

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL APPLICATION NO.58 OF 2019

IN

PUBLIC INTEREST LITIGATION NO.11 OF 2010

Saptashrungi Housing Society Through

Chief Promoter Manoj Mishra & Anr. ..Applicants

IN THE MATTER BETWEEN

Vrushali Kalal ..Petitioner

Vs.

The State of Maharashtra & Ors. .. Respondents

ALONG WITH

INTERIM APPLICATION NO.1996 OF 2020

IN

PUBLIC INTEREST LITIGATION NO.11 OF 2010

Shri Sevalal Co-operative Housing

Society, Thane (Proposed) ..Applicant

IN THE MATTER BETWEEN

Vrushali Kalal ..Petitioner

Vs.

The State of Maharashtra & Ors. .. Respondents

ALONG WITH

CIVIL APPLICATION NO.15 OF 2019

IN

PUBLIC INTEREST LITIGATION NO.11 OF 2010

Dharmveer Nagar CHS through

Its Chief Promoter ..Applicant

IN THE MATTER BETWEEN

Vrushali Kalal ..Petitioner

Vs.

The State of Maharashtra & Ors. .. Respondents

ALONG WITH
INTERIM APPLICATION (STAMP) NO.28207 OF 2023
IN
CIVIL APPLICATION NO.58 OF 2019

Dinesh Tukaram Pachkude ..Applicant

IN THE MATTER BETWEEN

Saptashrungi Housing Society Through

Chief Promoter Manoj Mishra & Anr. ..Applicants

IN THE MATTER BETWEEN

Ms. Vrushali Kalal ..Applicant

Vs.

The State of Maharashtra & Ors. .. Respondents

- Mr. Mihir Desai, Senior Advocate appointed as Amicus in PIL/11/2010.
- Ms. Neeta Karnik, for the Applicant in IA/17532/2022 & IA/15727/2023 in PIL/11/2010 & IAST/28207/2023 in CAI/58/2019.
- Mr. Ram S. Apte, Senior Advocate i/b. Mr. Mandar Limaye & Mr. Prathamesh Sawant, for Respondent No.4–Corporation.
- Dr. Birendra Saraf, AG a/w. Mr. P.P. Kakade, G.P. a/w. Ms. N.M. Mehra, AGP for the State.
- Mr. Anil Singh, Senior Advocate a/w. Mr. Sandesh Patil, Mr. Pavan Patil & Ms. Preeti Gokhale, for the Applicant in CA/15/2019.
- Mr. Anil Singh, Senior Advocate a/w. Mr. Sandesh Patil, Mr. Adarsh Vyas i/b. Ms. Anusha Amin, for the Applicant in CAI/58/2019.
- Mr. Chintan Shah, for the Applicant in IA/1996/2020.
- Mr. Deepak M. Mahajan, Assistant Engineer–MMRSRA present.
- Dr. Netaji Mulik, Medical Superintendent, Regional Mental Hospital, Public Health Department, Thane present.
- Mr. Shrikant U. Yewale, Deputy Engineer, P.W.Sub–Division No.1, P.W.Division No.1 present.

CORAM : SUNIL B. SHUKRE &
FIRDOSH P. POONIWALLA, JJ

RESERVED ON : 17th OCTOBER, 2023.

PRONOUNCED ON : 20th OCTOBER, 2023

P.C. :

IN CIVIL APPLICATION NOS.58 OF 2019 & 15 OF 2019 IN PIL/11/2010

1. Heard.

2. These applications seek clarification and/or modification of the order dated 12.08.2015 in the nature that this order would not apply to land admeasuring 2457.42 Sq. Mtrs. more particularly described in Notification dated 04.05.2016 and 23040.45 Sq. Mtrs. more particularly described in the affidavit dated 03.10.2023 filed on behalf of Respondent No.1 on the ground that they have been declared to be Slum Rehabilitation Areas requiring their development for the purpose of rehabilitation of the slum-dwellers.

