
(2022) 05 BOM CK 0072

In the Bombay High Court

Case No : Appeal From Order (ST.) No. 27909, 27910, 27932 Of 2019, Interim Application No. 1991, 1992, 1994 Of 2019, 3106, 3107, 3108 Of 2020

Manisha Mahesh Sawant And Others

APPELLANT

Vs

M/S. Adhikari Engineering Private Limited And 21 Ors

RESPONDENT

Date of Decision : 26-05-2022

Acts Referred:

Code Of Civil Procedure, 1908 — Order 43 Rule 1(r)
Maharashtra Slum Areas (Improvement, Clearance And Redevelopment) Act, 1971 —
Section 4, 33, 38

Citation : (2022) 05 BOM CK 0072

Hon'ble Judges : Sandeep K. Shinde, J

Bench : Single Bench

Advocate : Pradeep Thorat, Sameer K. Sawant, Shakeeb Shaikh, Genevieve D? souza, Diamondwala

Final Decision : Partly Allowed/Disposed Of

Judgement

Sandeep K. Shinde, J

1. Heard learned counsel for the parties.

2 These appeals are taken up for hearing together, since the facts therein are substantially common.

3 The dispute, arose from Slum Rehabilitation Scheme sought, to be implemented by M/s. Adhikari Engineering Company Private Limited ("Developer-Defendant No.2" for short) and in particular relates to, whether suit structures, Room Nos.18, 19 and 21 at Samarth Nagar, Bhandup, Mumbai-400 078 ("suit premises" for short), occupied by the plaintiffs are falling in the alignment of rehabilitation building, in respect of which Slum Rehabilitation Authority ('SRA' for short) has issued plinth certificate dated 11th January, 2019. Necessarily, thus, it is 'Boundary Dispute', amenable to jurisdiction of Civil Court.

4 Appellants/plaintiffs, instituted Suit (St.) Nos. 8104, 8105 and 8106 of 2019 in

the City Civil Court at Mumbai, seeking following reliefs;

(i) Development agreement dated 30th December, 2014 inter-lia, executed by Promoters of Sainath Co-operative Housing Society, then proposed, appointing M/s. Adhikari Engineering Private Ltd. (Developer-Defendant No.2) is illegal, unlawful and not binding on them;

(ii) The consent-cum-affdavit and tripartite agreement, dated 19th July, 2015 executed with Promoters of Ganpat Mali Co-operative Housing Society, then proposed, is invalid, null, void and not binding on them;

(iii) Declare, that the appointment of the defendant no.1 as Developer, to develop plot of land bearing CTS No.231/A(Part) admeasuring 1100 sq.mtrs. is unlawful, bad in law and be set aside;

(iv) Direct, defendants no.1 to 3 to conduct the joint survey with members of Sainath Co-operative Housing Society (Proposed) to measure, demarcate and fix the boundaries of the Slum Scheme carried out by the defendant no.1 in the name and style of Ganpat Mali SRA Co-operative Housing Society Ltd, on plot bearing CTS No.231-A(Part), 234, 234(1-14), 235, 235(1-6), 236(1-7), 1331, 1331(1-10) of Village-Kanjur, Taluka-Kurla, Bhandup (West) and submit report to the Court.

5 Pending suit, appellants/plaintiffs, sought an order to injunct defendant nos.1 to 4 from demolishing and/or dispossessing the appellant from the suit premises situate at Sainath CHS on plot of land Survey No.105 at Village: Kanjur, Taluka: Kurla, Bombay 400078, pursuant to notice dated 7th March 2019, issued under Sections 33 and 38 of the Slums Act issued by the respondent-Slum Rehabilitation Authority.

6 The learned trial Judge vide orders dated 30th September, 2019 refused, interim injunction, pending suit.

7 Thus, these orders are under challenge in these appeals filed under Order 43 Rule 1(r) of the Code of Civil Procedure, 1908.

8 Briefly stated facts of the case are as under;

(i) Sainath Co-operative Housing Society (Proposed), ("Sainath" for short), vide Deed of Conveyance dated 21st November, 1969 executed through its Promoters, purchased Land Survey No.105, Hissa No.1 (Part) admeasuring 920.25 sq.mtrs, with structures standing thereon. Later, vide deed of rectification executed on 11th March, 1991, Deed of Conveyance dated 21st November, 1969 was rectified, to the extent of area of the land and its CTS number. Whereupon, Sainath CHS (Proposed) would claim to be, owner of Survey No.105, Hissa No.1 (Part), corresponding CTS No.231/A admeasuring 1100 sq.mtrs.

