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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 1718 OF 2022

SHRIKANT MURLIDHAR SHARMA,
Age:70 years, Hindu, Indian Inhabitant,
Having my address at Solicitor's Bungalow,
Rani Sati Marg, Malad(E), Mumbai-97.

...Petitioner

~ VERSUS ~

THE STATE OF MAHARASHTRA,
Through Secretary
Urban Development Department,
Mantralaya, Mumbai-400032
Through Government Pleader,
High Court, Bombay.

**OFFICE OF THE DEPUTY
COLLECTOR,**
(Encroachment/Removal) and
Competent Authority M.H.B., Building
No.38, First Floor, Siddharth Nagar,
SV Road, Goregaon (W), Mumbai
400062.

MAHESHKUMAR B PATEL,
President, Solicitor Compound,
Rani Sati Marg, Malad (E), Mumbai
400097.

**SOLICITOR COMPOUND
VYAPARI MANDAL,**
Solicitor Compound, Rani Sati Marg,
Malad(E), Mumbai 400097.

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SHARMA,

Aged 85 years

SHARMA,

Aged 80 years, Hindu, Indian

Inhabitants, Residing at Solicitor's

Bungalow, Rani Sati Marg, Malad East,

Mumbai-400097.

Wife of Late Rajnikant M Sharma

(SON)

(Married Daughter of Rajnikant M

Sharma) Legal Heirs of Late Rajnikant

M Sharma,) having address at 102,

Ginni Apartments, Rani Sati Marg,

Malad (East), Mumbai-400097.

...Respondents

APPEARANCES

FOR THE PETITIONER

Dr

Birendra Saraf, Senior

Advocate, *Ranjeev Carlhavo,*

Siddharth Sharma, Satchit

Bhogale, i/b Shweta Sharma.

FOR RESPONDENT Nos.

M1

AI Patel, Addl GP, with PG

Sawant, AGP.

FOR RESPONDENT NO. 4

M1

Maushad Engineer, i/b Anand H

Singh.

**CORAM : G.S.Patel &
Madhav J Jamdar, JJ**

DATED : 23rd February 2022

ORAL JUDGMENT (Per GS Patel J):-

1. The Petitioner claims to have an undivided ownership interest in an immovable property of about 1750.9 sq mtrs, CTS No. 436-C, 436-C/1-47 at Rani Sati Marg, Malad (E), Borivali, Mumbai. The entire plot is popularly known as Solicitor's Compound.
2. The challenge in this Petition is primarily to an order of 26th October 2021 at Annexure "A" from pages 41 to 65. This was an order passed by the Maharashtra Slum Areas (I. C.& R.) Tribunal, Mumbai rejecting the Petitioner's appeal against an order declaring part of the immovable property as a slum.
3. The matter has a litigation history that dates back the better part of two decades to 2005. At Solicitor's Compound, there are commercial enterprises occupying built up structures along the periphery. A residential colony also stands within the compound.
4. The Petitioner's appeal was against a declaration under Section 4(1) of the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971 ("**the Slum Act**"). It is not disputed that the declaration is in respect of the commercially occupied portion of Solicitor's Compound, and that the residential portion has been excluded from the declaration.

5. The short point canvassed by Dr Saraf for the Petitioner is that, apart from considerations of the past litigation record, there was no material before the authority to hold that the commercial portion of Solicitor's Compound satisfied the conditions prescribed in the statute for a declaration under Section 4.

6. We will first advert briefly to the past history.

7. On 2nd June 2005, there came to be issued an order under Section 4(1) of the Slum Act declaring a part of this property as a slum area. The order covered an area of about 56 structures in occupation or use of about 225 to 250 people. This was the first declaration of this area as a slum. On 16th June 2005, as required by the statute, the declaration was notified and published in the Maharashtra Government Gazette.

8. The Slum Act provides for an Appeal and some of the owners filed Appeals under Section 4(3) to set aside the first declaration.

9. On 13th December 2006, the Slum Tribunal constituted under the Slum Act allowed the four appeals preferred by the owners. This appellate order proceeded on the basis that the Additional Collector (Encroachment and Removal), being the competent authority for issuance of the Section 4(1) declaration, had not himself carried out any survey or inspection of the property and which was the basis of the first declaration. That there was indeed a survey inspection, but it had been done by the Deputy

Collector Malad, and not by the Competent Authority. A copy of this appellate order is annexed to the Writ Petition.

