

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

WRIT PETITION {L} NO.2452 OF 2019

Mrs. Daisy Oniel Pareira
& Others

.... Petitioners

Vs.

The Chief Executive Officer,
Slum Rehabilitation Authority
& Others

.... Respondents

Mr. S.G. Kudle for the Petitioners.
Mr. J.G. Aradwad (Reddy) with Mr. Arvind Aswani
for Respondent No.1.
Ms G.R. Shastri, Addl.GP, for Respondent Nos.2 & 3.
Mr. P.K. Dhakephalkar, Senior Advocate, with
Mr. Pratik Kothari, Ms Riya Makwana & Mr. Pratik
Priyadarshi i/by IC Legal for Respondent No.4.

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

DATE : JANUARY 23, 2020

P.C:

1. Taken up on production board as urgency was made out.
2. This petition was mentioned on the ground that the petitioners would be forcibly dispossessed by the Slum Rehabilitation Authority (respondent No.1) so as to implement and enforce a slum rehabilitation scheme. They would be dispossessed after their structures are demolished.

3. The petitioners claim that they are the heirs and legal representatives of one Andrew Alvino Barretto. It is said that the said Andrew Alvino Barretto is a protected tenant of lands now bearing CTS Nos.377, 378, 379, 380, 381, 382, 416, 422, 424, 425, 426, 427, 326, 327, 328, 371 (Part), 374 and 375. The petitioners claim that the lands are agricultural lands covered by a legislation known as the Maharashtra Tenancy and Agricultural Lands Act, 1948. The respondent No.1 is the Slum Rehabilitation Authority through its Chief Executive Officer whereas the 2nd and the 3rd respondents are the State of Maharashtra and the District Collector of the Bombay Suburban District. The 4th respondent is the Builder and Developer who has been permitted by the authorities to enforce and implement the scheme. The 5th respondent is the present owner of the property. It has purchased the property from the original owner.

4. The principal argument of Mr. Kudle, appearing in support of this petition, is that the subject land, which is an agricultural land, cannot be declared as a slum and that declaration is *void ab initio*. It is also *void* and non-enforceable because there is no compliance with the provisions of the Maharashtra Slum Areas (Improvement, Clearance And Redevelopment) Act, 1971 (**"the Slum Act"**). The Slum Act requires compliance with the principles of natural justice before the declaration of an area as a slum is issued. Admittedly, the

petitioners have not been heard before such a declaration was issued. In any event, they are in physical possession and today their structures would be demolished only to protect the commercial interest of the 4th respondent.

5. The petitioners have fairly pointed out that there is a Notification published in the Maharashtra Government Gazette.

6. This Notification has been published and the petitioners are aware of the consequence thereof. They have in the writ petition itself averred that the Notification/declaration has been issued although the lands are agricultural in nature. They could not have been subjected to a scheme, particularly under the Slum Act.

7. In any event, there has to be compliance with the principles of natural justice before the declaration is issued.

8. The petitioners do not dispute that the Slum Act has been enacted way back in 1971 and to be precise, on 11-8-1971. It is an Act to make better provision for the improvement and clearance of slum areas in the State and their redevelopment and for the protection of occupiers from eviction and distress warrants. The definitions include the definition incorporated by amendment of the term “eligible slum dwellers”. That is defined to mean a slum dweller who fulfils such criteria

of eligibility as may be prescribed from time to time and is declared so eligible by the Competent Authority. There is a grievance redressal mechanism. The Notification under which a slum area has to be declared as such is referable to Section 4. That, in very clear term, says that the State is empowered to declare the area, which is particularly referred to in this section, as a slum area on being satisfied that the same has not been maintained although there is human habitation. The satisfaction in terms of Section 4, sub-section (1) has to be reached and thereafter the declaration follows. The sub-section (3) of Section 4 of the Slum Act provides for an Appeal against the declaration made under sub-section (1). The period of limitation is thirty days. Now, before this Act was extensively amended, so as to insert Chapters 1-A and 1-B, all that is stated is that, the State Government may, by Notification in the Official Gazette, appoint any person, to be the Competent Authority for the purposes of this Act, for such areas as may be specified in the Notification. Then the powers that are to be exercised by the Competent Authority are in terms of sub-section (2) of Section 3.

9. The copy of the Government Notification says that, in exercise of the powers conferred by Section 4(1) of the Slum Act, the Competent Authority declares the areas mentioned in this Notification to be the slum areas. There is no dispute that

this Notification has been published in the Government Gazette. It is dated 30-6-1978. The subject area has, therefore, been declared as a slum area. Now, the petitioners do not say in the writ petition that there is any Appeal filed by their predecessor in title and is pending. They have also not filed any Appeal. The reliance that is placed upon the Judgment of the Hon'ble Supreme Court is clearly misplaced. That Judgment was rendered by the Hon'ble Supreme Court when it was considering a challenge to the constitutional validity. The constitutional validity was in the context of three Notifications. The Hon'ble Supreme Court, in para 1 of the decision reported in AIR 1975 SC 596 {**The Government of Mysore and others v. J.V. Bhat, etc.**}, has referred to them. The Notifications were issued under the Mysore Slum Areas (Improvement and Clearance) Act, 1958, and the declaration was under Section 3 of that Act, and a declaration thereafter under Section 9 and then a Notification under Section 12 by which certain lands were to be acquired under that Act. The provisions of Sections 3, 9, 12 and 15 were challenged as unconstitutional. Bearing in mind the language of Article 19(1)(f) of the Constitution of India, which was then prevailing, the High Court struck down Sections 3 and 9 and Section 12(1)(b) was struck down as violating Article 14 of the Constitution of India. The High Court did not consider it necessary to decide the issue of constitutional validity of Section 15 of that Act. It, however, held that the three

Notifications referred in para 1 were not unconstitutional because in exercising their functions under Sections 3, 9 and 12 the authorities concerned were not exercising a quasi-judicial power. Since the sections were struck down, the Notifications also perished. That is why the State preferred the Appeals.

