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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION (L) NO.405 OF 2020

Anil Kesrimal Jain ...Petitioner
vs
The Apex Grievance Redressal Committee and 4 Ors. ...Respondents
.....
Mr. Ashif Husain, for the Petitioner.

Mr. Jagdish G. Reddy, for Respondent No.1.

Mr. S.P. Thorat, for Respondent No.2.

Mr. S.G. Surana, i/b. Mr. Madhur S. Surana, for Respondent No.5.

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CORAM : S.C. GUPTE, J.

DATED: 26 FEBRUARY, 2020

P.C. :

. Heard learned Counsel for the parties.

2. This writ petition challenges an order passed by Apex Grievance Redressal Committee ("AGRC") on 24 January 2020 in an appeal from an order passed by Deputy Collector, Slum Rehabilitation Authority under Section 33/38 of Maharashtra Slum Areas (Improvement, Clearance And Redevelopment) Act, 1971 ("Slum Act"). In its impugned order, AGRC has directed Assistant Registrar of Co-operative Societies to decide the quantum of rent to be paid to the Petitioner per month. It is not in dispute that the Petitioner herein is an eligible slum dweller, who is entitled to a permanent alternative

accommodation in the rehab building, forming part of the slum redevelopment project, and also interim transit rent pending construction of the permanent alternative accommodation. It is also not in dispute that the present accommodation of the Petitioner is a commercial accommodation and that he is, accordingly, entitled to a commercial alternative accommodation. The dispute between the parties concerned the location and nature of alternative accommodation to be allotted by Respondent No.5 developer to the Petitioner and the quantum of transit rent payable. In its impugned order, AGRC has directed Assistant Registrar of Co-operative Societies/SRA to hear the parties and fix the quantum of transit rent. It has also directed the developer to deposit eleven months' advance rent fixed by the Assistant Registrar. It has allowed the developer to demolish the existing structure of the Petitioner only after such rent is deposited. It has called upon the parties to execute individual agreement for permanent alternative accommodation.

3. So far as location and nature of accommodation to be provided to the Petitioner is concerned, it is also not in dispute that the Petitioner is being allotted commercial premises of comparable area and on the ground floor of the rehab building. The Petitioner's grievance is that he is not being allotted a road facing accommodation. It is submitted by learned Counsel for Respondent No.5 developer that all commercial occupants cannot be allotted road facing accommodation, since all rehab buildings cannot be road facing. It is submitted that all commercial occupants are being accommodated in rehab building Nos. 5 and 7, which have an internal road abetting them. In these facts, merely because the Petitioner is not getting permanent alternative

accommodation at a location desired by him, he cannot obstruct delivery of possession of his existing accommodation under an order passed under Sections 33/38 of the Act or oppose demolition of the existing structure, which is crucial to implementation of the subject SR project. No fault can be found, accordingly, with the order of AGRC. In fact, the impugned order of AGRC does not even indicate that the aspect of location of the permanent alternative accommodation to be provided to the Petitioner was even debated before AGRC. The contentions of the parties before AGRC proceeded merely on the aspect of interim transit rent. So far as that is concerned, AGRC has rightly directed Assistant Registrar, Co-operative Society/SRA to hear the parties and decide the quantum of rent payable. Accordingly, there is no infirmity in the impugned order of AGRC and the petition deserves to be dismissed. It is, however, pointed out to the Court that by a recent order passed by Assistant Registrar (order dated 1 February 2020), which order has not even been communicated so far to the Petitioner, but has come to his knowledge through a communication addressed by Respondent No.5 developer to him, Assistant Registrar, Co-operative Society, SRA has already fixed the quantum of rent without even hearing the Petitioner. This position, though, is contested by Respondent No.5 developer. Learned Counsel for Respondent No.5 developer submits that his client has merely forwarded a cheque to the Petitioner on the basis of what was offered to the others. The quantum of rent offered is disputed by the Petitioner. It is submitted that whilst Rs.30,000/- rent is being offered per month as transit rent to the others, he is merely being offered Rs.12,000/-. It is to be decided by the Assistant Registrar after hearing both parties. The Assistant Registrar has passed an order

without hearing both parties. It is in breach of the order passed by AGRC. If that is so, the order deserves to be set aside and a re-hearing ordered. If he has not decided the rent so far, it is for him to hear the parties and decide the quantum of rent.

4. Accordingly, the following order is passed:-

(i) The parties are directed to abide by the order passed by AGRC both in letter and spirit;

(ii) Assistant Registrar, Co-operative Societies, SRA is directed to hear the Petitioner as well as Respondent No.5 herein and decide the quantum of transit rent to be paid by Respondent No.5 to the Petitioner herein;

(iii) Learned Counsel for Respondent No.5 states that the Petitioner will be offered permanent alternative accommodation in terms of commercial premises on the ground floor of a rehab building in situ (Building Nos. 5 and 7). The statement is noted and accepted;

(iv) In case the Petitioner has any grievance about the permanent alternative accommodation, he is at liberty to seek such remedy as may be permissible to him in law; he cannot, however, stall the project or obstruct the same. If any such application is made, it will be decided on its own merits without being influenced by the present order;

(v) Learned Counsel for the Petitioner undertakes to file vakalatnama within one week from today.

(vi) The writ petition is disposed of accordingly.

(S.C. GUPTE, J.)

Smita
Gonsalves

Digitally signed by
Smita Gonsalves
Date: 2020.03.02
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