

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

**INTERIM APPLICATION NO. 1 OF 2019
IN
WRIT PETITION NO. 3552 OF 2018**

**WITH
NOTICE OF MOTION NO. 278 OF 2019**

Sherkhan Nazir Mohd. Khan and Anr.	} }	Applicants
in the matter of		
Sherkhan Nazir Mohd. Khan and Anr.	} }	Petitioners
versus		
The Assistant Engineer (Maint.) N/Ward, Municipal Office and Ors.	} }	Respondents

Mr.S.G.Kudle for the applicants/petitioners.

Ms.K.H.Mastakar for the Municipal Corporation.

Mr.Hemant Haryan-AGP for State.

Mr.Abhijeet Desai with Ms.Bhavika Thakkar i/b.
M/s.Desai Legal for respondent no.4.

Mr.Prashant Nakati for respondent no.5.

**CORAM :- S. C. DHARMADHIKARI &
R. I. CHAGLA, JJ.**

DATED :- JANUARY 29, 2020

P.C. :-

1. By this interim application, the petitioners have prayed for the reliefs which we have already noted in our previous order. The previous order was passed noting the stand of the parties that the

petitioners have been discriminated against or not and particularly the plea that the petitioners' structure is or is not a slum. The respective stands were noted in the order dated 9th January, 2020, which reads as under:-

“1. On the previous occasion and even now when the matter was argued, the primary contention of Mr.Kudle is that the subject structure is not situate in a slum area. There is no declaration of the area as a slum area under Section 4(1) of the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971 (for short, “the Slum Act”) nor can this area be termed as deemed slum area. This fact is disputed by the contesting respondents, namely, respondent Nos.1 to 4 and 7 so also respondent Nos.5 and 6.

2. We leave aside the opposition of respondent Nos.5 and 6, but the statutory authorities maintain that the Maharashtra State Government Notification issued way back on 14th November, 1977 declares City Survey No.151(part) and City Survey Nos.151/1 to 61 and City Survey Nos.152 and 152/1 to 152/43 and other City Survey numbers as a slum.

3. According to the Deputy Collector and Competent Authority as also the State, this Notification has not been challenged. Hence, according to them, there is no substance in the arguments of the petitioners' counsel that the structure is not situate in a slum area. Para 2 of this writ petition reads as under :-

“2. The Petitioners herein most respectfully state and submit that certain influential persons of the area in question are having an eye over the properties of the Petitioners and moreover they are having animosity towards the Petitioners on account of their caste factors and hence the story in question which is advanced by the Respondents herein is so improbable which does not inspire any confidence for the simple reason that at no point of time the Petitioners' properties were included in the Annexure-II by the Respondent No.2 herein and whatever structures were shown in the Annexure-II were pertaining to CTS No.151 whereas in the said CTS No. Petitioners structures are shown holding them ineligible but however Petitioners' structures

are situated in CTS No.152 but however, the Annexure-II Petitioners' structures were wrongly shown thereby mentioning CTS No.151 and copy of the Annexure-II issued by the Respondent No.2 herein is annexed hereto and marked as "**Exhibit-B**".

4. For the sake of clarity, we would like the learned AGP to file an affidavit of the Deputy Collector (Encroachment/ Removal) and Competent Authority under the Slum Act on behalf of himself as also the State to clarify this position, particularly by relying on this Government Gazette Notification.

5. It is stated that this affidavit will be filed within two weeks from today. Let the affidavit also annex the copies of all relevant documents and Mr.Kudle, if desires to inspect the originals, inspection be provided to Mr.Kudle or to the petitioners in the office of the learned Government Pleader, High Court, Original Side.

6. Apart from this primary contention, assuming that Mr.Kudle is wrong in his assertion with regard to the structure as not a slum, still, we would like the Slum Rehabilitation Authority to clarify the position with regard to the implementation of the Slum Rehabilitation Scheme and whether the petitioners, if eligible, would be granted all the benefits on par with others at the very site. In other words, on establishing and proving their eligibility, will the Slum Rehabilitation Authority, Society and the developer would extend to the petitioners all benefits on par with others, including offering transit accommodation or compensation in lieu thereof and permanent alternate accommodation of identical size and dimension as offered to the other eligible persons. Our concern is that the first petitioner apart the second petitioner is a senior citizen and carrying on a small business. The affidavit of the Slum Rehabilitation Authority shall also be filed within this period of two weeks.

