

Wadhwa

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 787 OF 2017**

Ashiyana Welfare Society ...Petitioner
Versus
Mumbai Metropolitan Regional Development
Authority & Ors ...Respondents

**WITH
INTERIM APPLICATION (L) NO. 9071 OF 2022
IN
WRIT PETITION NO. 787 OF 2017**

Shohrab Ahmed Abdul Khaliq Shaikh & Ors ...Applicants
In the matter between
Ashiyana Welfare Society ...Petitioner
Versus
Mumbai Metropolitan Regional Development ...Respondents
Authority & Ors

**WITH
INTERIM APPLICATION (L) NO. 9905 OF 2022
IN
WRIT PETITION NO. 787 OF 2017**

Ashiyana Welfare Society ...Applicant
In the matter between
Ashiyana Welfare Society ...Petitioner
Versus

Mumbai Metropolitan Regional Development
Authority & Ors

...Respondents

WITH

WRIT PETITION (L) NO. 9672 OF 2022

Sameer Ahmed Choudhary & Ors

...Petitioners

Versus

Municipal Corporation of Greater Mumbai & Ors

...Respondents

**Mr Mukesh Vashi, Senior Advocate, i/b MP Vashi & Associates, for
the Petitioner in WP/787/2017.**

**Mr Vivek Shukla (Online), with Ravikant Purohit, Bushra Sayed,
Fayzan Khan, i/b V Shukla & Associates, for the Petitioner in
WPL/9672/2022.**

**Mr GS Hegde, Senior Advocate, with CM Lokesh, i/b AR Bhole &
Co, for Respondent No 1 in WP/787/2017.**

**Mr Anil Sakhare, Senior Advocate, with Bhavik Manek & Kunal
Waghmare, for the Respondent-MCGM.**

**Ms Jyoti Chavan, Addl GP, for the Respondent-State in
WP/787/2017.**

**Ms Uma Palsuledesai, AGP, for the Respondent-State in
WPL/9672/2022.**

Mr BL Powar, SE (Main), L ward, present.

Mr S Pendharkar, SE (SWD), ES, present.

**Mr Parth Zaveri, i/b Judicare Law Associates, for the
Applicant/Intervenor in IA/9071/2022 in WP/787/2017.**

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

DATED: 21st March 2024

PC:-

1. Both Petitions can be disposed of having regard to the Affidavit filed by the Brihanmumbai Municipal Corporation (“**BMC**”) which is dated 12th March 2024. This Affidavit starts at page 121 of the record. At paragraph 7, there is a status given of the phase wise work for the Mithi River widening and allied activity project from CST Bridge to Kurla-Kalina Bridge at Kismat Nagar in ‘L’ Ward, Kurla (West). The total number of structures is given including in the aggregate and for each phase. Phase 1 is from Kalina Bridge to Bike Gully. Phase 2 is from Bike Gully to Masjid. Phase 3 is from Masjid to CST Bridge. For Phase 1, 179 structures are affected. In Phase 2, 252 structures are affected. In Phase 3, 310 structures are affected. A draft Annexure I finalization has been completed for all three phases. Annexure II finalization is complete for Phase 1 and is underway for Phases 2 and 3.

2. This table is to be read with Exhibit ‘C’ at page 139 which is a summary of the position.

3. There are two distinct dimensions that arise in these Petitions. One is the question of the rights of these persons in relation to the public project. Clearly, a Writ Court cannot be expected to decide whether such a project is or is not necessary. That is a decision of the Planning Authority. Persons whose structures are affected also cannot dictate the municipal requirements.

4. This is because there is, apart from anything else, in place a structured policy for handling such cases of site clearance and

evacuation of people from the project site. The rehab policy has itself two components. A choice is given to those who are eligible to either take available Project Affected Person (“PAP”) accommodation or, if they prefer not to take that PAP accommodation, to receive compensation calculated according to the policy.

5. No Writ Court can determine the amount of compensation under the policy. No Writ Court can rewrite that policy. These are purely executive and administrative decisions and being in the nature policy, do not lend themselves to judicial review, short of being shown that they are irrational and arbitrary. There is no such case before us.

6. We understand Mr Vashi’s concern that these demolitions tend typically to proceed in a disorganized fashion. More pertinently, his submission that a person who is affected, whatever be the entitlements under the rehab policy, certainly has a right to be informed of when the action is proposed to be taken against him or his structure.

7. He has another concern which we can address immediately that structures will be demolished without a survey and without a decision and eligibility. That is not possible in law. No structure can be removed without a survey because then no question of application of a rehab policy would even arise. That is not even Mr Sakhare’s suggestion on behalf of the BMC.

8. In the course of a survey, every structure that is affected receives a number or some form of accurate identification. That has of course been done. But the continuance of the structure has nothing to do with a decision on eligibility. Questions of eligibility are not decided on the basis of the existence of a physical structure but on documents and an examination of scrutiny as to whether these conform to a stated and unchallenged policy such as a cut-off datum line, the nature of activity, and so forth.

9. Having regard to these circumstances, all that is necessary is to require the BMC to give sufficient advance notice on site of the schedule for vacating and to do this well in advance so that people know when they are to vacate the structures and can make the necessary arrangements. There is no doubt that the survey must precede site clearance. There is also no doubt that those who are found eligible must be made the necessary offer of PAP accommodation or cash compensation.

10. We make it clear that the law is not that until eligibility is finally decided a structure cannot be removed. The eligibility of a person to receive rehab compensation has nothing at all to do with the continuance of the physical structure on site. Once the structure has been surveyed and its use identified (residential or non-residential), then the next question is to determine whether the use of that structure or its occupant is or is not eligible. The second aspect is decided on documents, not on a physical survey of the structures in question. We reject the submission that 'until eligibility for rehab is decided, there can be no eviction', because this posits

that if a person is found *ineligible*, she or he can continue to remain on site; or, alternatively, until the person grinds through appeals and writ petitions and somehow gets eligibility favourably decided, there can be no eviction. The argument assumes that every person is or must be ultimately held to be eligible. But it is also self-contradictory. A person may be found eligible or ineligible and, therefore, eligibility can have nothing at all to do with the continuance of a structure on site.

11. Equally, there is no third option of an eligible person saying that she or he is rejecting both the PAP accommodation and the cash compensation and will therefore continue on site. That is not even the suggestion of the Petitioners before us today.

12. As a practical measure at site, we would expect the BMC to be able to put up sufficient notices at various locations and, for structures that are affected in each phase, to serve or paste a notice of the structure itself specifying the date of proposed demolition. Of course, we leave it to the BMC to provide for reasonable time for this so that persons affected can make the necessary arrangements.

13. Under no circumstances will the BMC travel beyond the parameters of what is permissible in law, i.e., the requirement of a preceding survey, notices, the offer of rehabilitation and a structured phase wise program even if a larger area is required for further expansions, for further works whether allied to this project or even otherwise.

14. We see little purpose in keeping these Petitions pending although Mr Vashi and Mr Shukla would have us simply monitor it on an ongoing basis. But this presupposes a great deal of mistrust on our part of the BMC and various authorities. We have no such mistrust. The Petitioners have their remedies and are always entitled to approach a Court if required. We believe this is sufficient protection.

15. The Petitions are disposed of in these terms. In the facts and circumstances of the case, there will be no orders as to costs.

16. All Interim Applications stand disposed of.

(Kamal Khata, J)

(G. S. Patel, J)