

Shephali

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 3869 OF 2021

WITH

INTERIM APPLICATION NO. 844 OF 2024

IN

WRIT PETITION NO. 3869 OF 2021

WITH

INTERIM APPLICATION NO. 435 OF 2024

IN

WRIT PETITION NO. 3869 OF 2021

WITH

INTERIM APPLICATION (L) NO. 9455 OF 2022

IN

WRIT PETITION NO. 3869 OF 2021

Prakash Gangaram Jadhav & Ors

...Petitioners

Versus

**Assistant Engineer, Maintenance Department, ...Respondents
MCGM Office & Ors**

WITH

WRIT PETITION NO. 549 OF 2023

WITH

INTERIM APPLICATION NO. 410 OF 2023

IN

WRIT PETITION NO. 549 OF 2023

Jitendra Damodar Jadhav & Ors ...Petitioners
Versus
Assistant Engineer, Assistant Municipal ...Respondents
Commissioners Office & Ors

WITH

WRIT PETITION NO. 3284 OF 2021

WITH

INTERIM APPLICATION (L) NO. 9527 OF 2022

IN

WRIT PETITION NO. 3284 OF 2021

Jitendra Dharma Pandav & Ors ...Petitioners
Versus
Assistant Engineer, Assistant Municipal ...Respondents
Commissioners Office & Ors

WITH

WRIT PETITION (L) NO. 30586 OF 2023

Sylvester Anthony Fernandes ...Petitioner
Versus
The State of Maharashtra ...Respondent

WITH

WRIT PETITION NO. 555 OF 2023

WITH

INTERIM APPLICATION NO. 1208 OF 2022

IN

WRIT PETITION NO. 555 OF 2023

Yussuf Gafar Sayyad & Ors ...Petitioners

Versus

Assistant Engineer & Ors ...Respondents

WITH

WRIT PETITION NO. 379 OF 2023

Shakuntala Gopal Ghag ...Petitioner

Versus

Assistant Engineer N-Ward & Ors ...Respondents

WITH

WRIT PETITION NO. 548 OF 2023

Chandra Baliram Bhadrike ...Petitioner

Versus

Assistant Engineer N-Ward & Ors ...Respondents

WITH

WRIT PETITION NO. 547 OF 2023

WITH

INTERIM APPLICATION (L) NO. 30546 OF 2023

IN

WRIT PETITION NO. 547 OF 2023

WITH

INTERIM APPLICATION (L) NO. 9529 OF 2022

IN

WRIT PETITION NO. 547 OF 2023

(Not on Board)

Sadanand Arjun Mohite & Ors

...Petitioners

Versus

Assistant Engineer & Ors

...Respondents

WITH

INTERIM APPLICATION (L) NO. 6868 OF 2024

(Not on Board)

Ms Gayatri Singh, Senior Advocate, i/b Kranti LC & Kaustubh Gidh, for the Petitioners in all matters in WP/547/2023, WP/549/2023 & WP/3284/2021.

Ms Aneesa Cheema, i/b Milind Nar, for the Applicant in IAL/30546/2023.

Mr GS Godbole, Senior Advocate, with Anoop Patil, Sunil Sonawane, Pallavi Thakar & Kunal Waghmare, for the Respondents-BMC.

Mr Mayur Khandeparkar, with Arun Panikar, i/b Vaibhav Parab, for the Intervenor-Sejal Siddha Realtors LLP in IA(L)/6868/2024.

Mr Jagdish G Aradwad (Reddy), for Respondent-SRA in all matters.

Mr Abhay L Patki, Addl. GP, for the Respondent-State in WP/549/2023 & WP/555/2023.

Mr Milind More, Addl. GP, for the Respondent-State in WP/548/2023.

Ms Lavina Kriplani, AGP, for the Respondent-State in WP/3869/2021.

Mr Himanshu Takke, AGP, for the Respondent-State in WP/547/2023.

Mr Manish Upadhye, AGP, for the Respondent-State in WP/3284/2021.

Ms Rita Joshi, AGP, for the Respondent-State in WP(L)/30586/2023.

Mr Mohit Jadhav, AGP, Addl GP, for the Respondent-State in WP/379/2023.

Mr Gautam Bhatia, i/b Arati Ranade, in IA/844/2024 in WP/3869/2021.

Mr Shantanu M Shetty, in IA/435/2024 in WP/3869/2021.

Mr SK Dhekale, *Court Receiver*, present.

Mr Prasad Patwardhan, *Assistant Engineer, Water Work (Planning), BMC*, present.

Mr VR Desai, *Assistant Engineer (Survey)*, present.

Mr SP Kadam, *Sub-Engineer (Roads)*, present.

**CORAM G.S. Patel &
 Kamal Khata, JJ.**
DATED: 23rd April 2024

PC:-

1. Mr Godbole has evidently had detailed discussions with senior officers of the Brihanmumbai Municipal Corporation (“**BMC**”). There is a note with remarks from the Hydraulic Engineer Department. For record and completeness, we take this on record and mark it “**X**” for identification with today’s date.
2. In principle, the BMC is agreeable to the appointment of the Court Receiver. Ms Singh has already indicated her agreeability to a Receiver of the hutments in question. The Receiver of the hutments will be notional. No ones’ possession is to be disturbed.
3. We also note that in the document tendered by Mr Godbole there is a synopsis of the remarks of the Executive Engineer of the Slum Rehabilitation Authority (“**SRA**”). The BMC is not to be deemed to have accepted the views of the Executive Engineer, SRA at this stage.
4. As regards the Receivership of the BMC land, the boundaries of the land will have to be indicated by the BMC officers to the

Court Receiver. He will put up signboards and there should be sufficient markers (but without permission of the Court, not a wall or a fence) to indicate precisely how those boundaries run. These boundaries should be mapped by the BMC and Receiver jointly so that there is no ambiguity in future.