10. In 2007, the first appellate order of the Slum Tribunal was challenged in Writ Petition No.3933 of 2007 by one Bhanwarlal Motilal Doshi. This Court passed an order on 6th September 2007 upholding that appellate order (i.e., the one that set aside the first declaration).

11. Five years went past. On 26th May 2011, there was a second declaration under Section 4(1) of the Slum Act once again declaring the very same area as a slum area. In June 2011 this second declaration was also published and notified. In August 2011, the present Petitioner filed an appeal under Section 4(3) to set aside the second declaration. This appeal also succeeded by an appellate order dated 4th January 2013. A copy is at Exhibit “D” to the Writ Petition from page 176. The appellate order however, said that the present 2nd Respondent viz. the Deputy Collector (Encroachment/ Removal) could initiate a fresh enquiry following the due process of law. The reasoning in this appellate order was that the Deputy Collector — the designated competent authority — had not complied with a State Government Resolution up to 28th May 2021. This GR required the competent authority to obtain the prior permission of the State Government before declaring any private land of more than 250 sq mtrs and containing more than 25 hutments as a slum area. Another reason that we find in the second appellate order was that there were inconsistencies in the report

submitted by the competent authority and the report by another surveyor, one PS Patil.

12. In July 2014, there came to be filed an application or complaint by one Maheshkumar Patel with the Competent Authority seeking a declaration yet again of the area as slum area within the meaning of Section 4(1) of the Slum Act.

13. This time, on 28th December 2014, the 2nd Respondent did carry out a preliminary survey of the property. He prepared a panchnama and survey report recording his findings. On 8th May 2015, the 2nd Respondent is said to have issued a show cause notice to all co-owners, including Petitioner. This was on the basis of the names and details as they appeared in the property card or cards. On 17th April 2015, the Petitioner and one Laxmikant Sharma replied to the show cause notice through their Advocate. On 28th June 2016, the 2nd Respondent issued another notice disclosing his intention to conduct a survey or inspection of the property on 4th July 2016. The record indicates copies of this notice were pasted at several places on the subject site. On 4th July 2016 the 2nd Respondent did visit the property. There was heavy rainfall. The 2nd Respondent could not carry out or complete that survey. A fresh notice of 13th July 2016 followed, regarding a proposed survey or inspection on 28th July 2016. On that day, the 2nd Respondent was able to carry out an inspection and survey.

14. On 12th August 2016, the 2nd Respondent issued a second show cause notice to all co-owners, including the Petitioner. Again,

this was on the basis of the names as they appeared or stood in the property card. Once again, there was a reply to this notice on behalf of the Petitioner and Laxmikant Sharma through their Advocate on 28th August 2016. On 1st September 2016, the 2nd Respondent heard the noticees. The record reflects that the Petitioner was present and participated in the hearing.

15. Between 9th September 2016 and 27th October 2016 the 2nd Respondent held further hearings. During the course of the hearing, on 27th October 2016, the 2nd Respondent directed that the property be surveyed and inspected yet again, this time on 25th November 2016. A fresh notice of this proposed inspection survey was pasted at various places on the property.

16. On 25th November 2016 the Naib Tehsildar and the Surveyor, officers from 2nd Respondent's office, inspected the property and surveyed it. A panchnama survey report was prepared recording their findings. A copy of this is at page 214. *Prima facie* this indicates that there were about 225 to 250 occupants. There were about 56 structures. While there were four toilets, only two were usable. There were open gutters. There were only two water taps in existence. Structures were below the existing passage height leading to flooding within the structure. There was no ventilation. This panchnama has not been separately challenged by any of the co-owners in any proceedings, even collaterally.

17. We come now to the order of 29th December 2016 by the 2nd Respondent. This declared a portion of the property of about 1396.9

sq mtrs as a slum area. This was the third declaration of a part of the Solicitor's compound as a slum.

18. Broadly in consonance with the panchnama to which we have just referred, but expanding on it somewhat, the declaration itself records that there were 56 structures with only two toilets, clearly insufficient; open gutters, dirt and sewage flowing in the lanes; the likelihood of injury due to open gutters; no street lights; no ventilation; and low-lying structures below the passage height leading to internal flooding.

19. On 5th January 2017, the third declaration was published and notified in the Maharashtra Government Gazette.

20. In March 2019, the Petitioner and other owners filed Appeal No.13 of 2019 to set aside the impugned declaration. Even in this appeal, there was no specific challenge to the 25th November 2016 panchnama and survey report.

