

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 6836 OF 2025

Jimmy Talakchand Savla & Anr. ... Petitioners
Versus
Apex Grievance Redressal Committee
(AGRC) & Ors. ... Respondents

Mr. Chirag Balsara a/w Mr. Amit Kanani i/by Kanani and Co. for the Petitioners.

Dr. Dhruti Kapadia, AGP for Respondent No.1.

Dr. Dhruti Kapadia a/w Ms. Kavita Dhanuka for Respondent Nos.2 and 3.

Mr. Mayur Khandeparkar a/w Mr. Vikramjeet Garewal, Ms. Santosh Pathak and Mr. Kailash Pathak for Respondent No.4.

Mr. Amogh Singh i/by i/by Y. R. Mishra for Respondent No.5.

CORAM: MANISH PITALE, J.

DATE : 16th JUNE 2025

P.C. :

1. The petitioners herein have challenged order dated 23rd May 2025 passed by the Apex Grievance Redressal Committee (AGRC) i.e. respondent No.1, whereby an appeal filed by the petitioners was dismissed, thereby confirming an order dated 4th March 2025 passed by respondent No.2-Deputy Collector, under Sections 33 and 38 of the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971 (hereinafter referred to as 'the Slum Areas Act').

2. The petitioners claim right as sub-lessees in structures existing on the subject property, on the basis of a registered sub-

lease deed dated 21st January 2008, which was rectified on 20th June 2013. The petitioners claim that they are running their garment business from the said structures located on CTS No. 1138, Kandivali (East), Mumbai. The petitioners claim that although in the adjoining areas of the said structures there appeared to be some activity undertaken by the respondent-Authorities under the provisions of the Slum Areas Act, upon specific queries put to the concerned Authorities, they were assured that the land on which the said structures existed, were not covered under the declaration of slum. According to the petitioners, when it appeared that the activities of respondent-Authorities, under the garb of executing a scheme at the behest of respondent No.5-Society, were likely to adversely impact the interest and possession of the petitioners in the said structures, they were constrained to file Writ Petition No. 1409 of 2021, initially praying for deletion of their structures from a public notice dated 20th November 2021 issued by the respondent-Authorities, manifesting their intention to implement slum rehabilitation scheme at the best of respondent No.5. Subsequently, the petitioners were constrained to amend the writ petition to challenge notification dated 20th January 2016 issued by the respondent-Authorities under Section 3C of the Slum Areas Act, declaring the adjoining properties, as also purportedly the property on which the said structures exist as slum area and also raised a challenge to a notice dated 15th June 2017, whereby the State Authority intended to acquire the properties in question. The

said writ petition is still pending before the Division Bench of this Court.

3. According to the petitioners, they were never put to notice before the respondent No.3-Slum Rehabilitation Authority (SRA) issued the notification dated 20th January 2016 under Section 3C of the Slum Areas Act, declaring the said properties as a slum and therefore, when they became aware of such a notification and papers pertaining to the same became available to them recently, they were constrained to file an appeal before the respondent No.1-AGRC, which is also pending. According to the petitioners, their structures cannot be covered under the SRA scheme being implemented through respondent No.4 i.e. the Developer and while they are not opposed to the redevelopment and implementation of the SRA scheme, their structures cannot be disturbed in any manner.

4. It is in this backdrop that the respondent No.2-Deputy Collector passed the aforesaid order dated 4th March 2025 under Sections 33 and 38 of the Slum Areas Act, directing the petitioners to vacate their structures within 30 days and to handover possession to the respondent No.4-Developer. As noted hereinabove, aggrieved by the same, the petitioners approached the respondent No.1-AGRC and by the impugned order dated 23rd May 2025, the AGRC dismissed the appeal.

5. Since the respondents were represented by Counsel and extreme urgency was projected on behalf of the petitioners, the

petition was taken up for consideration and disposal.

6. Mr. Chirag Balsara, the learned counsel appearing for the petitioners, submitted that the impugned order of the AGRC is riddled with contradictions and it proceeds on a factually erroneous basis. It is submitted that while on the one hand the order records the fact that the appeal filed by the petitioners to challenge the notification issued under Section 3C of the Slum Areas Act, is still pending, on the other hand, the order proceeds on the basis that the notification has attained finality. Even with regard to the notice issued for acquisition of the land, despite challenge raised thereto in the form of the aforementioned writ petition pending before the Division Bench of this Court, the AGRC proceeded on the basis that the said notice had also attained finality. It was submitted that on this short ground, the impugned order deserves to be set aside.

