

Prajakta Vartak

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

WRIT PETITION NO. 2856 OF 2018
WITH
INTERIM APPLICATION NO. 1 OF 2020
WITH
INTERIM APPLICATION (L.) NO. 5486 OF 2023

Hemant Narayan Desai & Ors. .Petitioners
Vs.
Municipal Corporation of Gr. Mumbai & Ors. .Respondents

Mr. Mandar Soman with Mr. Vachan Bodke, Hitesh Gupta, Ms. Ankita Vishwakarma i/b. V&M Legal, for the Applicant/Petitioners.
Ms. Vandana Mahadik, for the MCGM.
Mr. Abhijit Desai with Karan Gajra i/b. Desai Legal, for SRA.
Mr. T. D. Deshmukh with H.D. Chavan, for Respondent No.4-MHADA.
Mr. R. K. Mendadkar with Ms.Priyanka Shah & Ms.Jayshri Mendadkar, for Respondent No.6.
Ms. Uma Palsuledesai, AGP for Respondent No.7.
Ms. Mansi Marewar, Naiab Tahsildar, SRA Office present.

CORAM : G. S. KULKARNI &
R. N. LADDHA, JJ.
DATE : MARCH 24, 2023

P.C.:

1. We have heard Mr. Soman, learned counsel for the petitioners, Mr. Desai, learned counsel for respondent no.3-Executive Officer, SRA, Mr. Deshmukh, learned counsel for MHADA, Mr. Mendadkar, learned counsel for the society-respondent no.5, as also for the developers-respondent no.6 and Ms. Palsuledesai, learned AGP for State-respondent no.7 on the petition as also on the two interim applications.

2. At the outset, Mr. Mendadkar, learned counsel for the society as also for the developers has submitted that the rehabilitation building has been granted a Part Occupation Certificate by the Chief Executive Officer of the SRA. He submits that the commercial tenements, which would be allotted to the petitioners, are ready for occupancy, hence, they need to vacate their existing structures and take possession of the permanent alternate tenements in the building in question.

3. It is not in dispute that all the petitioners are eligible and entitled for allotment for tenements in the rehabilitation building as constructed by respondent no.6-developer.

4. This writ petition is filed praying for the following reliefs:-

“(a) That this Hon’ble Court be pleased to issue a Writ of Certiorari or such other appropriate writ order or direction thereby calling for the records of the case and after going to the records of the Case this Hon’ble Court be pleased to quash and set aside the Impugned Order dated 6th March 2018 being Exhibit “H” and 14th June 2018 being Exhibit “L” hereto.

(b) That this Hon’ble Court be pleased to direct the Respondent No.6 to demolish Wing “D” of the said building and carry out reconstruction of the same as per the sanctioned plan of 5th May 2015.

(c) That this Hon’ble Court be pleased to direct the Respondent No.6 to carry out construction of Wing “D” as per the sanctioned plan of 5th May 2015 and to provide the shops to the Petitioners with the dimensions as mentioned in the said plan.

(d) That pending the hearing and final disposal of the present

Petition this Hon'ble Court be pleased to restrain the Respondent Nos.1, 2 & 3, their agents and servants from any manner taking any steps for demolishing of the premises occupied by the Petitioner in pursuance to the notice dated 14th June 2018."

5. There are two interim applications. Interim Application No.1 of 2020 has been filed praying for the following reliefs:-

"(a) That the Occupation Certificate dated 4th September, 2018 in respect of Ground Floor Wing "D" of the SRA building known as Angoli Mala Co-operative Housing Society granted by the Slum Rehabilitation Authority the Respondent No.3 herein, in favour of the Architect of the Respondent No.6, be cancelled and/or withdrawn.

(b) That the Wing "D" of the SRA building known as Angoli Mala Co-operative Housing Society, situated on Plot bearing Plot of Land bearing C.T.S. No.6 (Part) of Village Kurla having an area of about 5002.22 sq. mtrs., be demolished.

(c) That the Wing "D" of the SRA building known as Angoli Mala Co-operative Housing Society, situated on Plot bearing Plot of Land bearing C.T.S. No.6 (Part) of Village Kurla having an area of about 5002.22 sq. mtrs., be reconstructed as per the sanctioned plan."

6. Interim Application (L.) No.5486 of 2023 has been filed praying for the following reliefs:-

"(a) That this Hon'ble Court be pleased to stay the operation of the order dated 20th February, 2023.

(b) That such suitable action may be initiated against the Tahsildar – 2 (Special Cell SRA) for having passed the said order in violation and breach of the order dated 13th March, 2020 passed by this Hon'ble Court."

