

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION (L) NO.96 OF 2020

Sabavva Sabareddy Koli and others	...	Petitioners
Vs.		
Grievance Redressal Committee Mumbai Suburb		
and others	...	Respondents

Dr. Abhinav Chandrachud i/b. Mr. Tushar Kochale and Mr. Ajay Jenkar for Petitioners.
Mr. G. S. Godbole a/w. Mr. Mayuresh Khandeparkar, Ms Deepa Bisht, Mr. Chirag Sarawagi i/b. Mr. Tushar Goradia for Respondent No.4.
Mr. J. G. Aradwad (Reddy) a/w. Mr. Arvind Aswani for Resp. No.5.
Mr. Amit Shastri, AGP for respondent Nos.2, 3 and 6-State.

CORAM : UJJAL BHUYAN, J.
DATE : JANUARY 16, 2020

P.C. :

Heard Dr. Chandrachud, learned counsel for the petitioners; Mr. Godbole, learned counsel along with Mr. Khandeparkar, learned counsel for respondent No.4; Mr. Aradwad (Reddy), learned counsel for respondent No.5; and Mr. Shastri, learned AGP for respondent Nos.2, 3 and 6-State.

2. By this petition under Article 226 of the Constitution of India, petitioners have challenged order dated 14.03.2018 passed by respondent No.3 under Sections 33 and 38 of the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971 (briefly 'the Slum Act' hereinafter) as well as orders dated 20.07.2018 and 31.07.2018 passed by respondent No.2 rejecting the appeals filed by the petitioners under Section 35(1) of the aforesaid Act.

2.1. Petitioners have also assailed legality and validity of the order dated 04.10.2018 passed by respondent No.1 dismissing the further appeals filed by the petitioners under Section 35(1-A) of the Slum Act.

Finally, petitioners have challenged the consequential eviction notice dated 24.12.2019 issued by respondent No.3.

3. On 27.12.1985, the land in question in Village Chandivali, Taluka Kurla, Mumbai was declared as a slum area under Section 4 of the Slum Act. Subsequently, there was partial modification of the slum area by deletion of certain area. Maharashtra General Kamgar Union representing the residents of the slum area filed a writ petition before this Court being Writ Petition No.2798 of 1995 relating to re-development of the slum area. In the meanwhile, Slum Rehabilitation Authority (SRA) granted provisional letter of intent dated 26.11.2002 amongst others to respondent No.4 for the proposed slum rehabilitation scheme. Be it stated that respondent No.4 was appointed as the developer for development of the slum rehabilitation scheme.

4. Writ Petition No.2798 of 1995 was disposed on 21.03.2003 on consent terms as per which SRA was directed to consider the slum rehabilitation scheme in accordance with law with regard to the land in question and sanction be accorded in accordance with law.

5. According to the petitioners, they are not members of Maharashtra General Kamgar Union and they were not party to the said writ petition. Therefore, the consent terms are not binding on them.

6. SRA issued final letter of intent dated 07.07.2003 in favour of respondent No.4. Petitioners have alleged that SRA failed to verify as to whether 70% of the slum dwellers had given consent for the said scheme. Petitioners have also referred to a report dated 13.10.2006 of the Deputy Collector / Competent Authority in this connection.

7. SRA granted principal approval to the slum re-development scheme for the existing slum dwellers on 26.06.2007 by issuing final letter of intent in favour of respondent No.4. Though during the

interregnum there were certain litigations, the same may not be relevant for the purpose of adjudication of the present writ petition. In the year 2012, the competent authority under the Slum Act prepared the Annexure-II list of eligible slum-dwellers. It is stated that out of total 195 slum-dwellers, only 14 were declared as eligible, which included petitioner Nos.16 and 17. In the meanwhile, State Government issued Government Resolution dated 22.07.2014 extending the cut-off date of eligibility from 01.01.1995 to 01.01.2000.

8. Petitioners filed application before the competent authority during the months of November and December, 2017 for inclusion of their names in Annexure-II list as eligible slum-dwellers.

9. However, on application of respondent No.4, respondent No.3 initiated eviction proceedings following which the first impugned order dated 14.03.2018 was passed directing the petitioners to vacate their premises.

10. Against such order, petitioner Nos.1 to 13 preferred Appeal No.54 of 2018 whereas petitioner Nos.14 to 20 preferred Appeal No.53 of 2018 before respondent No.2. By order dated 20.07.2018, respondent No.2 rejected Appeal No.53 of 2018. By a subsequent order dated 31.07.2018, respondent No.2 rejected Appeal No.54 of 2018. Aggrieved by the aforesaid orders dated 20.07.2018 and 31.07.2018, petitioner Nos.1 to 13 filed further appeal being Appeal No.1026 of 2018 whereas petitioner Nos.14 to 20 filed further appeal being Appeal No.1025 of 2018 before respondent No.1. It is stated that respondent No.1 heard the appeals on 19.09.2018 and granted time to the petitioners to file written submissions / arguments by 28.09.2018.