7. It was further submitted that at no stage, either before issuance of notification under Section 3C of the Slum Areas Act nor before undertaking proceeding for acquisition of the property under Section 14 of the Slum Areas Act, were the petitioners put to notice. When they became aware about such notifications and actions undertaken by the respondent-Authorities, behind their back, they initiated appropriate proceedings. Even during pendency of the said proceedings, the respondent-Authorities illegally undertook steps under Sections 33 and 38 of the Slum Areas Act to evict the petitioners and this clearly demonstrated the

high-handed approach of the respondent-Authorities. It was submitted that so long as the challenge raised to both, the declaration of slum and acquisition of the property, was pending and insofar as the petitioners are concerned, the same is yet to attain finality, the respondent No.2-Deputy Collector could not have initiated eviction proceeding under Sections 33 and 38 of the Slum Areas Act. It was submitted that even though it may appear that the appeal filed before the AGRC for challenging the notification dated 20th January 2016 regarding declaration of slum, was belated, the prayer for condonation of delay, if any, along with challenge on merits is still pending before the AGRC and therefore, the proceedings for eviction could not have been undertaken against the petitioners. It was submitted that valuable rights of the petitioners were being violated, which the AGRC completely failed to appreciate, while passing the impugned order. On this basis, it was submitted that the impugned order deserved to be quashed and set aside.

8. On the other hand, Dr. Dhruti Kapadia, learned AGP appearing for respondent Nos.1 to 3, Mr. Mayur Khandeparkar, learned counsel appearing for respondent No.4-Developer and Mr. Amogh Singh, learned counsel appearing for respondent No.5-Society, vehemently opposed the contentions raised on behalf of the petitioners. It was submitted that the scope of jurisdiction, while considering a challenge to an order passed under Sections 33 and 38 of the Slum Areas Act, is limited and the

petitioners cannot be allowed to raise a frontal challenge to the notification under Section 3C of the Slum Areas Act, declaring the slum and the act of acquisition of the property validly undertaken by the respondent-Authorities. It was submitted that, so long as the said declaration of slum is in vogue and since the petitioners have lost all their rights as sub-lessees upon such declaration and acquisition of the properties, there is no scope for either respondent No.2-Deputy Collector or respondent No.1-AGRC to go into any of the questions sought to be raised by the petitioners.

9. The learned counsel appearing for respondent Nos.4 and 5 highlighted the fact that 165 out of 171 slum dwellers had given their consent for redevelopment and therefore, there was no question of the same being stalled at the behest of the petitioners. The respondent No.4 in its affidavit in reply tendered to the Court placed much emphasis on the fact that, in terms of the directions issued by the SRA, the said Developer was incurring substantial expenses towards payment of rent to 165 members of the respondent No.5-Society. The amount of rent approximately comes to Rs.30 lakhs per month and till date, the respondent No.4-Developer has paid an amount of about Rs.3.30 crores towards such rent. It was also highlighted that in terms of the directions issued by respondent No.2-Deputy Collector, during the course of the proceedings under Sections 33 and 38 of the Slum Areas Act, the respondent No.4 had deposited rent of 6 months towards the structures of the petitioners.

10. Reliance was placed on an order dated 13th February 2023 passed by this Court in the case of ***Chandiwala Enterprises Pvt. Ltd. v/s. Ghanshyam Shivpati Sharma & Anr.***, to assert that upon declaration of slum, the petitioners as owners of structures (Imla Malik) came to an end due to operation of clause 1.12 of Regulation 33(10) of the Regulations framed under the Development Control and Promotion Regulations for Greater Mumbai, 2034 (hereinafter referred to as 'DCPR 2034'). On this basis, it was submitted that the petitioners had no right, in any manner, to obstruct the process of their eviction from the structures. On the aspect of challenge to the declaration under Section 3C of the Slum Areas Act, it was submitted that the same was delayed by 9 years, although such challenge is supposed to be raised within 30 days of the declaration. Merely because the petitioners feigned ignorance and chose to file the appeal after 9 years, which is still pending without any interim direction, it cannot become the basis for resisting action initiated under Sections 33 and 38 of the Slum Areas Act, for their eviction and in that process, the petitioners cannot be permitted to raise such a challenge in the instant proceedings. Similarly, a belated challenge was raised to the acquisition of the property undertaken in the year 2017 and that too by way of an amendment of the writ petition. Even in that writ petition, when interim relief was sought before the Division Bench, no such express relief was granted and only a statement was made on behalf of the respondent No.4 to the effect that possession would be taken in accordance with law.