21. This directly now brings us to the impugned order of 26th October 2021. The Slum Tribunal dismissed the latest Appeal and reaffirmed the finding of the competent authority, specifically holding that the amenities available on the notified land were insufficient and that there existed enough factors to justify a declaration of the property as a slum area.

22. In order to appreciate the jurisprudential contours in matters such as these, we believe we can profitably refer to the Division

Bench judgment of this Court in *Jokim Vincent Gomes & Ors vs State of Maharashtra & Ors*.¹ Speaking for the Division Bench presided over by the RMS Khandeparkar J, Dr DY Chandrachud J (as he then was) considered a substantially similar challenge to a slum declaration under Section 4(1) of the Slum Act. The submission before the Division Bench was that the declaration was a colourable exercise of power. The Appellant had instituted eviction proceedings and sought possession from the encroachers. The official machinery could not be invoked, it was argued, to perpetuate the existence on site by encroachers and trespassers. We may note that a substantially similar argument is being advanced before us even today when we are told that the owners have eviction proceedings against some or all of the persons occupying commercial structures of the area that is the subject matter of the impugned declaration.

23. In the matter before the Division Bench, the record reflected a prior survey and inspection after notice. The owner was present on site at the time of the survey. Details were listed. Importantly for our purposes, the report they indicated that there were 18 toilets, but nine were functional. The others were broken. There were open gutters. Even these had been built by the slum dwellers at their own cost. Refuse water had overflowed from the gutters and had spread across the internal pathways. There was a stench in the area and the condition was harmful to the health of the residents. There was no internal street lighting. The tenements lacked natural light and air. Adjacent colonies have been declared as slums and hence the

1 2007 (3) Mh LJ 386.

declaration. Paragraph 4 of the Division Bench judgment notes that the Tribunal took these factors into account. We now reproduce paragraph 5 of that judgment:

“5. Under Section 4(1), the Competent Authority is empowered to issue a declaration that an area is a slum area inter alia where it is satisfied that any area is or may be a source of danger to the health, safety or convenience of the public of that area or of its neighbourhood, by reason of the area having inadequate or no basic amenities, or being insanitary, squalid, overcrowded or otherwise. In the present case, this Court would not be justified in sitting in appeal over the assessment of facts by the Competent Authority. Even if, as the Appellant submits, some of the residents were motivated to move the Government in pursuance of decrees that were passed against them by the Civil Courts, it cannot be said that the exercise of the power by the Competent Authority to issue a declaration is invalid. In any case the vast majority of other slum dwellers cannot be deprived of the protective arm of the Slum Areas Act. The Report of the Court Commissioner has been submitted during the pendency of this appeal. The Report will not be of relevance to deducing the condition of the area when the land was declared as a slum. The relevant date when the pre conditions spelt out by Section 4(1) must exist is the date of the declaration. So long as the authority has applied its mind to the considerations which are required to be borne in mind by the statute, the Court in exercise of its jurisdiction under Article 226 of the Constitution would not be justified in interfering with it. From the material on record, it does not appear that the order of the Competent Authority has been guided by irrelevant or extraneous considerations. The factors that have weighed with the Competent Authority are

germane to the exercise of the power under Section 4(1) of the Act. In the circumstances, no case for interference is made out. The petition is dismissed.”

(Emphasis added)

24. We believe we are almost exactly situated. Before us also there is material on record to indicate that the area is not just unsanitary but satisfies the conditions set out in the Slum Act for a Section 4(1) declaration. We reproduce Sections 4(1) and 4(2) of the Slum Act:

4. Declaration of Slum Areas.-

- (1) Where the Competent Authority is satisfied that—
- (a) any area is or may be a source of danger to the health, safety or convenience of the public of that area or of its neighbourhood, by reason of the area having inadequate or no basic amenities, or being in sanitary, squalid, overcrowded or otherwise; or
 - (b) the buildings in any area, used or intended to be used for human habitation are —
 - (i) in any respect, unfit for human habitation; or
 - (ii) by reasons of dilapidation, overcrowding, faulty arrangement and design of such buildings, narrowness or faulty arrangement of streets, lack of ventilation, light or sanitation facilities or any combination of these factors, detrimental to the health, safety or convenience of the public of that area,

the Competent Authority may, by notification in the Official Gazette, declare such area to be a slum area. Such declaration shall also be published in such

other manner (as will give due publicity to the declaration in the area) as may be prescribed.]