7. We list the petition on 28th January, 2020 on the "Supplementary Board". It shall appear High on Board.

8. Mr.Abhijeet Desai says that in the order passed on 6th January, 2020, there are certain observations which cast aspersions on his functioning as a professional and as an officer of the Court.

9. The order, if read in its entirety, is not disapproving the conduct of Mr.Desai only because he was absent, but because on that date, no reason, much less *bona fide* and genuine, was given for his absence by the colleague holding for him.

10. Be that as it may. On the assurance given by Mr.Desai, the observations in para 2 of our order passed on 6th January, 2020 shall stand deleted.”

2. On 28th January, 2020, the petitioners desired to place an affidavit, we took it on record.

3. The primary contention of the petitioners, as noted in the foregoing paragraphs and particularly in the previous order, is that the petitioners’ structures are existing in Survey No.152. The Chief Promoter of respondent no.6-Society, fifth respondent-Developer and the Slum Rehabilitation Authority (SRA), together with the municipal officials colluded with each other and are projecting that the petitioners’ structures are slum. This stand is taken though, while preparing Annexure-II, the petitioners’ structures were never shown. Therefore, the petitioners’ property is sought to be included in the Slum Rehabilitation Scheme illegally and *mala fide* so as to benefit the fifth respondent-Developer. One of the partners of the said Developer firm is the wife of the ex-Chief Executive Officer of the SRA. The ex-Chief Executive Officer is facing serious allegations and charges. The same are enlisted in the news reports, copies of which are referred in the applicants’/petitioners’ pleadings.

4. Mr.Kudle appearing for the applicants/ petitioners would submit that the SRA is implementing a Slum Rehabilitation Scheme in respect of Survey Nos. 151, 151/1 to 61 and admittedly, the petitioners' structures are in Survey No.152. Therefore, there was no question of including the petitioners' structures in the Slum Rehabilitation Scheme.

5. On the earlier occasion, a notice was issued by the Assistant Engineer (Maintenance), N/Ward, Ghatkopar, Mumbai. That was challenged by filing Writ Petition (L) No.493 of 2018. In that, an order was passed on 13th February, 2018 directing the first respondent to this petition to pass an order after considering the submissions of the petitioners. Until he passes an order, no coercive steps should be taken against the petitioners and if that order is adverse to the petitioners' interest, then, no action should be taken for a period of two weeks from the date of communication of such order.

6. The petitioners submitted before the first respondent that the Slum Rehabilitation Scheme could not have been including the petitioners' structures. The petitioner pointed out throughout that their structures are not a slum. The petitioners, according to Mr.Kudle, pointed out that the removal of the structures so as to implement the Slum Rehabilitation Scheme is impermissible in

law. The Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971 (hereinafter referred to as “the Slum Act”) would have no application.

7. Insofar as the notice touching the aspect of widening of the road/ existing road, the petitioners/ applicants have fully co-operated with the Municipal Corporation and handed over that part of the structures of the petitioners, which are affecting the road widening. In these circumstances, by this act, it cannot be presumed that the petitioners are consenting to the entire structure being termed as a slum and falling within the above survey numbers. For all these reasons, Mr.Kudle would submit that the interim application be allowed. The arguments of Mr.Kudle are based on the violation of the mandate of Articles 14 and 300A of the Constitution of India.

8. An exhaustive affidavit has been filed by the Assistance Engineer (Maintenance), N/Ward of the Municipal Corporation. In that affidavit, the deponent says that the notice dated 28th November, 2019 was issued to remove that part or portion of the structure of the petitioners which is affected by the road widening. The petitioners are taking advantage of the fact that such a notice was addressed, but that was in respect of different work. Now, 505 structures affected in the Lal Bahadur Shastri Road widening

project have been removed. However, there is a policy of the Maharashtra Government and the SRA, under which, all documents pertaining to the structures were scrutinised and verified. The guidelines are to consider whether the occupants of these structures are eligible for permanent alternate accommodation. If the residential and commercial structures are existing on 1st January, 2000 and affected by the road widening project, then, they would be granted the above benefit. However, it is brought to the notice of the court that the documents submitted by Sherkhan Nazir Mohd. Khan, who is also applicant no.1 in the present interim application, demonstrate that his structure is included in Annexure-II. That is issued in respect of the Slum Rehabilitation Scheme at Lal Bahadur Shastri Marg, near Pankesha Baba Dargah, opposite BPCL Petrol Pumb, Ghatkopar (West), Mumbai 400 086. Out of total area of notice structure no. 647, as per the survey plan, the area of about 11.25 square meters is affected by the road widening and is required to be removed for completion of that project. As the structure is mentioned in Annexure-II, no additional benefit is required to be awarded to the noticee by the Municipal Corporation. In other words, if the benefit which the petitioner no.1/ applicant no.1 derives by being treated as a project affected person is identical, then, he cannot be granted additional advantage of allotment of permanent alternate

accommodation as a slum dweller. In the present case, the layout of the SRA is on CTS No 151, 151/1 to 61, village Ghatkopar where the petitioners' structure no.647 is also shown as the affected one.

