

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

**WRIT PETITION NO. 369 OF 2005
WITH
INTERIM APPLICATION NO. 417 OF 2023
IN
WRIT PETITION NO. 369 OF 2005**

Hrishikesh Co-op. Hsg. Soc. Ltd. ... Petitioner/Applicant
Versus
Municipal Corporation of Greater
Bombay & Ors. ... Respondents

Mr. A. S. Khandeparkar, Senior Advocate a/w Rajesh Revankar and
Ms. Sonali Sigum i/by A. G. Revankar & Co. for the Petitioner.

Mr. A. Y. Sakhare, Senior Advocate a/w Ms. Vandana Mahadik for the
Respondent-MCGM.

Mr. Saurabh Utangale a/w Girish Utangale and Mr. Rohan Savant i/by
Utangale & Co. for the Respondent No.3-SRA.

Mr. Akshay Pai a/w Atharva Sane, Shanmukh Puranik i/by Bina Pai for
the Respondent No.4.

Ms. Shruti Tulpule for the Respondent No.11.

Ms. N. N. Thakkar for the Respondent No.10.

Mr. Sanjiv Sawant a/w Mr. Hemant Kadam and Ms. Ishita Patole for
the Applicant in NMW/128/2016.

**CORAM: G. S. KULKARNI &
R. N. LADDHA, JJ.**

DATE : 20th MARCH, 2023

PC. :-

1. We have heard Mr. Khandeparkar, learned senior counsel for the petitioner, Mr. Sakhare, learned senior counsel for the MCGM, Mr. Pai, learned counsel for the respondent no.4, Mr. Sawant, learned counsel for the applicant in Notice of Motion No. 128 of 2016 and Mr. Utangale, learned counsel for the respondent no.3-Slum Rehabilitation Authority.

This order is corrected as per speaking to the minutes order dated 31.03.2023.

2. This petition has been filed praying for the following reliefs:-

“a) this Hon'ble Court may be pleased to issue Writ of Mandamus or other appropriate Writ, Order or Direction of like nature commanding Respondent No.1 to implement the Order dated 6/6/88 passed by Minister of State (Ex.C hereto) by removing all contravening structures from R. G. area on plot no.874 TPS IV Mahim as confirmed in their letter dated 19/5/1995 (Exhibit I hereto);

a1) in the alternative to prayer (a) above this Hon'ble Court be pleased to issue appropriate writ thereby permitting the Petitioner to take over the Slum Redevelopment project in respect of part of final plot no. 874, TPS IV Mahim Division, from the stage of the application made by their predecessor in title vis. Venus Housing Enterprise and Slum Rehabilitation Authority be accordingly directed to consider and sanction their redevelopment proposal under DC Regulation 33 (10);

b) It be declared that no SRA scheme exists in respect of Plot No. 874 TPS IV, Mahim;

c) that pending the hearing and final disposal of the Writ Petition the Respondents, their servants and agents be restrained by an order and injunction of this Hon'ble Court from further processing any SRA Scheme or proceeding further with any SRA scheme or allowing or carrying on only development activity thereunder;

c1) By issuing appropriate writ, direction or order this Hon'ble Court be pleased to declare that no SRA scheme can be sanctioned and implemented on the said Plot No. 874 TPS IV Mahim without the consent of the Petitioners and unless the FSI utilized for construction of Petitioners building is regularized as per order dated the order dated 3.09.1996 passed in Writ Petition No.962 of 1996;

c2) By issuing appropriate writ, direction or order this Hon'ble Court be pleased to declare that notification dated 10.8.1995 is invalid and unlawful and be pleased to quash, cancel and set aside the notification dated 10.8.1995, being Exhibit "F-1" annexed hereto in respect of the entire area admeasuring 4675.07 sq. mt which is declared as Slum;

c3) In the alternately to prayer clause (e) above this Hon'ble Court be please to issue appropriate writ, direction or order and declare that notification dated 10.8.1995 is invalid and unlawful to the extent of 20% of the total plot area which is reserved for Recreation Ground as per the Town Planning Scheme including the set back

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area abutting S K Bole Marg (formerly known as Old Prabhadevi Road) admeasuring 543.22 square yard equivalent to 454.20 square meter and be pleased to quash, cancel and set aside the notification dated 10.8. 1995, being Exhibit "T" annexed hereto;

c4) In the alternately to prayer clause (e) above this Hon'ble Court be please to issue appropriate writ, direction or order and declare that notification dated 10.8.1995 is invalid and unlawful to the extent vacant land admeasuring about 500 sq. mt., more particularly shown in green colour wash in the sketch annexed hereto as Exhibit "F5" be de-regularized and set aside and the Petitioners be allowed to use and occupy the said land for the purpose of the society and its members;

c5) By issuing appropriate Writ, Direction or Order this Hon'ble Court be please to direct Respondent No. 1, 3 and 9 to demolish the illegal structures constructed on the said plot of land including the structures constructed on the portion of the plot of land which is reserved as RG as per the sanctioned scheme and to evict the illegal/ineligible occupants who are residing in the structures located on the said plot of land;

c6) By issuing appropriate Writ, Direction or Order this Hon'ble Court be please direct Respondent No. 1 and 3 to demolish the illegal structures constructed on the set back area abutting S K Bole Marg (formerly known as Old Prabhadevi Road) admeasuring 543.22 square yard equivalent to 454.20 square meter;

