

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 9782 OF 2021

Rajendra Singh S/o. Amrish Singh	...Petitioner
V/s.	
The Deputy Collector (Eastern Suburbs)	
Slum Rehabilitation Authority & Ors.	...Respondents

Mr. Pradeep J. Thorat a/w. Ms. Aditi Naikare, for the Petitioner.
Mr. Anoop Patil, for the Respondent No.1.
Mr. Mayur Khandeparkar i/b. Mr. Y. D. Patil a/w. Mr. Amey
Sawar, for the Respondent No.2.
Ms. V. S. Nimbalkar, AGP for the Respondent No.5 / State.

MAMTA
AMAR
KALE
Digitally
signed by
MAMTA
AMAR
KALE
Date:
2022.09.16
16:43:13
+0530

CORAM : C.V. BHADANG, J.
DATE : 15 SEPTEMBER 2022

P.C.

. Rule. Rule made returnable forthwith. The learned counsel for the Respondents waive service. Heard finally by consent of parties.

2. By this petition, the Petitioner is challenging the order dated 29 June 2020 passed by the Apex Grievance Redressal Committee (AGRC) in Application No.201/2019. By the impugned order, the application filed by the Applicant, under Section 35 of the Maharashtra Slum Areas (Improvement,

Clearance and Redevelopment) Act, 1971 ('said Act', for short), challenging the order dated 2 August 2019, passed by the Deputy Collector (SRA), under Section 33/38 of the said Act, has been dismissed. The net result is that the order directing eviction of the Applicant from the subject premises stands confirmed.

3. I have heard the learned counsel for the parties. Perused record.

4. It appears that the third Respondent – Society has been granted LOI on 17 January 2015 for implementation of a SRA Scheme on CTS No.843, 843/1 to 32 of Village Mohili, Tehsil Kurla. There are 34 slum dwellers, out of which 32 have been declared eligible as per Annexure II and revised Annexure II. These occupants have already vacated the respective structures which are stated to be demolished. The present Applicant Rajendra Amrish Singh alongwith Sonu Singh have been declared non-eligible as noticed by the AGRC. The present petition is only by Mr. Rajendra Amrish Singh, son of Late Amrish Singh, challenging the order passed by the Deputy Collector (E and R) SRA directing the Petitioner to vacate the subject structure. The Petitioner challenged the same before the AGRC where the AGRC has refused to interfere.

5. The learned counsel for the Petitioner submitted that the structure of the Petitioner is situated on CTS No.844 which is

adjacent to the land on which SRA scheme has been implemented. It is submitted that late father of the Petitioner has been recorded as an owner of land CTS No.844. In short, according to the learned counsel for the Petitioner, the subject structure is not situated on the land on which the SRA scheme is being implemented. He submitted that the AGRC has failed to consider this aspect. The learned counsel has pointed out the notice dated 17 May 2019 issued by the Competent Authority wherein it is shown that the claim of the Petitioner for inclusion in the scheme is pending.

6. Mr. Khandeparkar, the learned counsel for the Respondent No.2 submitted that there was a survey conducted after notice to the parties in which the structure of the Petitioner is partly shown on the land on which the SRA scheme is being implemented. He has referred to the panchanama dated 12 May 2015 which is annexed to the affidavit-in-reply of the Respondent No.6 City Survey Officer, Kurla. It is pointed out that the panchanama bears the signature of the Petitioner. He submitted that LOI is granted on 17 January 2015 and at no point of time the measurement and the demarcation is challenged.

7. I have considered the submissions made.

8. The principal issue is whether the subject premises of the Petitioner are situated on land CTS No.843, 843/1 to 32 or they

are situated exclusively on land CTS No.844. The case of the Respondent No.2 appears to be that the part of the structure is situated on the land where the SRA scheme is being implemented. This was precisely the issue which was required to be considered and decided by the AGRC. However, a perusal of the impugned order shows that the AGRC has noticed two decisions of this Court in *Andrade Motors Vs. Additional Collector (Eng/Rem) & Competent Authority & Ors.*¹ and *Amrut P. Shinde Vs. State of Maharashtra*² in order to find that no case for interference is made out.

9. In so far as the decision in *Andrade Motors* is concerned, this Court has held that the Authority acting under Section 33/38 has no jurisdiction to test validity of the SRA scheme. It is necessary to note that at no point of time the legality of the SRA Scheme is subject matter of challenge. In *Amit P Shinde* the question was whether the redevelopment can be stalled when the eligibility claim of some of the occupants is pending. Even that is not the case of the Petitioner. The only question is whether the subject structure is partly situated on the land which is subject matter of the SRA Scheme which has to be decided in the light of the survey and the demarcation conducted as noticed in the affidavit-in-reply of the Respondent No.6 who was subsequently added in this petition.

¹2009 (3) BCR 120

²in Writ Petition No.1475/2016 decided on 6 February 2016

10. In that view of the matter, I find that it would be appropriate for the AGRC to reconsider the application afresh.

11. In the result the following order is passed.

ORDER

1. The petition is partly allowed.
2. The impugned order is hereby set aside.
3. Application No.201/2019 is restored back to the file of AGRC to decide it afresh in the light of the observations made above and the survey and demarcation conducted.
4. The AGRC shall decide the application after hearing the parties, as expeditiously as possible and within a period of two months from the receipt hereof.
5. The status-quo operating in this petition shall continue to operate during the pendency of the application before the AGRC.
6. Rival contentions of the parties are left open.

Rule is partly made absolute in the aforesaid terms.

C.V. BHADANG, J.