

(2009) 03 BOM CK 0058

In the Bombay High Court

Case No : Writ Petition No. 1708 of 2009

Andrade Motors

APPELLANT

Vs

The Additional Collector (Eng./Rem) and Competent Authority
and Others

RESPONDENT

Date of Decision : 06-03-2009

Acts Referred:

Development Control Regulations for Greater Bombay, 1991 — Rule 1.12, 1.16, 33(10)
Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971 —
Section 33, 35

Citation : (2009) 3 BomCR 120 : (2009) 111 BOMLR 1139

Hon'ble Judges : Anoop V. Mohta, J

Bench : Single Bench

Advocate : N.H. Seervai and Chirag Balsara and Anil Jagrayal, instructed by Legal Associates, for the Appellant; Rajeev Matkar, for Respondent No. 6, N.V. Walawalkar, for Respondent Nos. 2 and 3, D.D. Madon and S.A. Sawant, for Respondent No. 7, Neeta Masurkar and N.R. Prajapati for Respondent No. 18, Ravi Kadam, General and G.D. Utangale, instructed by Utangale and Co. for Respondent Nos. 4 and 5 and Shramila Deshmukh, for the Respondent

Final Decision : Dismissed

Judgement

Anoop V. Mohta, J.

By consent, heard finally.

1. The Petitioner has basically challenged the impugned order passed by the Administrator and Divisional Commissioner, Konkan Division, Mumbai in Appeal u/s 35 of the Maharashtra Slum Areas (I.C. & R.) Act, 1971 (for short, "the Act") dated 19th January, 2009, whereby his Appeal against the impugned order dated 21/08/2008 passed by the Assistant Commissioner, G-South, MCGM, has been dismissed. In the result, the basic notice u/s 33 of the Act and the order passed by the Assistance Commissioner has been confirmed.

2. Admittedly, the Slum Rehabilitation Authority (for short, "SRA") has

sanctioned the Redevelopment Scheme on plot bearing C.S. Nos. 209 (pt), 224 (pt), 226 (pt), 231 (pt), 232 (pt) and 991 (pt), known as Belani Nagar, Worli Koliwada, Worli, Mumbai- 400 025, u/s 33(10) of Development Control Regulations for Greater Bombay, 1991, (for short, "D.C.R. Rules"). A Letter Of Intent dated 04/08/2006 shows the Petitioner is eligible for an alternate accommodation as per Municipal record in Annexure-II at Serial No. 174.

3. The Petitioner is in possession of 330.35 Sq. Mtrs. and loft of 49.40 Sq.Mtrs.. It is also shown in the Municipal record that the Petitioner is vacant land Tenancy holder (for short, "VLT"). The said VLT was on temporary basis. The Petitioner's structure has been declared as slum for redevelopment of the plots. The structure of the Petitioner is affecting 120" D.P. Road - nearly 50% and remaining portion affecting BEST Bus Stand (for short, "BBS") reservation.

4. A notice u/s 33 of the Act was issued calling upon the Petitioner as to why he should not be evicted from the structure for enforcing the scheme.

5. Section 33 of the Act reads as under:

33. Power of eviction to be exercised only by the Competent Authority.

Where the Competent Authority is satisfied either upon a representation from the owner of a building or upon other information in its possession that the occupants of the building have not vacated it in pursuance of any order or direction issued or given by the Authority, the Authority shall, by order, direct the eviction of the occupants from the building in such manner and within such time as may be specified in the order, and for the purpose of such eviction, may use or cause to be used such force as may be necessary;

Provided that, before making any order under this section the Competent Authority shall give a reasonable opportunity to the occupants of the building to show cause why they should not be evicted therefrom.

6. Though objected, but as requisite numbers/ percentage was available, the scheme has been sanctioned in accordance with the Act and Regulations. A majority of the eligible hutment dwellers have been shifted to the Temporary Transit Accommodation. The Petitioner being in the list, has been informed about this Temporary Transit Accommodation, shop No. 18 constructed at site, enabling to conduct his commercial activity.

7. The concerned Respondent has been proceeding based upon the scheme since 2006. The concerned Respondent is under obligation to give and provide the requisite area as per his existing commercial activity based upon the circular No. 70 dated 30th December, 2004 if he falls within the ambit of the said circular and entitlement. Whether that circular applies to the structures of the Petitioner is also a matter, which the Appropriate Authority needs to take note of. That itself, according to me, just cannot be the reason to oppose and even resist the impugned notice and action of eviction.

8. The Petitioner's entitlement for structures has already been reconsidered and accordingly allotted Transit Accommodation. The Concerned Authority in a given case, may or may not decide his case of entitlement for two structures, in view of Rule 1.12 and 1.16 of the D.C.R. Rules, if the case is made out, provided he should submit to the scheme. This also according to me, cannot be the reason to halt the project.

9. As the point was raised, the Authority below in the impugned orders, considered the aspect of applicability of CRZ Regulations to the land. The contention that the structures in question are not urgently required to be demolished, just cannot be permitted to raise on this count under this proceedings initiated u/s 33 of the Act. Once the Scheme is sanctioned based upon the material available at the appropriate time by considering all these aspects, unless that is disturbed or set aside, at this stage, in my view, the action of eviction just cannot be halted on these grounds.

10. This Court by an order dated 02/02/2009 permitted the Petitioner to carry out amendment and issued notices to the Union of India through the Secretary Ministry of Environment and Forest (IA-III Division), Central Secretariate, New Delhi and the Maharashtra Costal Zone Management Authority, Mumbai and there is a report the validity of which can not be decided in such proceeding initiated u/s 33 of the Act as contended including the basic prayer to quash and set aside the Scheme and all other proceedings arising out of the same.

11. 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 u/s 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.

12. 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".

13. The Authority u/s 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.

14. 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.

15. Resultantly, the Writ Petition is dismissed by keeping all points open, with regard to the circular No. 70 dated 30th December, 2004 and issue of CRZ, if any. No order as to costs.

16. Considering the facts and circumstances of the case and in view of the reasonings already given, the request for interim protection is restricted only for one week from today.