c7) By issuing appropriate writ, direction or order this Hon'ble Court be pleased to direct the Respondent to demolish the toilet block and washing place being constructed on the said Plot located besides the water tank of the said Society as shown in Exhibit "I-1" annexed hereto and to reconstruct the same in some other portion of the said plot other than RG area, as per the rules and regulation of BMC;

c8) By issuing appropriate writ, direction or order this Hon'ble Court be pleased to declare that the Petitioners are entitle to charge and collect rent/ compensation and property tax from the occupants of Gulmori Wadi occupying the hut located in the area which is declared a Slum;

c9) By issuing appropriate writ, direction or order this Hon'ble Court be pleased to direct Respondent No. 9 to issue No objection certificate in favor of the Petitioners to initiate eviction proceeding against the occupants who have been illegally occupying the said Plot of land or who have illegally changed the user of the suit premises or who have changed the nature of their premises or who have illegally sublet their premises in favour of any third party etc.

c10) By issuing appropriate writ, direction or order the Respondents, their agents, servants including the tenants and occupants of Gulmori Wadi be restrained by a permanent order of injunction from pursuing or initiating any Slum Redevelopment Proposal and for that purpose any acquisition proceeding or from carrying out any development /construction activity or any addition and alteration of whatsoever nature in the said plot bearing FT No. 874 or any part thereof.

c11) Pending the hearing and final disposal of this Writ Petition this Hon'ble Court be pleased to direct Respondent No. 1 and 3 to conduct a table survey of the portion of land which is declared as Slum admeasuring 4675.07 sq. mt. through Respondent No. 9 viz. the Competent Authority (Office Of Collector, Dharavi Division) or any other competent or local authority at the cost of the Petitioners demarcate the portion of the Plot (i.e., 20% of the total plot area) which is reserved as Recreation Ground area as per the sanctioned plan under the Town Planning Scheme and report to this Hon'ble Court the number of huts which are presently in existence on the said portion of land including the Recreation Ground area, the names of the present occupants and the purpose for which the huts/ structures are being used by them and the number of structures which are constructed after the year 1995 and the number of occupants who have occupied the huts after the year 1995.

d) Ad-interim relief in terms of prayer (c).

e) Such other and further orders be passed as deemed fit in the facts and circumstances of the case.

f) Costs."

3. After some discussion on the petition, it appears that insofar as the preferential rights of the petitioner to undertake redevelopment of its land, which has been notified as a slum, is covered by a decision of the Division Bench of this Court in the case of ***Indian Cork Mills Private Limited v/s. State of Maharashtra, through its Housing Department & Ors., (2018) SCC OnLine Bom 1214*** to which one of us (G. S. Kulkarni, J.) was a member.

4. The anxiety of the parties, is that the redevelopment of the slum
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needs to be now taken forward, as the project is already delayed. This petition itself is of the year 2005.

5. On such a backdrop, we have heard learned counsel for the parties. There is consensus between the parties that there is a need that the project should move expeditiously so that the redevelopment of the slums in question can be achieved. As consented by the parties, we dispose of this petition by the following order :

(a) The petitioner has already submitted a redevelopment scheme dated 9 December 2021 with the Slum Redevelopment Authority, which is now required to be processed by the Slum Redevelopment Authority in accordance with the law.

(b) The Slum Rehabilitation Authority is directed to process the said proposal as expeditiously as possible and in any event, by 30 July 2023.

(c) In the event, any additional compliances are required by the petitioners, the Slum Rehabilitation Authority shall inform the petitioner on such compliances to be made, and which be complied by the petitioner as the law may mandate. All contentions in that regard are expressly kept open.

(d) Insofar as the eligibility of the slum dwellers is concerned, the appropriate Authority shall simultaneously undertake the exercise of determining the eligibility of the slum dwellers, and the same be completed, as expeditiously as possible, and in any event, on or before 30 June 2023.

(e) At this stage, it is stated that annexure II has already been notified. If that be the case, further appropriate steps in that regard be taken, and issues in this regard be completed before 30 June 2023.

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(f) Needless to observe that, in the event, any of the occupants of the structures are not eligible, they are free to pursue their cause before the appropriate authority, so that a decision can be taken in regard to their eligibility which would finally be necessary for their entitlement to a permanent alternate accommodation.

(f) In view of the above orders, the impugned orders dated 6 June 1988 (Exhibit 'C') and the Communication dated 19 May 1995 (Exhibit 'I') are set aside.

(g) It is ordered that all the parties shall cooperate in the expeditious finalization of the slum scheme, and the Slum Rehabilitation Authority shall also take an appropriate view of the matter and more particularly, considering that the proceedings itself are almost about 20 years old.

6. Rule is discharged.
7. Petition stands disposed of in the above terms. No costs.
8. Interim Applications or Notice of Motions in the petition, would not survive in view of the above directions, the same stand disposed of.
9. Ad-interim orders, if any passed earlier shall stand vacated.
10. At this stage, Mr. Sawant, informs that there is a representation dated 13 March 2022 made by the Intervenors in Notice of Motion No. 128 of 2016 (Hrishikesh Co-op. Hsg. Soc. Ltd. v/s. M.C.G.M. & Ors.), which is pending consideration of the Chief Executive Officer, the same be decided in accordance with law.

[R. N. LADDHA, J.]

[G. S. KULKARNI, J.]

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