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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.1449 OF 2022

Sunil Aakaram Jadhav .. Petitioner
Versus
Municipal Corporation for Greater
Mumbai & Ors. .. Respondents

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Ms.Neha Parte i/b Ms.Vishakha V. Shelar for the Petitioner.

Mr.Santosh Parad with Mr.Om Suryavanshi for the
Respondent No.1/MCGM.

Ms.Aparna D. Vhatkar for the Respondent No.2/SRA.

Mr.Mayur Khandeparkar with Mr.Nitesh R, Ms.Disha Shetty
and Mr.Mustaq B. i/b Wadia Ghandy & Co. for the Respondent
No.3.

Mr.Amey Sawant for the Respondent No.4.

Mr.C.D.Mali, AGP for the State/Respondent Nos.5 and 6.

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CORAM: RAVINDRA V. GHUGE, J.
DATED : 15th FEBRUARY, 2022

P.C:-

1. The petitioner has put forth prayer clause 31(b) and (c),
which read as under :-

“b) That this Hon’ble Court be pleased to quash and set aside
the order dated 31/01/2022 passed by Respondent No.2 in
proceedings filed by Respondent No.3 under Section 33 and
38 of the Maharashtra Slum Areas Act, 1971;

c) That pending the hearing and final disposal of the present

Writ Petition, this Hon'ble Court be pleased to stay the effect, implementation and execution of the order dated 31.1.2022 passed by Respondent No.2 in proceedings filed by Respondent No.3 under Section 33 and 38 of the Maharashtra Slum Areas Act, 1971."

2. I have considered the strenuous submissions of the learned Advocate for the petitioner and the learned Advocates who have caused an appearance on behalf of all the respondents.

3. There is no dispute that in this scheme for slum development under the Maharashtra Slum Areas Act, 1971, the structure of the petitioner must find place in Annexure II alongwith the name of the person occupying the dwelling. Shri Khandeparkar informs that there could be two contingencies in which the dwelling or the name of the person occupying the dwelling may not find place in Annexure II. Firstly, if the structure/dwelling has come up after preparation of Annexure II. Secondly, if the dwelling is noticed, but the name of the person occupying the dwelling is not identified.

2. The orders passed by the learned Division Bench of this Court dated 06/01/2020 in Writ Petition (L) No.3371 of 2019 in the case of Sabula Buden Khan & Ors. Vs. Municipal Corporation of Greater Mumbai & Ors., dated 03/02/2022 passed in Writ Petition (St) No.2965 of 2022 in the case of Jabir Ali Ibrahim Ali Shaikh (Decd.) the legal heir & Anr. Vs.

M/s Build Square & Ors. and the order passed by this Court dated 11/02/2022 in Writ Petition (St) No.3210 of 2022 in the case of **Bhau Narayan Patil & Ors. Vs. Apex Grievance Redressal Committee & Ors.**, are placed before me.

3. There is no dispute that the petitioner will have to first establish his eligibility. If the petitioner has any grievance as regards being held ineligible, such grievance has to be decided by a competent authority, which is respondent No.1. It is conceded that in such proceedings, the petitioner has been held to be ineligible and, therefore, the petitioner has approached the Appellate Authority, which is respondent No.5 and the said appeal is pending.

4. It is equally undisputed that if the petitioner is subsequently found to be eligible on account of a decision of the Appellate Authority or any other Court, the petitioner would be entitled to an accommodation in the transit camp and in such a situation, the petitioner would be entitled for rent, in parity with others, from the date of vacating the dwelling till he occupies the transit camp, subject to allotment in such transit camp. After the slums are demolished and a new structure is erected, the SRA resorts to a lottery system to accommodate all such eligible slum dwellers and based on the same, the allotments are made.

5. The learned Advocate for the petitioner submits that her pending appeal be decided first and only thereafter the

petitioner may vacate the premises. I find this suggestion/submission to be unacceptable for the reason that unless the petitioner is held to be eligible, no right would accrue to the petitioner. Unless the dwellings are demolished and a new structure is erected, an eligible candidate cannot be a participant in the lottery system. If the petitioner is eligible, he would be able to participate in such lottery system and only thereafter, he would get his accommodation. For the said purpose, the demolition of the dwellings is necessary. A public project cannot be stalled on the ground of litigation, as is held by the Hon'ble Supreme Court.

6. The learned Advocate for the petitioner submits, on instructions, in the backdrop of the statement of the learned Advocate for the SRA that the demolition drive would commence on Thursday i.e. on 17/02/2022, that the petitioner would peacefully vacate the dwelling by 5.00 p.m. on Saturday i.e. 19/02/2022. He would collect all his belonging and vacate the said premises. He would not seek extension of time. In the light of this statement, the learned Advocate for the SRA submits that the demolition drive would proceed and would touch the dwelling of the petitioner after 5.00 p.m. on 19/02/2022.

7. In view of the above statements made to the Court, this petition is disposed off.

8. The request for an out of turn expeditious hearing before respondent No.5, is refused. Respondent No.5 would decide the said proceedings strictly in accordance with the procedure laid down in law.

(RAVINDRA V. GHUGE, J.)