

Shephali

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 3589 OF 2019**

Ramayan Hiralal Viashwakarma ...Petitioner
Versus
The Chief Executive Officer SRA & Ors ...Respondents

Mr SG Kudle, with AR Kori, for the Petitioner.
Mr Abhijit Kulkarni, with Viraj Hake, for Respondent No. 1-SRA.
Mr Mukesh Vashi, Senior Advocate, with Aparna Deokar, i/b MP
Vashi & Associates, for Respondents Nos. 4 & 5.
Mr LT Satelkar, AGP, for State.

**CORAM G.S. Patel &
 Madhav J. Jamdar, JJ.**
DATED: 15th December 2021

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1. We propose to dispose of this Writ Petition at the stage of admission with only the most absolutely necessary observations and directions. We do so in view of the order dated 10th July 2019 of a Division Bench of this Court in Writ Petition No. 1432 of 2018. That Writ Petition was filed by this very Petitioner.

2. In order to precisely identify the questions involved, we reproduce the order of 10th July 2019.

“1. The Petitioner has raised two fold grievances. His first grievance is that his entitlement of allotment of a residential unit admeasuring 269 sq.ft., as per the government policy is being denied by the builder-developer. His other grievance is that previously the SRA had held the Petitioner ineligible for allotment, which by the later order, was changed and the Petitioner was held eligible. The Petitioner therefore, expects that he should be paid rent/compensation for the entire period from the inception and not only from the date he was held eligible by the SRA by the later order.

2. In the context of the Petitioner’s first grievance, learned Counsel for the Petitioner drew out attention to a Government Resolution dated 14th May, 2008 and a Communication dated 26th December, 2017 issued by the SRA. In the said Government Resolution dated 14th May, 2008, the Government resolved to revise the entitlement of the displaced slum dwellers for allotment of the dwelling unit from the prevailing area of 225 sq.ft. to 269 sq.ft. In terms of this Government Resolution, the SRA in its Communication dated 26th December, 2017 took note of this revised policy for implementation. On the basis of these documents, the learned Counsel for the Petitioner strenuously argued that the Petitioner is entitled to be allotted the residential unit of 269 sq.ft., the developer is offering a unit of 225 sq.ft., which is not acceptable to the Petitioner.

3. In the context of the second grievance, learned Counsel for the Petitioner submitted that the Petitioner is entitled to rent from the inception, which the developer has not paid.

4. On the other hand, learned Counsel for the SRA submitted that the revised policy of the Government contained in the said Government Resolution dated 14th

May, 2008 would apply prospectively. The Policy itself envisages that the revised area entitlement would not apply to schemes which are completed or in progress. He therefore, submitted that the SRA has taken the decision not to enforce such revised area requirement in cases where the construction was completed upto plinth level since it would be impossible to change the entire layout plans of the building. In the present case, substantial development had already taken place by the time the said Government Resolution dated 14th May, 2008 was issued.

5. Learned Counsel for the Developer-Respondent Nos.4 and 5 submitted that the scheme envisaged 7 buildings, five of them were meant for rehabilitation of the existing dwellers. Substantial construction of all the towers was completed by the time the Government Resolution dated 14th May, 2008 came to be issued. He pointed out that the commencement certificate was issued by the SRA on 1st April, 2005. With respect to the rent entitlement of the Petitioner, he submitted that the issue can better be examined by the SRA authority, for which purpose, the Petitioner must be relegated to the said authority.

6. Having heard the Counsel for the parties, we find considerable force in the submissions of the learned Counsel for the Respondents in relation to the first grievance of the Petitioner. There is no quarrel that under the Government Resolution dated 14th May, 2008, the entitlement of the slum dwellers upon rehabilitation has been revised from residential unit of the area of 225 sq.ft. To 269 sq.ft. However, the such revision cannot be implemented where the scheme has made substantial progress. The Government Resolution itself envisages implementation of this revised area requirement not to apply to the schemes which are completed or in progress. Even otherwise, it can be seen that if the construction or substantial construction of a building is completed, it would

be impossible to enforce the revised requirement which will require virtual demolition of the building and reconstruction which obviously the Government would not have envisaged. The request of the Petitioner for allotment of larger area cannot be accepted. The learned Counsel for the developer had stated that the Petitioner was offered a unit of constructed area of 225 sq.ft., which even today if the Petitioner accepts, the developer would allot. We record this statement and expect the concerned Respondents to act accordingly.

7. With respect to the second grievance, the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971 contains sufficient machinery provisions, under which an aggrieved person can approach the appropriate authority who at the first instance, can examine the grievances. We therefore, do not foreclose the Petitioner's second prayer, but leave it to him to approach the appropriate authority. If such application is made within a period of four weeks from today, the same shall be entertained on merits without reference to limitation.