The said proceeding under Sections 33 and 38 of the Slum Areas Act, is such an action in accordance with law and therefore, the petitioners deserve no indulgence.

11. It was submitted that even if the petitioners were to rely upon their highly belated challenge raised to declaration under Section 3C of the Slum Areas Act, in view of the undisputed position that the structures of the petitioners were covered under a census of the slum, as per the settled law and notification dated 23rd May 2022 issued by the SRA, the structures of the petitioners were covered under the slum, even if no declaration in that regard was issued. On this basis, it was submitted that the present petition deserves to be dismissed. In that light, it was submitted that even if the petitioners claim that the impugned order of AGRC records contradictory findings, the same alone cannot be a ground to show any indulgence to the petitioners.

12. In support of their submissions, the respondents relied upon judgment of this Court in the case of *Andrade Motors v/s. Additional Collector (Eng./Rem) and Competent Authority and Ors., 2009 SCC OnLine Bom 358*, judgment and order dated 27th March 2025 passed in Writ Petition No. 8931 of 2024 (*M/s. Sushanku Builders Ltd. v/s. Apex Grievance Redressal Committee, Bandra, Mumbai & Ors.*) and judgment and order dated 8th May 2025 passed in Writ Petition (Lodging) No. 30829 of 2024 (*Ashok Kumar Gupta & Ors. v/s. State of Maharashtra & Ors.*), as also judgment of the Supreme Court in the case of *Mansoor Ali Farida*

Irshad Ali and Ors. v/s. Tahsildar-I, Special Cell & Ors., 2025 SCC OnLine SC 445.

13. This Court has considered the rival submissions in the light of the material placed on record. Since the present petition arises out of a proceeding initiated by the respondent No.2-Deputy Collector, under Sections 33 and 38 of the Slum Areas Act, it would be necessary to appreciate the scope of the power and jurisdiction to be exercised under the said provision. It provides for power to the Competent Authority i.e. respondent No.2-Deputy Collector herein to evict occupants, after giving an opportunity of hearing. There is no dispute about the fact that the petitioners were given hearing by the respondent No.2-Deputy Collector. The limited scope available with the Competent Authority, while undertaking such proceedings, was clarified by this Court in the case of ***Andrade Motors v/s. Additional Collector (Eng./Rem) and Competent Authority and Ors.*** (supra). It was held as follows :

“12. The issue of the Petitioner's entitlement pursuance to Circular No. 70 dated 30th December, 2004 and issue of CRZ, affecting the scheme are kept open for appropriate challenge by appropriate proceedings. In my view, the Authority under Section 33 of the Act, has very limited power and jurisdiction. It only requires to consider if the person though directed not shifting or vacating the plot in question and as it affecting the progress of the scheme/project, after hearing such person, to pass order of eviction. This Authority has no jurisdiction and authority to test the validity of SRA Scheme and Letter of Intent already issued on such issues.

13. The Schemes under the Act are with intention to

redevelopment of Slums and Rehabilitation of the slum dwellers. The “Competent Authority” and the “Slum Rehabilitation Authority-SRA” or “High Power Committee” are distinct Authorities with “Special power and jurisdiction”.

14. The Authority under Section 33 of the Act, is not empowered to interfere with the final sanctioned scheme. Therefore, no question to deal with the various challenges raised about the CRZ and the entitlement of extra area/structures, merely because the Petitioner has raised such issues and resisted by the other side, that itself noway enlarge the scope and purpose of Section 33 of the Act and related Rules. Even otherwise, the Petitioner's remedy is elsewhere.

15. In view of this, and in the public interest for development of proposed public utility, I see there is no reason to halt the project at the instance of one Petitioner, in view of above. I am declined to interfere with the action of eviction as initiated for removal of the structure of the Petitioner. The impugned order/action of eviction is well within the frame work of law and the record. There is no perversity.”

