
(2012) 02 BOM CK 0182

In the Bombay High Court

Case No : Writ Petition No. 1065 of 2011 with Notice of Motion No. 601 of 2010

Ganeshan Ramaswamy Devendra, Rane Digamber Laxman
and Nand Kumar

APPELLANT

Vs

The Municipal Commissioner of Gr. Mumbai (thro. Legal
Department) Mahapalika Bhavan, Mahapalika Marg, Next to
C.S.T. Mumbai - 400001 and Others

RESPONDENT

Date of Decision : 29-02-2012

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 7 Rule 11
Companies Act, 1956 — Section 617
Constitution of India, 1950 — Article 226
Development Control Regulations for Greater Bombay, 1991 — Regulation 33(10)
Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971 —
Section 3, 3(K)(1)

Citation : (2012) 3 ALLMR 258 : (2012) 5 BomCR 605 : (2012) 4 MhLj 169

Hon'ble Judges : S.A. Bobde, J; R.D. Dhanuka, J

Bench : Division Bench

Advocate : Glen Lobo, for the Appellant; J.G. Reddy (Aradwad), Advocate for Respondent No. 2, Mr. D.D. Madon alongwith Mr. Chirag Bulsara, Bhavik Manek and Ms. Pallavi Smriti, instructed by . Wadia Ghandy and Co. for Respondent No. 4, Mr. Rajiv Mane, A.G.P. for State, Mr. E.P. Bharucha alongwith Ms. Vidya Gharpure for B.M.C., Mr. S.G. Surana alongwith Mr. Madhur Surana for Respondent Nos. 5 and 6, for the Respondent

Final Decision : Dismissed

Judgement

R.D. Dhanuka, J.—Rule, returnable forthwith. Respondents waives service. Heard finally by consent of parties.

2. In this petition under Article 226 of the Constitution of India, the Petitioners have challenged the impugned order dated 14th August 2010 passed by the Under Secretary to the Government of Maharashtra u/s 3(K) (I) of the Maharashtra Slum Areas (Improvement, Clearance and Re-development) Act, 1971. The factual matrix involved in the above petition can be stated thus :

3. The Municipal Corporation of Greater Mumbai is the owner of the property bearing C. Survey No. 17/47 (Part) of Lower Parel Division, Mumbai City District in G/South Ward admeasuring about 68,970.58 sq.mtr. As per the revised sanctioned Development Plan of 1991, the reservations of the plot of the lands are designated cemetery 4253.90 sq.mt. (ii) Designated Sewerage Purification Works ? 9426.84 sq.mt. (iii) Housing for Dishoused Rehabilitation of slum ? 24998.88 sq.mt. (iv) Housing for Dishoused ? 30290.96 sq.mt. The said property is totally encumbered and occupied by existing census slums of about 3676 slum dwellers. The slum-dwellers have formed four slum colonies viz. (1) Jivan Jyot Nagar, (2) Shree Vivekanand Nagar, (3) Veer Jeejamata Nagar and (4) Mata Ramabai Nagar. The occupiers of the said slum are protected occupiers within the meaning of Section 3(x) of the said Act for getting permanent alternate accommodation.

4. The existing IPS and EPS units at Love Grove are designed for a maximum capacity of 1820 MLD which is sufficient for Mumbai Sewerage Disposal Project. The Municipal Corporation however, required additional land for further level of treatment as per Maharashtra Pollution Control Board/MOEF norms.

5. The Corporation obtained consent of its Standing Committee for implementation of MSDP II Project. The project is partly funded by Jawaharlal Nehru National Urban Renewal Mission. The Municipal Corporation required the entire land under designation of Sewerage Treatment Plan and also the land adjoining to the existing Love Grove Pumping Station encroached by slums. The Corporation required minimum size of 25, 433, 58, sq.mtr. of land from the total land encroached by slums. Out of 35, 775.58 sq.mtrs. occupied by the three societies, 25, 433.58 sq.mtrs was required by the Municipal Corporation for its MSDP-II project. According to Corporation, the balance land admeasuring about 10342.00 sq.mtrs was to be available for the purpose of construction of buildings under the S.R. Scheme. The Corporation found that it was not feasible to rehabilitate the existing three slum colonies on the land admeasuring 10342.00 sq.mtrs. The Corporation therefore decided that the composite rehabilitation scheme was in the best interest of all the slum dwellers as they would be rehabilitated on the same plot of land, otherwise merely 2515 families would be dislocated from the said land and the Corporation did not have any alternate land to relocate the said slum dwellers in and around said locality.

