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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION No. 4113 OF 2017

Vijaya Vishwas Patil ... Petitioner
Vs.
Additional Collector (Encroachment &
Clearance) & Ors. ... Respondents

Mr. R. V. Govilkar a/w Shaba Khan, Kinjal Jain i/b Govilkar &
Associates, for the Petitioner.

Mr. A. B. Kadam, AGP for Respondent Nos. 1 to 3.

Mr. Mayur Khandeparkar a/w Prerna R. Lalchandani, for Respondent
No. 5.

CORAM : C. V. BHADANG, J.

JUDGMENT RESERVED ON : JANUARY 31, 2020.

JUDGMENT PRONOUNCED ON : FEBRUARY 4, 2020.

JUDGMENT :

1. Heard. **Rule.** Rule is made returnable forthwith. Learned AGP waives notice for Respondent Nos. 1 to 3. Learned advocate Mrs. Prerna R. Lalchandani waives notice for Respondent No. 5. Heard finally by consent of parties.

2. By this petition, under Article 226 and 227 of the Constitution of India, Petitioner is challenging the order dated 27th March, 2017 passed by the first Respondent in Appeal No. 203 of

2016. By the impugned order, the learned Additional Collector has confirmed the order dated 16th March, 2016 passed by the Dy. Collector (Encroachment and Demolition) -cum-Competent Authority, Andheri in SR No. 10 of 2015. That is an order passed by the learned Dy. Collector under S. 33 / 38 of the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment), Act, 1971 (for short the "Act).

3. By the impugned order, the authorities below have directed the Petitioner to hand over the hut in her possession to the fifth Respondent within seven days, failing which the structure is directed to be demolished.

4. According to the Petitioner, her father Manohar Mahadik had purchased a land admeasuring 10' x 15' out of Survey No. 58/3 being plot No. 5 alongwith a room and 'Ota' admeasuring 10' x 3' of village Mazas, Shamnagar Jogeshwari (East), taluka Andheri, Mumbai Sub-urban district on 25th November, 1988 under a registered deed of conveyance from one Baban Sing. It is submitted that fifth Respondent has entered into unregistered deed of development dated 20th August, 2006 with Ramchandra Mahadik and 16 others. The fifth Respondent also claims to have purchased the property by a registered sale-deed dated 19th September, 2009 from Ramchandra Mahadik and

16 others. It is pointed out that Manohar Mahadik, the father of the Petitioner is not a party to the said transaction. It is submitted that the fifth Respondent claims to have purchased the land bearing Survey No. 58A, 58B, Hissa No. 2, CTS No. 67, 67/1 to 67/16, admeasuring 378.75 sq. mtrs., which does not comprise the land purchased by Manohar Mahadik. In short, according to the Petitioner, although her mother Manorama Mahadik is shown to be a person eligible in Annexure-II, in the absence of the land, which is purchased by father of the Petitioner and which is inherited by her, is acquired, the same cannot be subject matter of the slum rehabilitation scheme.

5. In the submission of the learned counsel Mr. Govilkar, appearing for the Petitioner, the impugned orders are in breach of the constitutional rights of the Petitioner under Article 300A of the Constitution of India. He submits that although the fifth Respondent claims to have allotted Tenement No. 805 to the mother of the Petitioner (who is since deceased), there is certain dispute as to whether actual possession of the said Tenement is handed over to the Petitioner or not. It is submitted that notwithstanding the allotment of Tenement No. 805, the Petitioner's right to the land underneath, the subject structure are unaffected and the same cannot be taken away by way of summary eviction proceedings under S. 33 / 38 of the said Act.

It is submitted that the application under S. 33 / 38 of the Act was not maintainable, particularly when the subject structure is prior to 1955.