10. The Hon'ble Supreme Court thereafter referred to the settled principle that there is presumption of constitutionality and not unconstitutionality. That there is a clear distinction in law between a declaration of the nature referred by the Hon'ble Supreme Court and traceable to the substantive provisions of the Act and the Notification issued pursuant to the power conferred by a provision like Section 12 of the Mysore Slum Areas Act. The latter could have been impugned on the ground that it does not comply with the principles of natural justice. Even if the statutory provisions are held to be constitutional, legal and valid, still the Notifications can be impugned. We have no quarrel with this proposition and in the instant case the declaration under Section 4 does not gain finality if Appeal is preferred challenging the same. However, when there is a substantive provision of an Appeal in which all grounds could be raised, including non-compliance with the principles of natural justice, then, we do not think that the authorities have committed an error in proceeding with the declaration and

enforcing it in accordance with law. Once the area is declared as a slum area on the satisfaction reached in terms of sub-section (1) of Section 4, then it is incumbent upon the State to take measures of improvement. If the measures of improvement are not going to be sufficient to provide the basic amenities to the slum dwellers, then a redevelopment of the property is permissible. In the instant case, Mr. Reddy, appearing for the Slum Rehabilitation Authority, has brought to our notice that not only there is no challenge to this Notification but the slum redevelopment scheme is being implemented at site. The existing structures have been demolished to a substantial extent. The rehabilitation buildings and four in number have already been constructed. In fact the argument is that, on 9-1-2020 the Apex Grievance Redressal Committee, set up by the Government of Maharashtra, heard Application No.182 of 2019, preferred by these very petitioners. It is stated that this application was filed by Lingzay Ollen Barretto, the petitioner No.2 in this petition. He raised self-same contentions. In dealing with his arguments, the Committee found that the main relief is to quash and set aside an order of 13-6-2019 passed by the Deputy Collector/SRA (Competent Authority) under Sections 33 and 38 of the Slum Act calling upon the applicant to handover the structure occupied by him within 30 days of the receipt of the order for implementation of a slum rehabilitation scheme.

11. The order, copy of which is taken on record and marked "X" for identification, refers to all the facts presented before the Authority and additionally says that there are steps taken in furtherance of the declaration and the Letter of Intent issued in favour of M/s. Transcon Sheth Creators Pvt. Ltd.. This is the very developer who has been impleaded as respondent No.4 to this petition. The Committee has found that after several steps have been taken by the developer and the construction of rehab buildings is also underway, it will not be a fit case for interference in its jurisdiction under the Slum Act.

12. The finding of fact is that there is also an order passed by this Court which has been extensively referred. The slum rehabilitation scheme is at an advanced stage of implementation. We have, therefore, allowed Mr. Reddy to rely on this order because although this petition has been filed on 20-8-2019, it does not contain any reference to the notice issued by the Competent Authority to petitioner No.2 and the order of the Competent Authority dated 13-6-2019. The petitioners, in para 18 of the petition, have said that they are protected from all angles and question of issuance of the notice under Sections 33 and 38 of the Slum Act is also unwarranted and not binding upon the petitioners. To our mind, therefore, these-guarded pleadings denote that there was indeed a notice

which was served by the Competent Authority to at least one of the petitioners. He was aware of the consequences of issuance of such a notice. The petitioners, whether eligible or otherwise, are identified as slum dwellers. They have to be removed from the site and their structures demolished so that a slum rehabilitation scheme can be implemented for their benefit at the very site. If the petitioners prove their eligibility, they obviously are entitled to all the benefits, including permanent alternate accommodation. When such is the scheme of the law and the contents of the Letter of Intent in favour of respondent No.4 being clear, there is no question of entertaining this writ petition. The petitioners cannot now be allowed to resist a declaration of the year 1978. The writ petition is, therefore, dismissed. However, if the petitioners prove their eligibility, then they be extended all the benefits of the slum rehabilitation scheme by the concerned authorities.

13. At this stage, Mr. Kudle prays for stay of the demolition at site pursuant to the aforementioned steps. This request is opposed by the respondents on the ground that there are eligible slum dwellers who are awaiting the fruits of the rehabilitation scheme. We have already noted that the petitioners have failed to challenge the declaration of the property/area as a slum area. They have not disclosed to this Court the relevant and germane facts but have rather

suresh

P501-WPL-2452.2019.doc

suppressed the same. In the circumstances, the request made by Mr. Kudle is refused.

(R.I. CHAGLA, J.)

(S.C. DHARMADHIKARI, J.)

SURESH
JAGDISH
SAJNAWAT

Digitally signed
by SURESH
JAGDISH
SAJNAWAT
Date:
2020.01.27
15:54:27
+0530