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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION (L) NO. 30922 OF 2023

Jannatbi Jainuddin Chaudhari & Ors ...Petitioners
Versus
Municipal Commissioner, Municipal Corporation ...Respondents
of Greater Mumbai & Ors

Mr Mathew Nedumpara, *with Hemali Kurne & Sandhya Tirmore,*
for the Petitioners.

Ms Rupali Adhate, *for the Respondent-MCGM.*

Mr Arif Y Bookwala, **Senior Advocate** (through video
conference), *with Sonal, Filji Frederick, Archi Chaturvedi,*
Alisha Mohite, i/b FF & Associates, for Respondent No. 4.

Mr SB Gore, **AGP**, *for Respondent - State.*

Mr Sachin Sarwade, **Sub-Engineer**, *Building & Factory Dept "L"*
Ward.

CORAM G.S. Patel &
Kamal Khata, JJ.

DATED: 8th November 2023

PC:-

1. We have heard Mr Nedumpara, Learned Counsel for the Petitioners at some length. He represents five Petitioners. All claim to have rights in respect of undefined portions of privately held land at Village Chandivali.

2. There is a background to this matter because the Petitioners are by no means solitary claimants in this regard. The 4th Respondent is Nahar Enterprises. It is a private developer. It filed Writ Petition No 1598 of 2008 which inter alia set out how it came to acquire rights in the land from one AD Sheth (HUF) and Chandivali Development Corporation. In that Writ Petition, Nahar Enterprises sought directions against the Municipal Corporation of Greater Mumbai (“MCGM”) to remove unauthorised encroachments that already existed on that land. At Exhibit ‘C’ to the 2008 Petition there was a long list of persons said to be in such unauthorised occupation. The Petitioners are said to be among those on that list.

3. Ultimately, on 13th August 2008, a Division Bench of this Court passed an order directing the Collector, Mumbai Suburban to survey the land and prepare a list of unauthorised structures and directed the removal of those structures in accordance with law.

4. The order of 13th August 2008 came to be challenged in Writ Petition No 2517 of 2009. That Petition was filed by the Maharashtra General Kamgar Union. That Writ Petition was rejected on 22nd July 2009.

5. On 6th August 2014, the Supreme Court dismissed a Special Leave Petition filed by the MCGM against the order of 13th August 2008 in the Nahar Enterprises Writ Petition No 1598 of 2008. While doing so, the Supreme Court inter alia directed that in

removing the encroachments the MCGM would follow the procedure established by law.

6. It did not end at that. In the meantime, in 2009, one Suresh Prahalad Patil & Others filed Writ Petition No 936 of 2009. One of the prayers in that Writ Petition was to recall the 13th August 2008 order. A Division Bench of this Court disposed of that Petition inter alia by holding that the eviction of any person would only be in accordance with law and not otherwise.

7. On 3rd November 2023, we had another set of Writ Petitions before us by others also on this land. We dismissed that Petition noting some of these factors.

8. Today Mr Nedumpara canvasses propositions that are much more broadly placed. To begin with, the prayer is that an absolute estate, right, title and possession in the dwellings of these Petitioners, all held to be encroachers, vests in them absolutely by limitation, prescription, possibly adverse possession and under Chapter I-A of the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971 (“**the Slum Act**”). Then there is a prayer for a certiorari to cancel all notices and finally there is a prayer for a writ of prohibition restraining the Respondents from interfering with this absolute estate.

9. The invocation of the Slum Act is entirely incorrect. Nobody has ever said that this is a notified slum. The submission to that effect in paragraph 34 of the Petition and elsewhere is misplaced.

10. What Mr Nedumpara argues is that all these orders including the order of 13th August 2008 were obtained behind the backs of these Petitioners. Nahar Enterprises knew well of the existence of the Petitioners. It did not join them to the Writ Petition. It did not make them parties. Even the order of the Supreme Court against the 13th August 2008 order was without notice to the Petitioners. At no point have the Petitioners been given notice, heard or their rights adjudicated. They are merely sought to be summarily evicted. The Petitioners canvas their right to shelter as enunciated by the Supreme Court in *Olga Tellis & Ors v Bombay Municipal Corporation & Ors*.¹ The fundamental right to shelter, it is argued, cannot be taken away except in accordance with law.

11. Two questions emerge before us. But before we address those, we believe we must look at paragraph 19 of the Petition because it is here that the Petitioners say that they did not know of these proceedings till 18th August 2023. That is the time, they say, when they first learnt of the Supreme Court order of 6th August 2014 and the High Court order of 13th August 2008. But what this does not tell us is that Petitioner No 1 was petitioner No 11 in Writ Petition No 2517 of 2009 (Suresh Patil & Ors) that was dismissed on 22nd July 2009, and which specifically sought the recall or reversal of 13th August 2008 order in the Nahar Enterprises Petition. We do not see how Petitioner No 1 could have completely suppressed this and, on the contrary said that she had no knowledge of it until 2023. Notably the Petition is affirmed by present Petitioner No 1 who was

¹(1985) 3 SCC 545.