7. The concern of the petitioners in the interim applications is primarily on an issue that there is some dispute between the Municipal Corporation and the Slum Rehabilitation Authority (for short, "SRA") in respect of the demarcated road line. Apprehension of the petitioners is

that the Municipal Corporation may take an action against the tenements being allotted to the petitioners in the slum rehabilitation building on the ground that they are affected by the road line and ultimately, the rights of the petitioners for permanent occupancy/rehabilitation would stand adversely affected by such assertion of the Municipal Corporation.

8. On such issue, we have heard Mr. Desai and Ms. Mahadik, learned counsel for the SRA and Municipal Corporation respectively. We have also perused the record. Mr. Desai has referred to a reply affidavit of Mr. Pradeep Pawar, Executive Engineer of the SRA, which inter alia states that the contention of the Municipal Corporation in asserting any road line affecting the plot/land of the scheme in question is not correct. Mr. Desai has drawn the Court's attention to paragraphs 12 to 14 of the said reply affidavit of Mr. Pradeep Pawar, wherein on behalf of the SRA, it has been categorically stated that the petitioners in the present case have been allotted shops in "D" wing and the approved plans clearly show that the Wing "D" nowhere interferes with the adjoining roads. It is stated that the plot was demarcated and accordingly plan was issued by the City Survey Officer, Kurla, on 03 March, 2006. A copy of the measurement plan is also placed on record. It is further stated that the documents as placed on record clearly indicate that the petitioners have been allotted the said tenements in "D" Wing and that the "D" Wing does not interfere with the

road widening. The said paragraphs in Mr. Pawar's reply affidavit are required to be noted which read thus:-

"12. I say that, if the Slum Plan at Exhibit E to the present Reply is perused along with the drawings attached to the Part Occupation Certificate at Exhibit C1 and C2 to the present Reply, it is clear that the Petitioners in the present case have been allotted shops in Wing D and the approved plans clearly show that the Wing D nowhere interferes with the adjoining roads.

13. I say that, the plot was demarcated and accordingly plan was issued by the City Survey Officer, Kurla, on 03/03/2006. Hereto marked and annexed as Exhibit G, G1 is the copy of the measurement plan by the City Survey Officer, Kurla.

14. I state that, through the perusal of the documents placed on record it is clearly seen that the Petitioners have been allotted the same exact premises in the Wing D and that the Wing D does not interfere with the road widening."

9. Thus, the SRA has taken a categorical stand disputing the assertion of the Municipal Corporation that the SRA plot to the extent of the tenements being allotted to the petitioners was at any time and in any manner was affected by the road widening and it is on such basis, the building plans were sanctioned. In any event, the Municipal Corporation had not taken any action to stop the construction. Now the construction is completed as also a Part-Occupation Certificate has been granted.

10. In these circumstances, in our opinion, dispute between two public authorities namely Municipal Corporation on one hand and the SRA on the other hand ought not to be any hurdle for the petitioners to take possession of their respective tenements as being offered by respondent

no.6, as it appears that the SRA itself was opposed to such assertion of the Municipal Corporation and had taken a categorical stand before the Municipal Corporation that the construction in question was in any manner affected by the road line demarcated by the MCGM. We, accordingly, do not delve on this issue and more particularly considering the prayers as made in the petition. We accordingly, keep open all contentions of the petitioners, as also the contentions of the two public authorities in this regard if at all to be agitated in appropriate proceedings. The contentions of the society/respondent no.5 in that regard are also expressly kept open as any such dispute would affect the members of the society.

11. The petition as also the interim applications stand disposed of in terms of the following order:-

ORDER

- i. We record the statement as made by Mr. Mendadkar that respondent no.6 is immediately willing to hand over the occupation of the permanent alternate premises to the petitioners.
- ii. We also record the statement of Mr. Soman, learned counsel for the petitioners that the petitioners are willing to take over the possession of the permanent alternate tenements within a period of four weeks from today.
- iii. Let vacating of the existing structures and taking over the tenements

happen in a cordial manner.

iv. The SRA shall accordingly take note of this development, which shall be communicated by the developer to be placed on the record of the SRA.

v. In regard to the contentions as urged on behalf of the MCGM in regard to the road line as disputed by the SRA, all such issues are expressly kept open. The parties are free to assert their respective contentions as may be permissible in law.

vii. The proceedings stand accordingly disposed of.

viii. Parties to act on an authenticated copy of this order.

ix. Needless to observe that any interim order passed earlier shall stand vacated in view of the above consensual agreement between the parties.

[R. N. LADDHA, J.]

[G. S. KULKARNI, J.]