

Shephali

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 6504 OF 2022**

Praveen Raghunath Lashkare & Ors ...Petitioners
Versus
State of Maharashtra through Secretary Housing ...Respondents
Department & Ors

**WITH
WRIT PETITION NO. 7488 OF 2021**

Rahul Triveni Mishra & Anr ...Petitioners
Versus
State of Maharashtra through Secretary, Housing ...Respondents
Department & Ors

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Date: 2024.02.29
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Ms Archana P Gaikwad, *for the Petitioners in both matters.*
Mr Deepak More, *with Shivram Gawade, for Respondent No. 3.*
Mr Rajdeep Khadapkar, *for Respondent No. 4 in WP/6504/2022.*
Mr Mayur Khandeparkar, *with Jagdish G Aradwad (Reddy), for*
Respondent No. 5 in both matters.
Mr Milind More, *for the Respondent-AGRC in WP/7488/2021.*
Mr Shahjirao Shinde, *with Viraj Bhate, for the Respondent-AGRC in*
WP/6504/2022.
Mr Kedar Dighe, Addl. GP, *with SR Crasto, AGP, for the*
Respondent-State.

**CORAM G.S. Patel &
 Kamal Khata, JJ.
DATED: 28th February 2024**

PC:-

1. On 8th February 2024, we passed the following order:
 - “1. Not on board. Mentioned. Taken on board.
 2. The matter is mentioned by Mr Khandeparkar, learned Advocate for the 5th Respondent. He points that the matter was not listed yesterday. It was not listed because though Petition is of 2022, it is yet on a lodging number. We have repeatedly insisted that all objections are to be removed and petitions are to be finally numbered especially for petitions filed before 2024.
 3. Mr Khandeparkar points out that there is a protective order obtained by Petitioners on 30th May 2012. That order is being continued and yet Petition remains on a lodging number with objections not being removed.
 4. We will give the Petitioners time until Monday, 12th February 2024 to have the Petition numbered and to remove office objections, failing which Petition will stand summarily rejected and the interim order will stand vacated forthwith.
 5. Learned Advocate for the 5th Respondent will communicate this order to the Advocates for the Petitioners within a course of the day today.

WRIT PETITION NO. 7488 OF 2021:

6. Writ Petition No. 7488 of 2021 is mentioned at the instance of learned Advocate for the 5th Respondent represented by Mr Khandeparkar. He points out that Petition is numbered but objections are yet to be removed. This is the reason why the Petition was not listed yesterday. There is an ad-interim order of 30th May 2022. This is unacceptable. All objections are to be removed by Monday, 12th February 2024 failing which this Petition will stand

rejected and the interim order will stand vacated forthwith.

7. Advocate for 5th Respondent will serve a copy of this order to the Advocate for the Petitioners subject to remove objection and finally numbered.

8. Subject to numbering and removal of office objections, both Petitions are to be listed on 22nd February 2024.

9. If office objections are removed and the Petitions are finally numbered then previous orders will continue until that date.”

2. It seems that on 30th May 2022, nearly two years ago, the Petitioners obtained an ad interim injunction from the Vacation Court. Matters remained at that. Objections were not removed till our order of 8th February 2024. The injunction continued to run. Several hundred slum dwellers were adversely affected because the entire project was delayed and their rehab units could not be completed.

3. These matters were listed on 22nd February 2024 and then is listed today, 28th February 2024.

4. After the above order was passed Ms Gaikwad at this stage appears and requests to keep these matters tomorrow, 29th February 2024. We refuse. Enough is enough. There is absolutely no occasion for these matters to remain on a lodging number so that it could not be listed. It is pointless to say that objections have now been removed. That was done only because of our 8th February

2024 order. The prejudice being caused to the Respondents is considerable.

5. There is also a prejudice caused to who are not respondents, viz., the various other slum dwellers who have vacated their structures and awaiting rehabilitation. We are told that there are as many as 820 slum dwellers of which 475 have vacated.

6. In any case, the Petitions are completely misconceived. In the first Petition, the Petitioners claim to be owners of the property in question. That title is disputed. The remedy is a civil suit. We are told that a suit has indeed been filed. The attempt is to use our writ jurisdiction to say the slum scheme and, effectively, decree the suit by returning a finding of title in favour of the Petitioners. That cannot be done. The second Petition is directed to orders under Section 33 and 38 of the Maharashtra Slum Areas (Improvement, Clearance And Redevelopment) Act 1971. Just because the Petitioners claim to be owners does not mean their structures cannot be included in a slum scheme, or that they cannot be surveyed, or that the Petitioners' eligibility for rehabilitation cannot be decided.

7. Those of the Petitioners who are eligible will be entitled to all the benefits of rehabilitation including transit rent from the date they vacate and permanent alternate accommodation as per the lottery system. Those who are ineligible must in any case vacate their structures. This Court has repeatedly held for the last 10 years that the continuance of the structures has nothing at all to do with

matters of eligibility. The structure is relevant only for the purposes of a physical survey. After that, an Annexure II has been prepared. Despite this being repeatedly stated, advocates persist in making the same application again and again although it is entirely misconceived and has no basis in law.

8. We make it clear that we will henceforth not entertain any of such petitions unless sufficient security is provided for the prejudice being caused to other slum dwellers whose benefits are held up or delayed on account of these Petitions.

9. Finally, we note that despite the clear hardship and prejudice to other slum dwellers, these Petitioners do not offer a single naya paisa by way of security. They only want to stall the project, notwithstanding the enormous prejudice to others. We cannot accept that.

10. The Petitions are rejected. The ad interim orders stand vacated. There will be no order as to costs.

(Kamal Khata, J)

(G. S. Patel, J)