9. This affidavit was filed on 18th December, 2019. The affidavit says that dual benefit from the SRA as well as the Municipal Corporation cannot be obtained by the petitioners. It has been pointed out that part structure no.638 is not affected in the Slum Rehabilitation Scheme but exclusively affected in the road widening project. That is how a separate notice is issued to the occupant of structure no.638.

10. The petitioners filed an affidavit in rejoinder, in which, the petitioners contend that the premises are not a slum and there is no question of the petitioners being treated as slum dwellers.

11. We have found from a perusal of the plan, which is annexed to the affidavits that the survey numbers, which are declared as a slum area are in terms of the Gazette Notification dated 16th February, 1978. The survey numbers are 151, 151/1 to 61. It was also brought to our notice that the petitioners may claim to be partly project affected persons but not slum dwellers, but the factual position is otherwise.

12. There is an affidavit in reply filed on behalf of respondent nos. 2 and 7. That is pursuant to our order passed on 9th January, 2020. This affidavit, affirmed on 23rd January, 2020, clarifies the entire position. The affidavit invites our attention to the Notification dated 14th November, 1977 issued by the Deputy Collector (Encroachment and Removal), Kurla-II and Competent Authority in exercise of the power conferred under section 4(I) of the Slum Act. It says that this notification declares CTS Nos. 151/1 to 61 and 152, 152/1 to 43 and 155/1 to 46 as a slum. That notification has not been challenged although an appeal could have been preferred to challenge the same. In consonance with this factual position, the Additional Collector (Encroachment and Removal), Eastern Suburb had addressed a letter dated 29th September, 2007 to the office of the Deputy Collector in respect of Pankheshahababa Co-operative Housing Society Limited. That letter required preparation of Annexure-II. In pursuance of that letter, the Slum Rehabilitation Scheme in respect of CTS No. 151, 151/1 to 61 was finalised for implementation. There are 557 slum dwellers/ members of this Society. The final Annexure-II was published on 2^{4th} July, 2008. The final report was submitted to the Additional Collector, Eastern Suburbs. As per Annexure-II, out of total 557 slum dwellers, 395 were held eligible and 162 are ineligible. That report was received and it was brought to the

notice of the deponent that the Slum Rehabilitation Scheme is also being implemented at CTS Nos.151(Pt.), 152, 152/1 to 43, 153(Pt.) and 154(Pt.) of Pankheshababa Co-operative Housing Society situated at village Ghatkopar, Taluka Kurla. 71 slum dwellers were included in the said Society. Supplementary Annexure-II of the said Society was published on 4th March, 2013 and the final report dated 20th March, 2013 has been submitted to the Additional Collector (Encroachment and Removal), Eastern Suburb. In the final report dated 20th March, 2013, 9 slum dwellers are shown as eligible, 46 slum dwellers are shown as ineligible, 6 slum dwellers are shown as undecided, 7 slum dwellers are out of boundary and 3 slum dwellers' huts were found closed. Annexure-II of CTS Nos. 151, 151/1 to 61 submitted to the Additional Collector (Encroachment and Removal), Eastern Suburb indicates that at serial number 532, Hut No.516 is shown in the name of Alfa Bakery/ Chiraguddin Khan, at serial number 537, Hut No. 521 is shown in the name of Sher Khan Chiraguddin Khan and at serial number 538, Hut No.522 is shown in the name of Ali Khan Chiraguddin Khan. They all are declared as ineligible as they could not submit documents proving possession and occupation of the structures and existence of the structures prior to the cut-off date. The Deputy Collector received a letter from respondent no. 5 to this petition, namely, the Developer

mentioning that some of the slum dwellers, whose names are mentioned in the letter, are not allowing to demolish their structures. Therefore, as a competent authority, the Deputy Collector (Encroachment and Removal) should take the necessary steps under the Slum Act. Therefore, a notice was issued under sections 33 and 38 of the Slum Act to the hutment dwellers. The hutment dwellers were given an opportunity to show cause and thereafter, a detailed order was passed on 11th April, 2018. The petitioners had challenged the order dated 11th April, 2018 by filing an appeal and that Appeal No.74 of 2018 came to be dismissed on 24th August, 2018.