14. It is on the touchstone of the said position of law that the correctness or otherwise of the impugned orders will have to be examined. It is evident that in such proceeding, the Competent Authority and consequently the AGRC as well as this Court, cannot go into the question pertaining to declaration of the slum and its logical consequences. The validity of the SRA scheme cannot be gone into in such proceedings.

15. The tenor of submissions made on behalf of the petitioners shows that the principal attack is based on the pendency of appeal before the AGRC, challenging declaration of slum under Section 3C of the Slum Areas Act, as also pendency of Writ Petition No. 1409 of 2021, challenging, *inter alia*, the acquisition of the

property. It is a matter of record that neither in the writ petition pending since the year 2021 nor in the appeal challenging the declaration, with prayer for condonation of delay of 9 years before the AGRC, any interim orders have been passed in favour of the petitioners. In fact, an attempt made by the petitioners to seek interim reliefs in the writ petition before the Division Bench, led to an order dated 25th October 2024, wherein only a statement was recorded on behalf of the respondent-Developer that it will follow all relevant provisions of the Slum Areas Act for seeking possession of the premises/structures from the petitioners. The proceeding under Sections 33 and 38 of the Slum Areas Act before the respondent No.2-Deputy Collector, is such a proceeding and therefore, the said order of the Division bench of this Court has been complied with.

16. Although, an attempt was made on behalf of the petitioners to raise challenge on merits with regard to the declaration of slum and the acquisition of the properties, considering the narrow compass within which the present proceedings under Sections 33 and 38 of the Slum Areas Act, are required to be considered, it is clear that such contentions cannot be considered on merits in these proceedings, which are necessarily limited in their scope, as per the law laid down by this Court in the aforementioned judgment.

17. Even otherwise, the Supreme Court in the case of ***Mansoor Ali Farida Irshad Ali and Ors. v/s. Tahsildar-I, Special Cell & Ors.***

(supra), while considering an appeal arising out of such proceedings under Sections 33 and 38 of the Slum Areas Act, dealt with a situation where the appellants' claimed that no notification was issued declaring slum area under the said Act. The said contention was repudiated by holding that since the project concerned a "censused" slum, it was clearly included in the definition of slum under Regulation 33(10) of the DCPR 2034. On this basis, taking note of the fact that in the said case the area had become a censused slum in the year 1981 itself, the Supreme Court held against the appellants. The relevant portion of the said judgment of the Supreme Court reads as follows :

"16. The appellants have also raised a point that no notification has been issued under the Slum Act declaring it to be a slum area. This contention is totally misconceived because the project in the present case relates to a 'censused slum' and it is included in the definition of slums under Regulation 33(10) of DCR for the purpose of redevelopment. As per Regulation 33(10)(II)(i) of DCR, slums for the purpose of redevelopment are defined as follows:

"...slums shall mean those censused, or declared and notified, in the past or hereafter under the Slum Act. Slums shall also mean areas/pavement stretches hereafter notified as Slum Rehabilitation Areas."

'Censused Slums' are defined under Regulation 33(10) (II)(viii) of DCR as 'those slums located on lands belonging to Government, any undertaking of Government, or Brihan Mumbai Municipal Corporation and incorporated in the records of the land owning authority as having been censused in 1976, 1980 or 1985 or prior to 1st January, 1995'.

In the present case, MHADA has submitted before us as well as before the High Court and AGRC that it is their property but it is not as MHADA layout and it has granted a

No Objection Certificate to SRA for the redevelopment of the land under Regulation 33(10) of DCR because the site is a slum which had been declared as 'censused slum' way back in the year 1981. Reading of the above regulations also makes it clear that if a slum is a 'censused slum' then it is already included in the definition of slums for the purpose of redevelopment under Regulation 33(10) of DCR and no separate notification is required under the Slum Act. In other words, a censused slum is also a slum as per Regulation 33(10) DCR and a separate notification under section 4 of the Slum Act is not required. MHADA has also never declared this slum as a part of its layout. It may be a MHADA property technically but over the years it has grown as a slum and therefore, for purely practical reasons, it needed to be developed by SRA under Regulation 33(10) of DCR and not as a MHADA layout under Regulation 33(5) of DCR. In fact, as discussed earlier, a No Objection Certificate to SRA for the development of the said property has already been granted by the MHADA.