Petitioner No 11 in 2009 and knew well of the order of 13th August 2008.

12. But it does not end even at that. Petitioner No 2 was Defendant No 8 in Suit No 1998 of 2007. That Suit was filed by Nahar Enterprises and some of its title vendors. An order came to be passed on 5th January 2009 which granted an injunction but held that the subject lands were not slum lands. There is an appellate order of 8th September 2011 that allowed the appeal filed by the owners and dismissed a cross-appeal or a parallel appeal filed by one of the occupants. The merits of that dispute are unimportant although they may overlap some of the submissions that are made before us today. What is of relevance is that this disclaimer of all knowledge of previous events, placed here to either show innocence, gain sympathy or to try and somehow establish that there has been a long standing and wholesale perversion of the course of justice is clearly incorrect.

13. Poverty does not excuse lack of candour and outright dishonesty in making a complete disclosure of material particulars before this Court. This is therefore not what we expect from any Party before us. Mr Nedumpara did say that these Petitions were filed in haste on limited instructions and indeed went so far as to accept responsibility for himself and his junior in the statements that may have been made in the Petition. But that is hardly an answer because we find that there is a verification in the name of the 1st Petitioner. There is a thumb print and a signature on it. We can only presume that the contents of this Petition were indeed explained to

the 1st Petitioner before she verified it. For if she did not understand the contents, then the situation is far worse.

14. But we do not need to go that far. Ms Adhate tells us that for every single one of the Petitioners, the entire procedure according to law has been followed. We take for example the case of the 1st Petitioner. A notice was issued on 3rd October 2023. It references a Section 351 notice of 18th August 2023. The unauthorised construction is a ground plus one structure with a brick masonry wall etc the dimensions are known. The 1st Petitioner actually responded to this notice and filed a reply on 28th August 2023. Copies of the notices are annexed to the Petition. The speaking order is of 3rd October 2023 at pages 34 onwards and this shows that the documents that were submitted were considered by the Authority including correspondence, litigation papers, ration card, wage slip and Aadhaar Card and so on. The finding was that there was no conclusive or satisfactory proof to show the existence of the structure prior to the datum line i.e., 17th April 1964 (for residential structures) or to show that the structure was authorised. The direction was therefore to remove the structure within 15 days. There are identical documents for the other Petitioners.

15. It is not possible to see how, despite Mr Nedumpara's valiant, albeit in our view misdirected, efforts at expanding our writ jurisprudence, a declaration of the kind sought in prayer clause 'A' can or even should be granted by a Court in exercise of its writ jurisdiction under Article 226 of the Constitution of India. He is right to this extent that our writ jurisdiction is indeed wide. But he

is wrong when he says that it is a virtually unrestricted jurisdiction. It is not. Its contours and limitations are well established. It is certainly not meant to oust the jurisdiction of a Civil Court. That jurisdiction is also well defined and the form it takes is also well known. But it does seem to us that under whatever manner possible these Petitioners and others like them have attempted to resist a removal in accordance with the law as it currently stands for far too long.

16. We understand Mr Nedumpara's concern that these are issues of human displacement. There are questions of Article 21 of the Constitution that may well be raised. But at the root of all of this lies an initial illegality, for nowhere in the Petition is there even an attempt at an assertion that the structures in question are in themselves lawful or authorised or that the entry of the Petitioners on the land is in itself juridical i.e., of such a kind as the law recognises.

17. Having regard to these circumstances we do not see how we can possibly interfere or grant any relief. The Writ Petition is rejected.

18. Having said that, we have recently directed that in view of the forthcoming Diwali vacation from 12th to 15th November 2023, all municipal corporations, authorities and other entities should stay their hands and should not effect demolition during this period and until at least 20th November 2023. We make that identical order in this matter as well.

19. Although we have dismissed the Writ Petition, neither the Corporation nor Nahar Enterprises should move against these Petitioners until after 20th November 2023.

20. Mr Nedumpara requests that liberty may be reserved for the Petitioners to approach a Civil Court. It is difficult now to do this after the judgment has been rendered. Had the Petitioners wanted to do so, they were well within their rights to instruct Mr Nedumpara not to press the present Petition and to adopt the civil remedy instead. Indeed, we even asked Mr Nedumpara if he agreed that the relief sought in prayer clause 'A' would more properly lie in a Writ Court. He said he has instructions to make press the Petition. Further, this is not the Petitioners' first attempt at stalling the demolition, as we have seen. Hence the request is denied.

(Kamal Khata, J)

(G. S. Patel, J)