13. Thereafter, that order of 24th August, 2018 was challenged by the petitioners by filing an appeal under section 35(1a) of the Slum Act (Appeal No.1111 of 2018). The Grievance Redressal Committee rejected the appeal on 16th November, 2018. Thereafter, a notice was issued calling upon the persons to vacate the structures. However, the petitioners have made an application to the office of the Deputy Collector/ Competent Authority for deciding the issue of their eligibility. The petitioners and their advocates were not present at the hearing of the application for a decision on their eligibility. The matter is now adjourned. In the meanwhile, a communication was received from the Assistant

Commissioner, N/Ward requesting the competent authority to take the necessary steps so as to enable him to widen the road. Thereafter, a survey was done. It is clear that the structures were affected by road widening. That part of the matter is not disputed.

14. Now, all that is remaining for consideration of the competent authority is the issue of eligibility.

15. The petitioners are not satisfied with this affidavit and they have filed a rejoinder affidavit to say that the Deputy Collector could not have presented such an affidavit. The Deputy Collector ought to know that the petitioners' structures are on CTS No.152. Only a part thereof was included in the Slum Rehabilitation Scheme and not the entire one. The petitioners maintain the stand that their structures are not part of the Slum Rehabilitation Scheme. The petitioners, however, in the affidavit in rejoinder, have not denied the other factual statements in the affidavit of the Deputy Collector. All that they say is that his affidavit is misleading.

16. We have perused these affidavits and we find that the petitioners go to the extent of saying that the petitioners' father is shown as Chiraguddin Khan, but in fact, the name of petitioner no.1 is Sherkhan Nazir Mohd. Khan. We are of the opinion that in the light of the affidavits placed by the statutory authorities on

record of this case, it will not be possible to us to accept the version of the petitioners. It is not as if this version of the petitioners is coming before the court for the first time. It is but a repeat story of the averments in the writ petition. In fact, even if they are treated as persons affected by road widening, still, the structures in their possession would have to be removed. The petitioners' structures are partly affected, on their own showing, by the road widening. If they are demolished and the road is widened, the petitioners can take advantage of either schemes. They can take advantage of the scheme meant for rehabilitation of project affected persons in terms of the Government policy or participate in the exercise of proving their eligibility for claiming benefits of the Slum Rehabilitation Scheme. They can take advantage and benefit of that as well. They must make a choice for the simple reason that the Slum Rehabilitation Scheme is being implemented for the benefit of about 628 slum dwellers. They are presently living in unhygienic condition. It is not living of a human being. The lack of basic amenities is, therefore, a vital matter.

17. Now, the fifth respondent is implementing this scheme in furtherance of LOI dated 20th June, 2009 and revised one dated 23rd June, 2017 and the Commencement Certificate dated 1st July, 2009. The sixth respondent is a Co-operative Housing Society of the slum dwellers and it has engaged the fifth respondent as the

Developer. In these circumstances, it is this Developer who is implementing the scheme. The Developer has constructed Rehab Building No.1 ('A' and 'B' Wings) and Occupation Certificate has also been obtained. Till the date of proceedings before this court, about 350 slum dwellers have been granted permanent alternate accommodation. Rehab Building No. 2 ('A' and 'B' Wings) is also under construction. Thereafter, the balance slum dwellers would be granted permanent alternate accommodation. Since the petitioners' structures are amongst these 628 identified by the SRA and out of them 400 have vacated their respective tenements, then, we are of the view that even this scheme is at an advance stage of implementation. We should not, at the instance of the present applicants/ petitioners, deprive the eligible slum dwellers of the benefits to which they are entitled in law. All the more, when the petitioners have yet to establish their eligibility for the Slum Rehabilitation Scheme. As and when they decide to claim the benefit and apply for determining the issue of their eligibility, needless to clarify that on being held eligible, they would be granted similar benefits and on par with other occupants. It is entirely for the petitioners to make a choice, however, we do not think that the petitioners are entitled to any relief, particularly in terms of the prayers of this interim application.

18. The interim application and the Notice of Motion No.278 of 2019 are, therefore, dismissed. There would be no order as to costs.

(R.I.CHAGLA, J.)

(S.C.DHARMADHIKARI, J.)