Explanation.— For the purposes of clause (b), the expression “buildings” shall not include,—

- (a) cessed buildings in the island City of Mumbai as defined clause (7) of section 2 of the Maharashtra Housing and Area Development Act, 1976, or old buildings belonging to the Corporation;
- (b) buildings constructed with permission of the relevant authority at any point of time;
- (c) any building in an area taken up under the Urban Renewal Scheme.

(2) In determining whether buildings are unfit for human habitation for the purposes of this Act, regard shall be had to the condition thereof in respect of the following matters, that is to say,—

- (a) repairs;
- (b) stability;
- (c) freedom from damp;
- (d) natural light and air;
- (e) provision for water-supply;
- (f) provision for drainage and sanitary conveniences;
- (g) facilities for the disposal of waste water;

and the building shall be deemed to be unfit as aforesaid, if and only if, it is so far defective in one or more of the said matters that it is not reasonably suitable for occupation in that condition.”

25. The submission by Dr Saraf has consistently been that whether one considers the panchnama or the slum declaration there is no material to indicate that the conditions that the authorities say exists and obtained on site actually do. According to the owners, there are enough taps, ventilation, toilet facilities and other amenities.

26. What is important is not what the Petitioner alleges. What is important is what the Petitioner can demonstrate. What is even more important, even given that we cannot sit in Appeal, is what is the Petitioner was able to demonstrate in support of his contentions before the Slum Tribunal or in answer to the show cause notices issued by the competent authority. We specifically put a question to Dr Saraf whether there was any material produced by the Petitioner to show that the Petitioner had in fact expended any amount at all on improvements or development of the property that is the subject matter of the slum declaration. The answer was that there is no such material on record. The specific question was whether the owners had been able to show any authority and were able to show us as a matter of record what could only have been matters specially within the knowledge of the owners. For instance, if the Petitioner or his co-owners had contracted for the construction of toilets, their maintenance, laying of gutters, paving, providing street lights and other amenities, then there would surely be some record of this showing not only the expenditure but the execution of these works. There is absolutely nothing at all in this direction. In other words, what is being sought from this Court is not just that the Court should sit in appeal over the decision of the Tribunal, but it should do so on the mere say-so of the Petitioner without any substantiating

documentation to support the Petitioner's contention. Apart from not being able to do this as a matter of record, as a matter of law we do not believe we can exercise our discretion in any such manner. There is nothing that the Petitioner produces to show that the Tribunal ignored germane considerations or took into account irrelevant ones.

27. Dr Saraf submits that had conditions been so terrible, the Petitioner and his co-owners ought to have been given an opportunity to improve the land and to carry out improvement works. We believe this submission is entirely misplaced and misdirected. We cannot ignore the fact that this is the third go-around. It is not as if the Petitioner and his co-owners were unaware of previous declarations. They twice filed Appeals. They knew precisely what was coming their way. More importantly, they knew why. We do not believe that it is the statutory intent to tell an owner of private land that he must take the necessary steps to improve and protect his land when he has or must be deemed to have had sufficient notice that the area of which he claims ownership desperately needs improvement. This is not a ground to set aside Slum Tribunal's impugned order.

28. These submissions are indeed contradicted by the undisputed record that is before the Court. For example the panchnama/survey of 25th November 2016 at page 137 to 214 itself indicates the substandard condition.

29. More importantly, the panchnama also indicates the existence on site of commercial user and residential user. The slum declaration however is careful to segregate only the commercial portion. In fact the record itself indicates at page 208 Annexure “N” that the authorities have been careful to segregate that portion of the site where slum conditions exists from the portions where slum conditions cannot fairly be said to exist. This is therefore not some sort of omnibus or sweeping declaration that has been made without application of mind or without due consideration to the actual conditions on site.

30. This is not a question of asking the Petitioner to ‘prove the negative’ (i.e. that the land is not, as it were, ‘slum-worthy’). What is required is evidence and material to substantiate the Petitioner’s case of having made improvements. If the Petitioner is unable to do so with appropriate and convincing material — and here there is no material at all — then we are quite unable to see what possible room remains demanding interference by this Court.

31. In our view the Petition has no merit at all. It is dismissed. There will be no order as to costs.

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

(Madhav J. Jamdar, J)

(G. S. Patel, J)