5. Mr Godbole states that on the technical and financial aspects of the proposal by the developer represented by Mr Khandeparkar, more time will be necessary as technical inputs are required from various consultants. We cannot deny BMC this time. It has to plan ahead in any water supply project of this kind.

6. As far as the Petitioners are concerned, therefore, the present status quo order will continue until a further order of the Court. Both sides will be at liberty to apply.

7. In the event that the matter is to be argued on merits, Mr Godbole may have to address a question as to why the slum project presented by Mr Khandeparkar's client is not a viable third alternative.

8. Mr Bhatia for the Intervenor has pointed out that in any such assessment, the Writ Court will not only have to balance equities but will do so bearing in mind fundamental constitutional principles and rights. In another manner of speaking, rights cannot be eroded by setting the floor too low in the evaluation of those fundamental rights.

9. For example, in this very case the BMC has offered the Petitioners an alternative location at Anik. Ms Singh has maintained that that location is unsuitable for human habitation. The response from Mr Godbole is that though he does not accept that the Anik location is unsuitable, and will address that case on merits later if needed, in this case there happens to be a cash compensation alternative. This is not entirely ad hoc, whimsical or arbitrary. It has a certain logic to it. He clarifies that this cash compensation alternative is not necessarily available in every site clearance and rehab programme.

10. We are *prima facie* unable to see how a Writ Court could dictate the frame of a policy or the amounts involved. What will need to be tested is whether the alternative offered by the BMC is entirely arbitrary and unreasonable or not. In this, there will now enter the discussion of the third proposal put forth by Mr Khandeparkar.

11. We have yet to make an assessment of how far exactly Ms Singh's clients are able to press their case. She has from the beginning agreed that she has not canvassed a right to continue in hutments *in situ*. This necessarily means that the Petitioners accept that there will be some relocation and displacement. It is the terms of that relocation and displacement that fall for consideration of a Court.

12. Mr Godbole also maintains that what is being offered at the relocation site is not of the quality that Ms Singh says. He points out

that it is perfectly habitable and that the BMC is in a position to show this from various factors including *inter alia* that the whole region is built up apart from other technical material as to the necessary ecological and environmental factors.

13. Mr Bhatia's three *Amicus* briefs have put together a considerable amount of material from various jurisdictions and sources. We have found this instructive. Having regard to the stage at which these matters are today, we do not think it would be either prudent or proper to pronounce on those matters. We only draw attention to the fact that principles have been set out and the applicability of those principles may need to be considered if a viable solution is not found.

14. Even on the question of what should be the parameters of the general framework, Mr Godbole submits that he would like to be heard because he does not accept as a matter of law that this can be open to, for instance, negotiations. He maintains that if these persons are since their inception in unauthorised occupation of municipal or public lands, no question of setting such a framework arises. This formulation is contested by both Mr Bhatia and Ms Singh. As Mr Bhatia points out, however imperative or necessary a municipal project may be, it cannot be more urgent, more imperative or more necessary than a fundamental right.

15. This does mean, however, that some suitable assessment will have to be done after hearing both sides.

16. For the present, we are concerned with protecting the site in question. We defined that site with some specificity in our order of 5th April 2024. A copy of this order is to be given to the Court Receiver.

17. We expect the Receiver to coordinate with the Advocates for the Petitioners to identify the houses and house numbers and to maintain a list. The Court Receiver must also maintain a list of the names of the people who are in the hutments because eligibility is not dependent on the house number but of the person in that house.

18. No person is to be dispossessed. If there are any cases pending in regard to a decision on eligibility, the hutment in question will still go under Receivership but the fact that the hutment is in Receivership will not mean that the person is bound to be held eligible.

19. Mr Godbole's anxiety is expressed in the note in the portion marked "X" for identification with today's date. We accept those three conditions which are reproduced below:

“(1) HE dept would not be prevented from entering the premises for carrying out Operation & Maintenance of existing water trunk mains.

(2) HE department would not be prevented from carrying out any cross connection & water main laying works or valve Operations on the land under reference for supply of water to nearby areas.

(3) Any other Departments of BMC shall be allowed to

carry out required duties like desilting of nalla, SWD drain & any other work on the land under reference.”

20. In addition, this order is not to serve as a precedent for or against the BMC. We have made this order with the consent of the parties only to protect the land, preserve the status quo as it currently stands and to ensure the interests of the Petitioners are also not compromised in the meantime.

21. Obviously, any new hutments after the date of this order within the boundaries of the area under Receivership will not receive protection of any kind. They will be treated as interference with orders of this Court. There will be no question of eligibility. They will be liable to summary removal in accordance with law. If there are any such cases, the BMC will coordinate with the Court Receiver. The entire site is in custodia legis.

22. We also clarify that this order has no bearing at all on the question of BMC ownership of the land which is undisputed. No equities will be claimed against the BMC in regard to this land or any structure that is under Receivership or the proposal propounded by the developer.

23. A copy of this order and a copy of the 5th April 2024 order are to be given to the Court Receiver.

24. It goes without saying that if any Petitioner wishes to accept alternative accommodation or the cash compensation, she or he is free to do so.

25. List these matters for directions on 14th June 2024.

26. Previous order to continue until further orders.

(Kamal Khata, J)

(G. S. Patel, J)