11. While the petitioners waited for a decision on their further appeals, on 26.12.2019, they were served with the impugned 48 hours' eviction notice dated 24.12.2019 issued by respondent No.3. Only

thereafter they could come to know that their further appeals were dismissed on 04.10.2018. It is in such circumstances that the present writ petition has been filed seeking the reliefs as indicated above.

12. When Dr. Chandrachud, learned counsel for the petitioners assailed the impugned orders and the notice, Mr. Godbole, learned counsel for respondent No.4 placed before the Court a copy of order dated 06.01.2020 passed by a Division Bench of this Court in Writ Petition (L) No.3371 of 2019, *Sabula Buden Khan and others Vs. Municipal Corporation of Greater Mumbai and others* and submitted that identical challenge has been turned down by the Division Bench and therefore, the present writ petition is liable to be dismissed.

13. Referring to the Division Bench judgment in *Sabula Buden Khan (supra)*, Dr. Chandrachud submits that Section 3-Z of the Slum Act was not placed before the Division Bench and therefore, the Division Bench had no occasion to go through the provisions of the said Section. He has referred to Section 3-Z of the Slum Act and contends that by virtue of the *non obstante* clause appearing therein, provisions of Section 3-Z will have overriding effect over all other provisions contained in the Slum Act. As per the said provision, no protected occupier shall be evicted from his dwelling structure except as provided in sub-section (2) thereof. He submits that the Division Bench has passed the order without considering the provisions of Section 3-Z and therefore, the said decision would be hit by the principle of *per incuriam*. On a query by the Court as to whether a Single Bench can hold the decision of a larger Bench to be hit by the principle of *per incuriam*, Dr. Chandrachud has placed before the Court the following decisions:

- a. (2015) 10 SCC 333, *Fibre Boards Private Limited Vs. Commissioner of Income Tax*;
- b. (2015) 16 SCC 542, *Jagannath Temple Managing Committee Vs. Siddha Math*; and
- c. (2011) 7 SCC 639, *State of M.P. Vs. Narmada Bachao Andolan*.

14. His contention is that the strength of the Bench is not material when it is demonstrated that decision of the larger Bench was contrary to the Statute.

15. On the other hand, Mr. Godbole submits that question of the decision of the Division Bench being hit by the principle of *per incuriam* does not arise at all as Section 3-Z is not at all applicable to the facts of the present case. Out of the 20 petitioners, only 2 of them i.e., petitioner Nos.16 and 17 have been found to be eligible and their names have been included in Annexure-II list as eligible slum dwellers; on the other hand, 18 petitioners have lodged their claim for inclusion in Annexure-II list as eligible slum dwellers; they have not lodged any claim for providing them photo-pass under Section 3-X(d) to enable them to be declared as protected occupiers. In such circumstances, the Division Bench decision is clearly binding.

16. Submissions made by learned counsel for the parties have been considered; also perused the materials on record.

17. At the outset, impugned order dated 04.10.2018 passed by respondent No.1 in the further appeals of the petitioners may be adverted to. Respondent No.1 has noted that petitioners' claim of eligibility was already decided by the competent authority. Insofar the claim of the petitioners to redetermine their eligibility, respondent No.1 took the view that issue of eligibility cannot be decided in a proceeding under Sections 33 and 38 of the Slum Act. Once a decision is given by the competent authority, removal of the structures under Sections 33 and 38 of the Slum Act cannot be halted merely because the hutment dweller is not satisfied with the decision of the competent authority or the hutment dweller has challenged such decision of the competent authority. Respondent No.1 noted that eligibility of the petitioners was decided by the competent authority in the year 2012. Regarding challenge by the petitioners to the decision of the competent authority *vis-a-vis* their

eligibility, respondent No.1 was of the view that petitioners are required to produce necessary documentary proof before the competent authority in which event competent authority would have to follow the provisions of law in deciding the matter. In such circumstances, respondent No.1 took the view that petitioners (barring petitioner Nos. 16 and 17) are ineligible at this point and therefore, they are entitled to one time compensation amount equivalent to 11 months agreed rent as per the scheme. In the event petitioners are declared as eligible, they would be entitled to receive transit rent till possession of the permanent tenement.

18. After noting the sequence of events, respondent No.1 observed that petitioners were intentionally obstructing implementation of the slum rehabilitation scheme. While petitioners may submit their documents before the competent authority to have their eligibility re-decided, the same cannot be a ground to halt implementation of the scheme at the instance of the petitioners. With the above view, the appeal was dismissed.

19. Following dismissal of the appeal, the eviction notice came to be issued.

20. Section 33 of the Slum Act provides for power of eviction to be exercised only by the competent authority. It says 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 issued or given, the competent authority shall direct eviction of the occupants from the building in such manner and within such time as may be specified in the order, and for the purpose of such eviction, he may use or cause to be used such force as may be necessary. As per the proviso, the competent authority is required to give a reasonable opportunity of hearing to the occupants to show cause as to why they should not be evicted there from.