8. The Writ Petition is disposed of in above terms."

3. Prayer clauses (b), (c) and (d) of the present Petition at pages 17 to 18 read thus:

“(b) This Hon’ble Court be pleased to issue the writ of mandamus order directions or any other order directions or appropriate writ in the nature of mandamus directing the Respondents herein and more particularly Respondent Nos. 4 and 5 herein to provide the Petitioner permanent accommodation by way of allotting tenement admeasuring 269 sq. ft. carpet area forthwith in the list of the government Resolution dated 14.5.2008 and on account of any reasons whatsoever it is not possible to accede to the

Petitioner's prayer then in that case the Respondents herein be further directed to allot the area admeasuring 225 sq. ft. without prejudice to Petitioner's contention as raised in the instant Petition pertaining to Revised LOI dated 5.6.2017 is concerned;

(c) This Hon'ble Court further be pleased to issue writ of certiorari order direction or appropriate writ in the nature of certiorari calling for records and proceedings in respect of the revised LOI dated 5.6.2017 issued by the Respondent No.1 herein and after perusing the legality, propriety and correctness of the said Revised Layout Plan this Hon'ble Court be pleased to declare that the said LOI was got approved just to accommodate those slum dwellers who were held to be eligible by taking into consideration the cut of date of 1.1.1995 thereby listing them in the list of project affected persons and also depriving of those slum dwellers who are entitled for allotment of tenement admeasuring 269 sq. ft. carpet and accordingly the said LOI dated 5.6.2017 be quashed and set aside thereby further directing the Respondent No.3 herein to assign the task of holding the proper enquiry in respect of revised layout plan dated 5.6.2017 and after holding an enquiry if it is reveals that the said revised layout was got sanctioned for committing fraud then in that case the necessary legal action be initiated against all concerned including the Respondent Nos.1, 4 and 5 herein;

(d) This Hon'ble Court further be pleased to issue the writ of mandamus, order direction or any other order direction or appropriate writ in the nature of mandamus directing the Respondent No.1 herein to secure the Petitioner's arrears of rent due and payable to him at the rate of Rs.12,000/- per month from the date of demolition of his structure i.e. from March, 2008 till date with interest @ 18% per annum thereby releasing the same forthwith."

4. The Petitioner now alleges that certain persons have been fraudulently, unlawfully and illegally included in the category or classification of “Project-Affected-Persons”. According to Mr Kudle for the Petitioner, this has been done to enable such persons to take advantage of the additional benefits and get possession of flats admeasuring 269 sq ft. There is no reason in his submission, for this completely arbitrary discrimination that leaves out persons like the Petitioner and limits their entitlement to rehab flats of only 225 sq ft.

5. We note the second portion of prayer clause (b). Mr Kudle has instructions to state that the Petitioner will accept the presently available rehab flat of 225 sq ft on a without prejudice basis leaving open his contentions about the wrongful, illegal or fraudulent inclusion of ineligible persons as PAPs entitled to 269 sq ft. We accept that statement and submission and we grant the Petitioner liberty to adopt appropriate proceedings in a court of competent jurisdiction in regard to those assertions of fraud and illegality. We have made it clear that such questions involving fraud, which require particularisation, do not lend themselves to an examination in the writ jurisdiction of a Court under Article 226 of the Constitution of India. The choice of proceeding and forum is left to the Petitioner.

6. As regards the question of compensation, this is the subject matter of paragraph 7 of the 10th July 2019 order. We are returning no finding today on the amount to which the Petitioner is entitled, i.e., the rate per month, or from what date. The Petitioner has made a representation to the SRA in regard to the amounts of transit rent. His claim may be higher than what the SRA is prepared to accept or

allow. But this does not mean that the SRA can avoid deciding the representation made by the Petitioner. We direct the SRA to take a decision on the Petitioner's representation for transit rent no later than four weeks from today. If SRA finds that a certain amount is payable to the Petitioner, it is open to the Petitioner to accept that amount also on a without prejudice basis and to adopt suitable proceedings for the remainder of his claim.

7. In our view, this is sufficient to dispose of the present Petition.

8. We make it clear that we have not assessed the merits of the Petitioner's claims on either ground in view of the liberties reserved above.

9. Mr Vashi appears for the developer and for the society. He contends that there is a dispute as to maintenance charges or arrears of maintenance charges against the Petitioner. According to the Society, the Petitioner must pay maintenance charges from the date of the occupation certificate. Mr Kudle says and submits that maintenance charges can only be payable from the date of actual possession and not any earlier date. Clearly, this is not the forum for deciding those disputes either. We do not, however, see how the Society can refuse to make the allotment or give possession on the basis that there is a money claim. Any claim by the Society against the Petitioner or vice versa will necessarily have to be filed before the competent authority.

10. Mr Vashi states that the keys to the flat are ready and can be handed over to the Petitioner at any time. On the basis set out in this order, Mr Kudle states that his client will, on a without prejudice basis, accept the keys to the flat. The other dispute as regards maintenance or other charges are left open for appropriate proceedings.

11. Mr Kulkarni is correct in saying that the date of delivery and possession should be fixed. We fix 19th December 2021 at 4.00 pm for delivery and possession.

12. The Petition is disposed of in these terms. No costs.

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

(Madhav J. Jamdar, J)

(G. S. Patel, J)