3. Mr. Anil Singh, learned Senior Advocate for the applicants submit that these applicants are the societies of slum-dwellers, who are occupying the areas shown in the slum rehabilitation area declarations in respect of these societies and because of the order sought to be clarified/modified by these applications, the applicants are not in a position to obtain the benefit of the Slum Rehabilitation Schemes framed by the Slum Rehabilitation Authority in accordance

with law, by development of the tenements thereupon. He submits that since the Slum Rehabilitation Schemes are declared in respect of these societies and in case of applicant society in Civil Application No.15 of 2019, even a LOI has been issued, it is necessary that, now appropriate clarification or modification, as sought in these applications is issued or made or otherwise the poor slum-dwellers would be deprived of the benefits and protection they have in law. He further submits that even the Mental Hospital Authorities and the State Government do not have any objection, especially when the benefit of 25% of the land premium on the said portions of land would have to be given to the Health Department while implementing the Slum Rehabilitation Schemes and it has been computed to be around Rs.42 Crores, which the Mental Hospital would get and can utilize for betterment of the facilities to be provided to mental health patients.

4. Dr. Birendra Saraf, learned Advocate General, who appeared on behalf of the State Government, on the request made by this Court and specifically noted in the order passed by this Court on 06.10.2023, in response to the submission of the learned Amicus Curiae that the proposed Development Plan of the Mental Hospital at Thane was only on proposed plan, and not final. It was further submitted on instructions of the State Government officers present in Court that the proposed development plan of Mental Hospital at Thane, has been

approved by the State Government and averments in this regard have been specifically made in Paragraph 7 of the affidavit dated 10.10.2023, which has been sworn in by the Medical Superintendent, Mental Hospital, Thane.

5. Learned Advocate General further submits, on instructions, that the superimposition map of the layouts of the redevelopment plan and the proposed SRA schemes of the societies involved in both these applications (Document A) would show that the areas of proposed SRA Schemes (Yellow Portion) are outside the area of the redevelopment plan of Mental Hospital (Blue Area).

6. On going through the affidavit dated 10.10.2023, we find that the proposed redevelopment plan of Mental Hospital at Thane (Document “B”) has indeed been approved by the State Government and this fact is specifically noted in Paragraph 7 of the said affidavit. It is also stated in the said affidavit that this plan has already been acted upon and construction has already started. The map of the layouts of the redevelopment plan of the Mental Hospital and of the layouts of proposed SRA Schemes (Document “A”) superimposed on each other do show, as rightly submitted by the learned Advocate General, that the areas of proposed SRA Schemes of both these applicants are out of the area of the approved redevelopment plan of Mental Hospital. If this is

so, the doubt expressed by learned Senior Advocate and Amicus Curiae on the last occasion that if these applications are allowed, there may be a possibility of adversely affecting the redevelopment plan of Mental Hospital, is ruled out. Then, the question would arise as to whether or not the prayers as made in these applications should be granted.

7. In the opinion of learned Senior Advocate for the Applicants, the prayers should be granted and whereas learned Senior Advocate and Amicus Curiae submits that this Court may appropriately consider if the SRA Schemes could be implemented somewhere else instead of on the land of the Mental Hospital, as there is no right of the applicants to seek their rehabilitation under Slum Rehabilitation Act, on a particular land or to be precise on the land of the Mental Hospital. According to Ms Neeta Karnik, learned counsel for the Intervenor, land of the Mental Hospital must never be utilized for implementation of the SRA Schemes, especially when the Intervenor has information that some of the beneficiaries of the SRA Schemes are the ex-employees of the Mental Hospital who are trying to grab land of Mental Hospital, which came to Mental Hospital as a gift from a private person. She submits that if these applications are allowed, the slum-dwellers would take away such a prime land without paying any price therefore inasmuch as they do not have any right in law to seek their rehabilitation in the name of a SRA Scheme on the land of the Mental Hospital.