6. The Corporation found that Respondent No. 4 Developer was supported by more than 70% of its slum dwellers from Jivan Jyot Nagar and Swami Vivekanand Nagar and had submitted rehabilitation proposal in respect of Jivan Jyot Nagar way back in 2004 and Swami Vivekanand Nagar in the year 2006. The Corporation also approved and certified the Annexure ? II in respect of these two societies and it has also found that Respondent No. 4 was also appointed as developer by the said society. Respondent No. 4 was supported by about 50% consent in respect of the entire slum area of the four colonies (i) Jivan Jyot (SRA) CHS (Proposed) (ii) Shree Swami Vivekanand Nagar (SRA) CHS

(Proposed) (iii) Veer Jijamata Nagar (SRA) CHS (Proposed) and (iv) Mata Ramabai Nagar (SRA) CHS (Proposed).

7. The Petitioners are claiming to be occupants of the plot situate at Swami Vivekanand Nagar. According to the Petitioners at Shree Swami Vivekanand Nagar there are more than 1000 occupants and Respondent No. 1 had not taken survey of the said Nagar or any of the Nagars.

8. It is the case of the Petitioners that Respondent No. 4 had not obtained consent of 70% of occupiers in respect of Shree Swami Vivekanand Nagar and therefore the Petitioners made various representations to the SRA Authorities and Municipal Corporation. The Petitioner, thereafter, filed a suit bearing No. 5535 of 2006 before the Bombay City Civil Court against the Respondents herein for declaration that Respondent No. 4 herein was not entitled to develop the said land belonging to the Municipal Corporation being a plot bearing C.S. No. 17/47 (Part) and for various other reliefs. By an order and Judgement dated 10th August, 2010, the Bombay City Civil Court dismissed the said suit under Order 7 Rule 11 (d) of CPC holding that there exist no cause of action in favour of the Plaintiffs, besides, absence of jurisdiction with Bombay City Civil Court to entertain and try the said suit. Being aggrieved by the said Judgement, the Petitioners herein filed First Appeal in this Court being First Appeal No. 2996 of 2010 and took out Civil Application for condonation of delay and for interim reliefs. The said First Appeal as well as Civil Application are pending for consideration before this Court.

9. By letter dated 16th June, 2009, the Municipal Corporation requested the Secretary, Housing Government of Maharashtra to take up the matter with the Government Authorities on top priority for implementation of consolidated under SRA Scheme (3) of Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971. Accordingly Slum Rehabilitation Authority by its letter dated 20th June, 2009 to the Secretary, Housing Department, Government of Maharashtra requested to process the representation of the Municipal Commissioner, to sanction it and for issuance of orders in that regard to be issued to the Slum Rehabilitation Authority and Municipal Corporation accordingly

10. On the application/recommendation of the Slum Rehabilitation Authority, under Secretary to the Government of Maharashtra conveyed the order dated 14th August, 2010 passed by the State Government to the Municipal Commissioner and issued various directions regarding development of plots requested. The State Government imposed various conditions in the said order/directions so as to safeguard the interest of the slum dwellers as well as the Municipal Corporation. The Government also provided various other safeguards regarding quality of the work etc. imposing various obligations and responsibilities on Respondent No. 4 developers.

11. Being aggrieved by the said order dated 14th August, 2010 passed u/s 3(K) (1) of the said Act, these Petitioners filed the present petition for declaration of

the said order and direction dated 14th August, 2010 null and void and not binding on the Petitioners.

12. The Municipal Corporation has filed a detailed affidavit opposing the petition filed by the Petitioners. Respondent Nos. 5 and 6 had taken out two separate Chamber Summons i.e. Chamber Summon Nos. 63 of 2011 and 71 of 2011 seeking intervention in the present writ petition and/or joining them as Party Respondent to the Writ Petition. The said Chamber Summons came to be allowed. The said two proposed societies were, therefore, impleaded as Respondent Nos. 5 and 6 to this Petition.