At the risk of repetition, we would like to note that clearly there is no force in the appellants' arguments that it is a MHADA layout and had to be redeveloped under Regulation 33(5) of DCR rather than Regulation 33(10) of DCR. In our view, this redevelopment, which is being carried out under the Slum Act and Regulation 33(10) of DCR, does not suffer from any legal infirmity."

18. This aspect was also taken into consideration in a recent judgment of this Court in the case of **Ashok Kumar Gupta & Ors. v/s. State of Maharashtra & Ors.** (supra), wherein it was noted that the land was found to be a censused land/slum and therefore, the petitioners were not entitled to dispute the same and that a belated challenge was sought to be raised to the SRA scheme with the sole intention of resisting vacating the premises and to obstruct the scheme.

19. The material on record shows that a census certificate was

indeed issued in the present case in the year 1980, in respect of the subject structures. In fact, the petitioners themselves annexed copy of such certificate with the said writ petition pending before the Division Bench of this Court. The position of law clarified in the above quoted judgment of the Supreme Court, demonstrates the fallacy in the contentions raised on behalf of the petitioners. It is relevant to note that a challenge to declaration of slum under Section 3C of the Slum Areas Act is supposed to be raised within 30 days and therefore, in this case also the whole strategy appears to be to somehow avoid eviction and delay the process of proper execution of the SRA scheme.

20. In this context, notification dated 23rd May 2022 issued by the SRA becomes relevant, which states that areas that have been censused slums shall be deemed to be slum rehabilitation areas under Section 3C of the Slum Areas Act, to ensure speedy implementation of SRA schemes and for saving time of the Authorities.

21. As regards the alleged contradiction in the impugned order passed by the AGRC, reliance is correctly placed on behalf of the respondents on the judgment of this Court in the case of ***M/s. Sushanku Builders Ltd. v/s. Apex Grievance Redressal Committee, Bandra, Mumbai & Ors.*** (supra), wherein this Court referred to precedents laying down the law that while exercising writ jurisdiction, this Court does not exercise the powers of an Appellate Tribunal and that such extraordinary jurisdiction can be

refused to be exercised to upset the impugned order, with a view to doing substantial justice between the parties. In this context, it cannot be ignored that 165 out of 171 slum dwellers have given their consent for implementation of the SRA scheme, which needs to be implemented expeditiously, the respondent No.4-Developer has parted with substantial amounts of money towards rent paid to such slum dwellers and it continues to do so on monthly basis. The respondent No.4-Developer even deposited advance rent of 6 months with the respondent No.2-Deputy Collector, when the proceedings under Sections 33 and 38 of the Slum Areas Act were initiated.

22. In view of the above and the narrow scope of the present proceedings concerning Sections 33 and 38 of the Slum Areas Act, this Court is of the opinion that the petitioners have failed to make out a case in their favour for setting aside the impugned order passed by the AGRC. The specific contentions raised with regard to the alleged contradictions in the observations and findings in the impugned order, cannot take the cause of the petitioners any further. This is because the petitioners have lost any semblance of right in the structures, particularly when the subject area has been declared a slum or at least, a deemed slum, in the light of the said position of law pertaining to censused slums and the notification issued by the SRA in that context dated 23rd May 2022. The position of law stated by this Court in the case of *Chandiwala Enterprises Pvt. Ltd. v/s. Ghanshyam Shivpati Sharma*

& Anr. (supra) also operates against the petitioners, as they cannot claim any right in the said structures.

23. It is also found that even the acquisition of the concerned property takes away the wind out of the arguments raised on behalf of the petitioners and reliance placed on the pending writ petition and the appeal before the AGRC, cannot inure to the benefit of the petitioners, as they appear to be bent upon avoiding handing over possession of the structures. This is seriously hampering the SRA scheme itself and causing grave inconvenience to 165 out of 171 slum dwellers, who have consented to such a scheme. Viewed from any angle, the petitioners cannot be said to have made out a case for persuading this Court to exercise jurisdiction under Article 227 of the Constitution of India, to interfere with the impugned order.

24. In view of the above, the petition is dismissed.

25. Pending applications, if any, also stand disposed of.

MANISH PITALE, J.