8. With all these submissions, suggestions and objections, what would matter ultimately would be the stand of the State Government to which the Mental Hospital belongs and which runs it. The affidavits filed on behalf of the State Government on 03.10.2023 and 10.10.2023, show that the State Government has no reservation or any serious objection as regards the implementation of the SRA Schemes on the said land of Mental Hospital. There are also SRA Schemes sanctioned for the rehabilitation of the slum-dwellers who have formed the Saptashrungi and Dharmveer Societies, the applicants here. In respect of these societies, even the Declarations of Slum Areas, showing the portion of lands under occupation of members of these societies as slum areas in terms of Section 4 of the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1979 (SR Act for short) have been issued. The structures of the members of these societies being in existence prior to 01.01.1995 are treated in law as protected structures under the SR Act and with sanctioning of the SR Scheme and issuance of Declarations as Slum Areas under SR Act, now, it would not be possible for the Government to rehabilitate them elsewhere, except at great delay, inconvenience and heavy expenses, as the Government may have to acquire private land for that purpose at huge cost and it may cause delay and inconvenience. On the other hand, compensation can be paid to the Mental Hospital for the loss of

it's land, if any SRA Scheme is permitted to be implemented on it, which would boost financial position of Mental Hospital, and that would be at least inconvenience and delay.

9. At the same time, it would also have to be seen that the approved redevelopment plan of Mental Hospital is not affected in any manner by implementing of such schemes. The affidavit of the Mental Hospital dated 03.10.2023 and the map of superimposed layouts vide Document "A" would dispel the doubt expressed in this regard by the learned Amicus Curiae. Document "A" shows that the areas where the SRA Schemes are proposed to be implemented for the benefit of the Saptashrungi Housing Society and Dharmveer Nagar Co-operative Housing Society, fall outside the area of the redevelopment plan approved by the State Government. So it is now clear that these areas of proposed SRA Schemes are not going to affect in any manner the implementation of the redevelopment plan.

10. As regards the compensation aspect, we find that the affidavit dated 03.10.2023 throws sufficient light on it. It states that while implementing these SRA Schemes, Health Department would be entitled to receive 25% of land premium on the land being used for implementation of the SRA Scheme and when computed in terms of money, the amount of 25% of land premium would come to around

Rs.42 Crores, which the Mental Hospital would be entitled to receive and utilize for the betterment of facilities to be provided to Mental Health patients.

11. It would be thus clear that if the SRA Schemes are permitted to be implemented on the lands in question, neither the implementation of approved redevelopment plan of Mental Hospital would be affected, nor the Mental Hospital would be put to any loss, rather the Mental Hospital would stand to gain by an amount of around Rs.42 Crores or more, which it can always utilize for improving the health infrastructure and quality of services to be provided to Mental Health patients. We are, therefore, of the view that both these applications deserve to be allowed.

12. Learned counsel for the Intervenor has, however, raised a question about the bonafides of some of the slum-dwellers, who she says are members of the said Cooperative Housing Societies, on the ground that some of them are the ex-employees of Mental Hospital and are trying to grab land of the Mental Hospital under the garb of implementation of a Slum Rehabilitation Schemes. She has also submitted that as per the knowledge of the Intervenor, some of these employees have also received show-cause notices as to why departmental action be not taken against them. When we asked her

about the source of the said information stated to be possessed by the Intervenor, she replied, on instructions, that Intervenor does have that information and he is unable to substantiate the same as his application filed under the provisions of Right to Information Act, 2005 seeking relevant information is still pending.