13. We have heard the Learned Counsel Shri Glenn Lobo for the Petitioners, Shri E.P. Bharucha, Senior Advocate appearing on behalf of Municipal Commissioner, Shri J.G. Reddy representing Respondent No. 2, Shri D.D. Madon, for Respondent No. 4 and Shri S.G. Surana representing Respondent Nos. 5 and 6. We have also perused the record and have bestowed our anxious consideration to the rival contentions.

14. The Learned Counsel appearing for the Petitioners contended that Respondent No. 4 did not have consent from 70% of the slum occupants as per SRS Scheme. He further contended that the impugned order passed by the State of Maharashtra is in violation of principles of natural justice and is without reasons. Per contra, the Learned Senior Advocate Shri Bharucha and Shri Madon pointed out that both these issues raised by the Petitioners are misconceived. At this juncture, it would be appropriate to refer to Section 3(K) (1) of the said Maharashtra Slum Areas (Improvement, Clearance and Re-development) Act, 1971 is as under:-

3K. Power of State Government to issue directions.

(1) The State Government may issue to the Slum Rehabilitation Authority such general or special directions as to policy as it may think necessary or expedient for carrying out the purposes of this Act and the Slum Rehabilitation Authority shall be bound to follow and act upon such directions.

15. Our attention is also drawn to Clause 1.15 under Appendix IV issued under Regulation 33 (10) of the Development Control Regulation for Greater Mumbai, 1991, which reads as under:-

1.15 Where 70 per cent or more of the eligible hutment-dwellers in a slum or pavement in a viable stretch at one place agree to join a rehabilitation scheme, it may be considered for approval.

[Provided that nothing contained herein shall apply to Slum Rehabilitation Projects undertaken by the State Government or Public authority or as the case may be a Government Company as defined in Section 617 of the Companies Act, 1956 and being owned and controlled by the State Government.]

16. Shri Bharucha, the Learned Senior Counsel for the Municipal Corporation and

Shri Madon appearing for the developers, i.e. Respondent No. 4 pointed out that the Respondent No. 4 developer was already supported by more than 70% of the slum dwellers from Jivan Jyot Nagar and Swami Vivekanand Nagar, the Petitioners claim to belong to Respondent No. 4 was also supported by about 50% concept in respect of the entire slum area of the four colonies.

17. In our view, since the project in question i.e. Slum Rehabilitation Project is undertaken by the Public Authorities, consent of slum dwellers is not necessary as is clear from the perusal of 1.15 of the Appendix IV of Development Control Regulations for Greater Mumbai, 1991 issued under 33(10). In our view, there is no substance in the issue raised by the Petitioners that Respondent No. 4 developer did not have consent of 70% occupiers.

18. As far as second issue raised by the Petitioner that the order is not reasoned order and is in violation of principles of natural justice is concerned, we have perused the impugned order dated 18th August, 2010 passed u/s 3(K) (1) of the Act. The said order is reasoned order providing for all the safeguards. In the said order, the State Government has disclosed sufficient reasons. The said order also provides for various safeguards in respect of not only slum dwellers but all the parties. It also provides obligations and responsibilities to the developers required to be discharged. It is also provided that CEO Slum Rehabilitation Authority shall take proper steps to get the third party quality audit done in respect of the construction to be carried out by the developers. We, therefore, find no substance in the second issue raised by the Petitioners.

19. Considering the detailed affidavit filed by the Municipal Corporation pointing out the necessity to sanction composite rehabilitation scheme so as to accommodate all the slum families on the said plant instead of dislocating of 2515 slum families from suit land and thereby also getting the additional area available for the purpose of expanses of Love Growth Sewerage Pumping work at Love Grove Pumping Station, we are of the view that the impugned order passed by the State of Maharashtra u/s 3(K) (1) was necessary and expedient for carrying out the purposes of Slum Act. We don't find any reasons to interfere in the said order passed by the State Government. Respondent Nos. 5 and 6 Society also eventually opposed the reliefs claimed by the Petitioners and pointed out that Respondent No. 4 developer had already paid scrutiny fee as far back as on 22nd March, 2006. Both these societies also supported Respondent NO. 4 Developer.

20. For the reasons aforesaid, we don't find any substance in the petition filed by the Petitioners and we accordingly pass the following order:-

(i). Writ Petition No. 1065 of 2011 is dismissed.

(ii). Rule discharged. No order as to costs.

(iii). Notice of Motion No. 601 of 2010 does not survive and disposed as such.