6. Mr. Khandeparkar, learned counsel for the fifth Respondent has supported the impugned order. It is pointed out that the mother of the Petitioner had submitted necessary documents on the basis of which the SRA had declared mother of the Petitioner as eligible, who is at Sr. No. 24 of Annexure-II. It is submitted that the Petitioner has also obtained possession of the permanent alternate accommodation in the form of Tenement No. 805 in rehab building No. 2. It is submitted that, as recorded in the order dated 18th April, 2017 the Petitioner has admitted that she has been handed over the keys of Tenement No. 805. It is pointed out that report of the Court Receiver would also indicate that possession of the Tenement is with the Petitioner. It is submitted that Petitioner has not challenged the inclusion of the subject structure in the slum rehabilitation scheme or the IOD issued in the year 2010. It is submitted that the Petitioner cannot conceivably challenge the order passed in the summary proceedings, particularly when her mother has been shown to be eligible occupant and has also been allotted a permanent alternate accommodation. It is submitted that the learned Dy. Collector while passing an order under S. 33 / 38 of the Act cannot examine the issue

of title or the validity of the scheme. On behalf of the fifth Respondent, reliance is placed on the decision of this Court in the case of ***Andrade Motors Vs. The Additional Collector (Eng./Rem) and Competent Authority & Ors.***¹ in order to submit that the authority under S. 33 of the Act has limited power and jurisdiction.

7. I have considered the rival circumstances and the submissions made. It is now well settled that the provisions under S. 33 / 38 of the Act contemplate a summary inquiry for eviction and demolition of the subject structure. This Court in the case of ***Andrade Motors*** (*supra*) has held that the authorities under S. 33 / 38 have no jurisdiction to test the validity of the SRA scheme. It is not in dispute that IOD in this case was issued somewhere in the year 2010 and the finalisation of the Annexure-II would precede the said date. None of these have been challenged by the Petitioner, nor by her mother. In fact, the mother of the Petitioner has been held to be eligible for grant of permanent alternate accommodation and indeed, according to the fifth Respondent, such permanent accommodation is allotted in the form of Tenement No. 805 in building No. 2. The Petitioner, as noted in the order dated 18th April, 2017, has admitted before this Court that the keys of the said Tenement have been handed over to her. The question is only about the land underneath the said structure, which the

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Petitioner claims to be the owner thereof on the basis of the deed of conveyance dated 25th November, 1986 executed in favour of her father Manohar Mahadik. In my considered view, any such dispute about title, particularly in the absence of any challenge to the rehabilitation scheme or IOD, cannot be examined by the authorities below while entertaining an application under S. 33 / 38 of the said Act. This Court in its order dated 7th April, 2017 has perused the allotment letter dated 24th June, 2014, and has further noted that although the construction activities were going on, no steps were taken by the Petitioner by approaching the Civil Court, restraining the fifth Respondent from carrying out the development activities. In that view of the matter, this Court had refused to grant interim relief on 7th April, 2017.

8. Be that as it may, the contention raised on behalf of the Petitioner about her title based on the deed of conveyance, to my mind, cannot be examined in the present petition, which arises out of an order passed under S. 33/38 of the said Act, and particularly in view of the fact that the Petitioner has admitted that she has been handed over the keys of Tenement No. 805.

9. The submission based on Article 300A, to my mind, is misplaced, as all that the constitutional right to property conferred by

Article 300A provides is that no person can be deprived of his property 'save by authority of law'.

10. For the present, we are only concerned with the order about eviction of the Petitioner from the subject structure and about demolition of the structure. The said order does not affect any right, constitutional or otherwise of the Petitioner to the property, as all that the said order provides is eviction and removal of the structure, in respect of which the Petitioner has already been allotted a permanent alternate accommodation.

11. A specific query was made to Mr. Govilkar, the learned counsel for the Petitioner, whether the Petitioner is interested in accepting and availing the benefit of the permanent accommodation, to which the answer was in the affirmative. In that view of the matter, no case for interference is made out. The petition is without any merit and is accordingly, dismissed. Rule is discharged with no order as to costs.

12. In view of the fact that, the Tenement No. 805 has been allotted to the Petitioner, which allotment the Petitioner accepts, the fifth Respondent shall take all necessary steps, as may be required, for execution / registration of documents, as per law.

13. The Court Receiver informs that he has taken physical possession of the tenement. The Court Receiver shall hand over the vacant possession of the said tenement to the Petitioner within a period of one week from today. Upon handing over of said possession, the Court Receiver shall stand discharged, subject to the costs to be borne by the fifth Respondent without passing accounts.

Vinayak
P.
Halemath

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by Vinayak P.
Halemath
Date: 2020.02.07
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Sd/-
C. V. BHADANG, J.