13. We may state it here that the reasons for seeking to know the source of information of the Intervenor by us are twofold, firstly the Intervenor, as disclosed by him in his application, is a Contractor thereby raising a possibility of his having a conflict of interest and secondly, the main intervention application itself is pending and unless it is allowed, this intervention application filed in these Civil Applications cannot be allowed, though we have granted hearing to his learned counsel. Coming back to the answer so given by the learned counsel for the Intervenor, we would say that it is a most unsatisfactory answer and, in our opinion, it would only render the aforesaid contentions of the Intervenor as unreliable. Besides, the said information even when accepted as it is, does not lead us anywhere as it does not give any names of the employees or ex-employees of the Mental Hospital, and it is a vague information. Therefore, such information cannot be considered in any manner for the purposes of both these applications. Even otherwise, if that information is considered to be relevant for stopping the implementation of the SRA

Schemes by the Intervenor, the Intervenor would be required to approach the Slum Rehabilitation Authority for review or revocation of the sanctions granted by it and these Civil Applications cannot be turned into a forum for ventilating such a grievance, which for the present is based upon vague and unreliable information. The argument of learned counsel for the Intervenor, is therefore, rejected.

14. Learned counsel for the Intervenor has pointed out to us the Government Resolution dated 19.04.2023 wherein the Cabinet of Ministers has taken a decision for removal of the encroachments made on 8 acres of land belonging to Mental Hospital in terms of the order of this Court dated 12.08.2015. There is no doubt about such a direction contained in Government Resolution dated 19.04.2023, and therefore, the encroachments made by the slum-dwellers would have to be removed accordingly, unless the order dated 12.08.2015 is suitably modified. In fact, these applications have been made only for the purpose of seeking modification of the said order dated 12.08.2015 as these societies for whose benefit the SRA Schemes have been sanctioned, are unable to obtain the benefit of these schemes by seeking appropriate development of the land declared to be Slum Rehabilitation Areas situated on the said portions of Mental Hospital land. Since, we are allowing these Civil Applications as stated already, the Government Resolution dated 19.04.2023 would no longer come in the way of

implementation of the said SRA Schemes.

15. In the circumstances, we are inclined to allow these applications conditionally and we do so.

16. We direct that in modification of the direction contained in the order dated 12.08.2015 whereby the State Government and the Collector, Thane were directed to contemplate steps to remove encroachment on 10 acres of land, now it is directed that the said direction, as contained in the order dated 12.08.2015, would not apply to land admeasuring 2457.42 Sq. Mtrs. in case of SRA Scheme relating to the applicant in Civil Application No.58 of 2019 and to the land admeasuring 23040.45 Sq. Mtrs. in relation to SRA Scheme relating to the applicant in Civil Application No.15 of 2019, subject to the condition that compensation in the form of 25% of the land premium on the said lands, which is computed to be around Rs.42 Crores by the State Government, shall be made available to the Mental Hospital, Thane by depositing the same in the account of Mental Hospital, Thane, before commencement of the implementation of the SRA Scheme on these portions of the land. The order dated 12.08.2015 stands modified accordingly.

17. Since, as stated above, the State Government has stated in Paragraph 7 of its Affidavit dated 10.10.2023 that the redevelopment

plan has been acted upon and construction has already started, we hope that the State Government expeditiously executes the said plan.

18. Both these applications are disposed of in the above terms.

19. We express our gratitude to the Amicus Curiae, Mr. Mihir Desai, for providing able assistance to this Court in this matter.

INTERIM APPLICATION (STAMP) NO.28207 OF 2023

1. In view of final order passed in Civil Application Nos.58 of 2019 & Civil Application No.15 of 2019, the Interim Application is disposed of in terms thereof.

IN INTERIM APPLICATION NO.1996 OF 2020

1. Learned counsel for the applicant, on instructions, states that the applicant does not press this application and therefore he prays for its disposal as not pressed at this stage with liberty to file a fresh application, in case there is a change in the circumstances. Leave with liberty as prayed for is granted and the Interim Application is disposed of accordingly.

[FIRDOSH P. POONIWALLA, J.]

[SUNIL B. SHUKRE, J.]