20.1. Likewise, Section 38 deals with order of demolition of buildings in certain cases.

21. In the present case, respondent No.3 had passed order dated 14.03.2018 under Sections 33 and 38 of the Slum Act. Perusal of the aforesaid order would go to show that petitioners were heard before the said order was passed. The appeal filed against the said order was rejected by respondent No.2 and further appeal filed thereafter was also rejected by respondent No.1 by a reasoned and speaking order. In none of these proceedings, petitioners raised the contention that they are protected under Section 3-Z of the Slum Act and therefore, without complying with the provisions of Section 3-Z, they cannot be evicted or that order under Sections 33 and 38 of the Slum Act could not have been passed. In fact no pleading or ground to that effect has also been taken in the writ petition.

22. At this stage, it may be noted that this Court in a large number of decisions has held that scope of Section 33 of the Slum Act is very limited which cannot be enlarged to raise questions about the scheme itself. That apart, this Court has held that the slum rehabilitation scheme which has the objective of redevelopment of slums and rehabilitation of the eligible slum-dwellers being in the public interest, such scheme cannot be halted at the instance of one or few slum-dwellers. They have to speak collectively through their co-operative societies or the general body and cannot have a veto like power to stall the scheme itself. It is not necessary to burden this order with the long line of judgments on this point.

23. That brings us to the Division Bench order in the case of Sabula Buden Khan (*supra*). Relevant portion of the said decision is extracted hereunder:-

“2. The petitioners say that exhibit K of the petition is a copy of the notice which has been issued by the Slum Rehabilitation Authority. That notice is at page 293 of the

paperbook. That refers to the annexures which are required to be maintained by the Authority so as to certify the slum dwellers as eligible for the rehabilitation package. The notice says that the petitioners are ineligible. They were desirous of seeking a permanent alternate accommodation for their residence.

3. For that, they have to prove their eligibility. The grievance is that the eligibility has to be decided in accordance with the two Government Resolutions, details of which are mentioned in the Writ Petition as also the prayers.

4. The Slum Rehabilitation Scheme is under implementation. It is evident that the first list of the eligible and ineligible slum dwellers has been certified long time back. An agency has been chosen to implement this project and that agency has been implementing this project and is also a respondent to the petition. The petitioners have been repeatedly asserting that on a certain date and time, the Competent Authority is going to decide the issue of petitioners' eligibility.

5. In the circumstances, we do not think that the petitioners were entitled to the relief of a stay of eviction notice dated 6.8.2018.

6. The petitioners as also their advocate ought to be aware that the scheme for rehabilitation of the slum dwellers has to be implemented by demolishing the existing structures at site. The slum rehabilitation project is then implemented by construction of what is styled as rehabilitation building. In that rehabilitation building, all eligible slum dwellers have to be provided with permanent alternate accommodation. If apart from the eligible slum dwellers, there are other slums at the site, the dwellers thereof have to establish and prove their eligibility by approaching the Competent Authority with the documentary evidence. The Slum Rehabilitation Authority is not expected to wait till all claims of the slum dwellers at site are decided, for, then it will be impossible for the Slum Rehabilitation Authority as also the Developer to implement the project. Those who have vacated their structures or handed over them for demolition voluntarily to the Developer and the Authority, cannot suffer merely because parties like the petitioners are yet to establish and prove their eligibility. The law is crystal clear that if the petitioners succeed in establishing and proving their eligibility, they will be accommodated in the ongoing project by providing permanent alternate accommodation as being eligible for residential accommodation or in some other scheme adjoining the site where the existing or present scheme is being implemented. When such was the position known to the petitioners and their Counsel, we do not see how they would have been eligible or entitled prima facie to any interim relief

muchless in terms of prayer clause (e) of the petition. That would mean the project cannot go ahead and its implementation is stalled.

7. The Writ Petition is disposed of with a direction to the Authority, before whom the petitioners are called upon to appear, to consider and decide the claim as expeditiously as possible and within four weeks from the date of appearance of both the sides. The ad-interim order passed by the Court in terms of prayer clause (e) is vacated forthwith by clarifying that this Court expresses no opinion on the rival contentions, particularly, on the point of eligibility.”

24. From what has been discussed above, Court is not inclined to accept the contention of Dr. Chandrachud that provisions of Section 3-Z of the Slum Act would be applicable to the facts of the present case and that the Division Bench judgment is hit by the principle of *per incuriam* for non-consideration of the same. As a matter of fact, the Division Bench decision is fully binding on this Bench. Having said so, Court is also conscious of the grievance of the petitioners that their claim for inclusion of their names in Annexure-II list as eligible slum dwellers is pending before the competent authority for more than 2 years.

25. In such circumstances, while declining to interfere with the impugned orders and notice, it is hereby directed that the competent authority shall take on board the applications of the petitioners (barring petitioner Nos.16 and 17) stated to have been filed in November / December, 2017 and take a decision on their eligibility in accordance with law within a period of 4 weeks from the date of receipt of an authenticated copy of this order. No opinion is expressed on merit and all contentions are kept open.

26. Petitioners shall vacate their premises within 7 days from today.

27. Subject to the above, writ petition is disposed of.

(UJJAL BHUYAN, J.)