

R.M. AMBERKAR
(Private Secretary)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1167 OF 2023

Atul Ratilal Vyas

.. Petitioner

Versus

The Tehsildar-2 (Special Cell)
SRA & Ors.

.. Respondents

.....

- Mr. M.M. Kale a/w Mr. Yogesh Sankpal for Petitioner
- Mrs. P.H. Kantharia for Respondent No. 1 – SRA
- Mr. Prithviraj S. Gole i/by Mr. Sandesh D. Patil for Respondent No. 4
- Mrs. V.S. Nimbalkar, AGP for Respondent No. 5 – State
- Mr. Mayur Khandeparkar a/w Mr. Vikramjit Garewal, Harshil Parekh, Xerxes Bharucha i/by M/s. Purnanand & Co for Respondent No. 2

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CORAM : MILIND N. JADHAV, J.

DATE : FEBRUARY 08, 2023

P.C.:

1. Heard learned Advocates appearing for the parties.

2. On 30.01.2023, this Court passed the following order:-

“1. Mentioned. Not on Board. Taken on Board.

2. Heard Mr. Kale, learned Advocate for Petitioner; Mr. Khandeparkar, learned Advocate for Respondent No.2 and Mrs. Nimbalkar, learned AGP for the State.

3. Perused the praecipe dated 30.01.2023.

4. The present Writ Petition takes exception to the demolition notice dated 24.01.2023 against the Petitioner to vacate his premises within 48 hours failing which the hutment of the Petitioner shall be demolished.

5. Mr. Kale would submit that the statutory Appeal has been filed before the Apex Grievance Redressal Committee.

6. Mr. Khandeparkar, learned Advocate for Respondent No.2 would submit that the facts in the present Writ Petition are gross in as much as

the Petitioner is the lone person attempting to stall the slum redevelopment despite the statutory order passed under Sections 33/38 of the Slum Act. He would submit that Respondent No.2 is ready and willing to offer to the Petitioner the alternative relief / premises already offered to all such other similarly placed tenants who have in fact vacated their respective premises. He would further submit that the Petitioner has also vacated his subject premises and he has photographs to prove the same.

7. Considering the aforesaid submissions, issue notice to Respondents. The Affidavit of Respondents is called for, which shall be filed within a period of three (3) days from today. Copy of the same be given to the Petitioner in advance.

8. Petitioner is directed to file his rejoinder, if any, within three (3) days thereafter.

9. Stand over to **06th February, 2023**. To be placed High on Board. Till the next date, the vacated hutment of the Petitioner shall not be demolished.”

3. Affidavit in reply dated 01.02.2023 filed by contesting Respondent No. 2 has been perused. It refers to and relies upon the agreement which has been offered to similarly placed tenant in the same project by Respondent No. 2. Submissions made by Respondent No. 2 have already been mentioned in paragraph 6 of the above order.

4. Mr. Khandeparkar, learned Advocate for Respondent No. 2 would submit that there would be no digression from the submissions recorded in paragraph No. 6 of the earlier order and all such material has been placed in the affidavit-in-reply for the benefit of the Petitioner.

5. Mr. Kale, learned Advocate for Petitioner would submit that the affidavit-in-reply of Respondent No. 2 was taken cognizance of by the Petitioner. However, he has not filed rejoinder as directed by this

Court till today.

6. Be that as it may, perusal of the affidavit-in-reply filed by Respondent No. 2 would reveal one thing and that is the Petitioner would not be discarded of any of his rights in the subject slum scheme as also his demand of not being housed with the tenants. In that respect, a specific averment has been made in the affidavit in reply filed by Respondent No.2 that the Petitioner shall be housed with all the tenants in the same project in a separate building housing the tenants. This was one of the principal grievance raised by Mr. Kale on 30.01.2023 when this Court had heard the parties and passed the aforesaid order.

7. Mr. Kale would further submit that in challenge to the impugned order, the statutory Appeal has been filed before the AGRC along with stay application. That Appeal is numbered as Appeal No. 11 of 2023. He would therefore urge the Court to pass necessary direction and direct the AGRC to dispose of the said Appeal within a time bound programme. Be that as it may, undoubtedly the Petitioner cannot be ousted if his statutory Appeal is pending but equally so, one person namely the Petitioner cannot stall redevelopment of the entire project also. This is a case where Respondent No. 2 has categorically placed on affidavit that the Petitioner is the only person attempting to stall the slum redevelopment project which would otherwise enure

to the benefit of all stakeholders. Mr. Kale would submit that there are certain other litigations i.e. Writ Petitions filed by other tenants who are the Petitioner's neighbours and who had vacated their premises and the orders that would be passed in those Writ Petitions would otherwise govern the parties. Be that as it may, this submission of Mr. Kale clearly shows one thing that other tenants have all vacated their structures and handed over the same to Respondent No. 2 for the purpose of redevelopment. Be that as it may, whatever orders that would be passed by this Court in the other Writ Petitions would ultimately govern all tenants, including the Petitioner equally.

8. Learned Advocate for Respondent No. 2 has referred to and relied upon the decision of the Division Bench of this Court in the case of **Upendra M. Vaidya & Ors. Vs. Satish Lokhande & Ors.**¹ and urged that the stay in the interregnum should not be continued. He would submit that Respondent No. 2 has incurred substantial expenditure of Rs. 31 Crore as informed by the learned Advocate for Respondent No. 2 on the project till date only on the rentals to be paid to the tenants / slum dwellers in the present project. Hence, it is once again clarified that the stay granted by this Court in its order dated 30.01.2023 shall only be in operation till the date of hearing of the statutory Appeal by the AGRC on the next date of its sitting.

¹ Order dated 13.07.2022 in Writ Petition (L) No. 21924 of 2022

9. In view of the above, interest of justice would be served if the learned AGRC is requested by this Court to determine the statutory Appeal filed by the Petitioner as expeditiously as possible. Considering that the learned AGRC assembles and hears the matters / Appeals on designated dates i.e. Fridays only, learned AGRC is directed to hear Appeal No. 11 of 2023 on the next immediate date of its sitting, be it this Friday or the next Friday and dispose of the said Appeal strictly in accordance with law. The stay granted by this Court in its order dated 30.01.2023 shall stand extended until the date of hearing of Appeal No. 11 of 2023. It is further directed that on the next date of sitting of the AGRC, the Petitioner shall move the stay application and seek appropriate relief. It is categorically stated that on the day on which the AGRC shall hear the statutory Appeal, interim stay granted by this Court in its order dated 30.01.2023 shall come to an end.

10. With the above direction, Writ Petition is disposed.

[MILIND N. JADHAV, J.]

Digitally
signed by
RAVINDRA
MOHAN
AMBERKAR
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