

Shephali/Shiv

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 3552 OF 2018

Sherkhan Nazir Mohd Khan & Anr ...Petitioner
Versus
The Assistant Engineer & Ors ...Respondents

WITH
WRIT PETITION NO. 2957 OF 2021

Sherkhan Nazir Mohd Khan & Anr ...Petitioners
Versus
Tahsildar- 2 (Special Cell) Slum Rehabilitation Authority & Ors ...Respondents

Mr SG Kudle, *with AR Kori, for the Petitioners in both matters.*
Mr Abhay Patki, *Addl.GP, for Respondent-State in WP/2957/2021.*
Mr Hemant Haryan, *AGP, for Respondent-State in WP/3552/2018.*
Ms Surbhi Agrawal, *i/b Abhijeet Desai, for Respondent No. 4-SRA in WP/3552/2018.*
Mr RD Suryawanshi, *for Respondents Nos. 1 and 5 in WP/2957/2021.*
Mr Prashant Nakati, *for Responent No. 5 in WP/3552/2018 and for Respondent No. 6 in WP/2957/2021.*
Ms Sapna S Pardeshi, *Maintenance Surveyor, City Survey Office, Ghatkopar, present.*

CORAM G.S. Patel &
Madhav J. Jamdar, JJ.
DATED: 14th December 2021

PC:-

1. At the beginning of the hearing, Mr Kudle reiterated his position and claim in regard to the location of the structure.
2. The short question that arises is whether CTS Nos. 152 and 151 are both covered by the slum notification under Section 4 and by the SRA Letter of Intent. If both CTS numbers are in fact covered, no question remains of Mr Kudle saying his clients' structure is on one and not on the other, because this would make no difference at all.
3. We are shown the Section 4 Notification dated 14th November 1977. This in fact mentions CTS No. 151 and all its parts 151/1 to 151/63 and CTS No. 152 and parts 1 to 43. Clearly, therefore, the slum notification would cover the Petitioners' structure. The LoI itself, a copy of which is at page 141, says that it extends to plot bearing No. 151, 151/1 to 61, 151 C(part), 152 and 152/ 1 to 43. So far as CTS No. 151 is concerned, this revised LoI covers the whole of it and its parts. The same is also applicable to parts 1 to 43 of CTS No. 152.
4. Thus, both CTS numbers are now clearly shown to be covered by the Section 4 Slum Notification and by the LoI of 20th January 2021.
5. The challenge in the Petition is to neither the slum notification under Section 4 nor the LoI but only to a consequential notice of 26th October 2021. Prayer clause (a) indeed contains the

essence of the argument advanced by Mr Kudle. It furnishes a reason or ground on which the relief is sought, namely that the Petitioners structures “do not fall within the parameters of the SRA scheme in question”. The next ground stated there is that the Petitioners’ structures are on CTS No. 152 which “has not been specifically mentioned”.

6. What Mr Kudle’s clients seems to have picked up on is that this notice only mentions CTS numbers 151 and 151/1 to 61 but does not mention CTS No. 152.

7. But factually, both grounds pleaded are now shown conclusively to be totally incorrect. Both CTS Nos 151 and 152 and all their component parts are part of the Slum Notification and the LoI. Whether the Petitioners’ structures fall on one or the other — and there is no doubt that they fall on one or the other — is wholly immaterial.

8. We were shown a survey map of the structure, the plot and a transparent overlay. From this, it is clear that the Petitioners’ structures do fall on CTS No.151. The other CTS No.152 is entirely landlocked. But both are part of the slum scheme, and the Petitioner’ structures are therefore on land covered by the Notification and the LoI.

9. What remains therefore is the entitlement of the Petitioners to have their eligibility assessed in accordance with law. This is in fact not being denied to them at all and for this there is the notice at

page 42A, being the notice in question. This has been issued by the Office of the Deputy Collector, Encroachment and Demolitions. It is addressed inter alia to the 1st Petitioner and the subject of the notice is to determine the eligibility of hutments.

10. It is clarified before us that the notice is intended to refer to the whole of the SRA project covered by the LOI. It is only on the basis of this notice to determine eligibility that the Petitioners seem to have reasoned backwards to contend that CTS No. 152 is not part of the SRA scheme and the LOI. But once it is shown that (a) this makes no difference; and (b) that the Petitioners' structures are shown on the plan to fall on CTS No 151, then nothing remains.

11. Indeed, it is fruitless to enter into the controversy of whether the Petitioners structures are on CTS No. 152 or 151. Once it is established conclusively that both CTS numbers are covered by SRA notification and the corresponding scheme, there is, therefore, no factual basis to this Petition at all. We keep open the Petitioners' rights to have their eligibility decided in accordance with law. Mr Kudle states that his clients will respond to the Notice at Exhibit "A1" and submit to the office of the Deputy Collector all necessary particulars and supporting materials regarding eligibility of the structure. The Petitioner's eligibility is to be decided within eight weeks from today. That will be decided without in any way being influenced by the filing of this Petition or this order. Mr Kudle has instructions to submit an undertaking on behalf of his clients that his clients will undertake and will remain present. They will not seek adjournments before the authority. They will produce the necessary documents.

12. We make it clear that in consequence of this finding, there is no possibility any longer of the Petitioner resisting removal or demolition on the ground that the CTS number on which their structure stands falls outside the slum notification or the sanctioned SRA scheme and the revised LOI.

13. The Petition is disposed of in these terms. In the facts and circumstances of the case, there will be no order as to costs.

14. It is clear to us that there is no question of staying the demolition or vacating the structure pending a determination of the eligibility. If the Petitioners are found eligible, they will be entitled to rehabilitation in accordance with law. If they are found ineligible, their entitlement to rehabilitation goes. In either circumstance, there is no question of staying the demolition and holding up the progress of the entire SRA project. To allow this would be to throw into jeopardy the interest of all other persons found eligible and the progress of the SRA project itself. That is not something that can be permitted. It is not even contemplated in accordance with law once the land under the structure in question is found to be included as part of the SRA scheme and covered by the LOI in question.

15. Mr Kudle's application for the stay of order or stay of demolition for eight weeks is rejected. To allow that application would severely prejudice other affected slum dwellers awaiting the completion of the project. We would never consider such an application which stalls the whole project without putting a petitioner before us to the most stringent terms. Persons who, in

isolation, seek to stall entire projects like this must realize that their actions and petitions have very real and very devastating consequences to others who are anxious to get their rebuilt homes. Mr Kudle's clients are evidently in no position to furnish any kind of security. They cannot get a stay for the asking.

16. All concerned will act on production of a digitally signed copy of this order.

(Madhav J. Jamdar, J)

(G. S. Patel, J)