making any order under Section-33, the competent authority is required to give a reasonable opportunity to the occupants of the building to show cause as to why they should not be evicted there from.

20. Similar provision is there in Section-38, the only difference being that it pertains to order for demolition of building in certain cases. If a building is being constructed in contravention of the relevant provisions of the Slum Act or in contravention of the plan under the redevelopment scheme, the competent authority in addition to other remedy that may be resorted to make an order directing demolition of such building or part thereof. However, as per the proviso, such order of demolition shall not be made unless a reasonable opportunity is granted to the owner of such building.

21. In *M/s. Andrade Motors V/s. Additional Collector (Eng./Rem), & Competent Authority - 2009 3 ALLMR 76; 2009 Supreme (Mah.)316*, a single bench of this Court held that the competent authority under Section 33 has very limited power and jurisdiction. It is only required to consider as to whether the person concerned was not shifting or vacating the plot in question though being directed. It was held that the authority under Section 33 has no jurisdiction and mandate to test the validity of the SRA Scheme and LOI already issued. In the said case, this Court took the view that there was no scope to enlarge the ambit of Section 33. In the facts and circumstances of the case, this Court declined to interfere with the eviction order passed under Section 33 at the instance of the petitioner.

22. In the case of *K and M Shelters Pvt. Ltd. V/s. Mrs. Poonam V. Punjabi, 2016(1) ALL MR 296*, this Court examined the role of individual members vis-a-vis the cooperative housing society. Observing that the cooperative housing society essentially acts by the

rule of majority, it was held that it is really the cooperative housing society which deals with the redevelopment proposal. Individual members do have limited say in so far decision taken by the cooperative housing society is concerned but they cannot claim to have a veto like power to obstruct any such decision.

23. Again in the case of *Kamla Homes & Lifestyle Private Ltd. v/s. Pushp Kamal Co-operative Housing Society Ltd.*, 2019(5) Bom. C.R. 731, this Court referred to the earlier decisions of this Court and held in categorical terms that when a considered decision is taken by the general body of the society by overwhelming majority redevelopment scheme cannot be stalled at the instance of a miniscule minority. Once a person becomes a member of the cooperative society, he loses his individuality. The member has to speak through the society; rather, the society alone can act and speak for him *qua* the rights and duties of the society as a whole.

24. Learned counsel for respondent No.6 has contended that if the individual grievance of one or two members of the cooperative society is acted upon which is at variance with the collective decision of the slum dwellers expressed through the cooperative society, no redevelopment scheme as contemplated under the Slum Act can be successfully executed.

25. On thorough consideration of the matter, this Court finds no error or infirmity in the view taken by respondent No.2. All contentions made on behalf of the petitioners are found to be without any substance. Petitioners were heard; M/s. Poddar Housing and Development Ltd. has already been introduced as a co-developer through a development agreement where respondent Nos. 4 and 5 were parties. In so far vacation of the *status quo* order is concerned, this Court in the order dated 16.08.2019 had clearly mentioned that the *status quo* order would continue till the next date in the appeal. Therefore, question of vacation of *status quo* order by respondent No.2 after the next date in the appeal does not arise.

26. Writ Petitions are thus found to be devoid of merit and are accordingly, dismissed.

27. Consequently, Interim Application will not survive and the same is hereby disposed of in view of the order passed in both the Writ Petitions.

(UJJAL BHUYAN, J.)