

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O.O.C.J.**

WRIT PETITION (LODGING) NO.3371 OF 2019

Sabula Buden Khan & others ... Petitioners

Vs

Municipal Corporation of Greater Mumbai & others ... Respondents

Mr.M.M. Abdi for the Petitioners

Ms.K.H. Mastakar for Respondent – Corporation

Mr.M.A. Sayyed, AGP, for Respondent Nos.2 to 4

Mr.Kunal Chheda with Chetan Mhatre i/b M/s.Utangale & Co. for Respondent No.5 (SRA)

Mr.Chetan Kapadia with Ms.Deepa Bisht, Mr.Chirag Sarawagi i/b Mr.Tushar Goradia for Respondent No.6

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

DATED: JANUARY 6, 2020

P.C.:

1. The 16 petitioners before this court have approached it seeking the following reliefs:

“a) That this Hon’ble Court be pleased to issue a writ of mandamus and/or any other appropriate writ, order or direction in the nature of mandamus directing the

Respondent No.3 to expediently determine the claim of eligibility of the Petitioner in accordance with GR dated 16.05.2015 and GR dated 16.05.2018. at Exhibit B and C.

b) That this Hon'ble Court be pleased to issue a writ of Certiorari and/or any other appropriate writ, order or direction to quash and set aside the notice dated 06.08.2018 issued by Respondent No.3. at Exhibit K.

c) That this Hon'ble court be pleased to direct the Respondent No.3 to allow the Petitioners herein to re-submit their relevant documents before Respondent No.3 in accordance with GR dated 16.05.2015 and GR dated 16.05.2018.

d) Pending hearing to direct Respondent No.3 to hear Petitioner Nos.3, 8, 11, 12 and 13 to expeditiously hear the application of the Petitioners by considering GR dated 16.05.2015 and 16.05.2018.

e) Pending hearing and final disposition of this Petition, this Hon'ble Court be pleased to Stay Eviction Notice dated 06.08.2018 at Exhibit K.

f) Ad-interim reliefs in terms of prayer clause (c), (d) and (e).

g) For such other and further orders as this Hon'ble Court deems fit in the facts and circumstances of this case.

h) For costs of this Petition."

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.

(R.I. CHAGLA, J.)

(S.C. DHARMADHIKARI, J.)

Vishwanath
S. Sherla

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