(ii) On 19th June, 1996, Notification under Section 4 of the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971 ('Slum Act' for short) was issued in respect of CTS No.231/A admeasuring 1100 sq.mtrs.

(iii) In March, 1997, Additional Collector Collector (Encroachment) and Controller of Slums, issued a site plan and list of hutment dwellers situated at CTS No.231/A, a plot owned by Sainath; who certified that, "area of 1100 sqmtrs in CTS No. 231 of Village: Kanjur Taluka: Kurla is notified as slum 4/1 of the said Act vide Notification dated 25th June 1996 and that there are 21 structures on the said slum out of which 15 structures are census/protected structures and therefore eligible for alternate accommodation. The list of such eligible hutment dwellers along with other relevant details are enclosed herewith."

(iv). Suit premises, viz. 18, 19 and 21, occupied by the appellants/plaintiffs were shown in the said site plan at Serial Numbers 18 to 21. (The plan is at page 117 of the paper-book).

. Thus, prima facie, structures occupied by the appellants/plaintiffs were within the boundary of land, CTS No. 231/A owned by, Sainath.

(v) On 24th December 2014 vide registered sale deed, M/s. Adhikari Engineering Private Limited, Developer-Respondent No.1, purchased a plot of land admeasuring 2418 sq.mtrs. bearing Survey Nos.105, (Hissa No.1/1), CTS No. 231-A(Part), 234, 234(1 to 14), 235, 235 (1 to 6), 236, 236(1 to 7), 1331, 1331(1 to 10) at Village-Kanjur with chawl-structures known as Ganpat Mali Compound, Pednekar Chawl, Sainath Chawl, more particularly described therein, in all, 124 hutments/structures, which is adjacent and abutting the plot owned by Sainath.

(vi) Although, the deed of conveyance dated 24th December, 2014 makes reference to, particulars of tenants-occupants of 124 structures in Annexure 3 appended thereto, developer did not produce the Annexure 3 to verify and to ascertain, whether such 124 hutments included the structures occupied by the appellants-plaintiffs.

(vii) Hutment dwellers on the part, of plot purchased by Developer, have formed housing society called 'Ganpat Mali CHS (Proposed)'.

(viii) Developer, proposed composite development of plot owned by Sainath, which admeasures 1100 sq.mtrs. and plot occupied by members of Ganpat Mali Co-operative Housing Society (Proposed).

(ix) Whereafter, pursuant to resolution passed in Special General Body Meeting of Ganpat Mali Co- operative Housing Society (Proposed), held on 28th December, 2014, members of both the societies i.e. Ganpat Mali and Sainath, allegedly, appointed M/s. Adhikari Engineering Private Limited, as a Developer;

(x) Following that, on 30th December, 2014 development agreement was executed by the promoters of both the proposed societies, by which M/s. Adhikari Engineering Private Limited was appointed, as Developer to develop plot admeasuring 3402.20 sq.mtrs.

(ix) In terms, of the Development Agreement, Developer had agreed to develop

plot admeasuring 3402 sq.mtrs and offered alternate accommodations to the members (slum dwellers) of both the Societies, free of cost in Slum Rehabilitation Scheme, which was to be implemented, as per Development Control Regulation No.33.10.

(x) In August, 2014, out of 136 slum dwellers, 99 dwellers had given consent in writing, to proposed Slum Rehabilitation Scheme.

(xi) On 1st October, 2015, Slum Rehabilitation Authority certified that 136 slum dwellers were occupying area admeasuring 3402.25 sq.mtrs.

(xii) On 2nd August, 2016, twenty-one members of Sainath Society, in its meeting, resolved to revoke their consent and withdraw from Composite Development Scheme, undertaken by M/s. Adhikari Engineering Private Limited; whereafter, Secretary of Sainath Society, informed the Developer, decision of withdrawal and cancellation of tripartite agreements and the declaration dated 19th July, 1995 executed by its members including the appellant herein and accordingly cancelled the Development Agreement dated 30th December, 2014.

(xiii) Appellants-plaintiffs are members of 'Sainath Co- operative Housing Society (Proposed).

(xiv) On 9th November, 2016, Tehsildar and Survey Officer visited site to conduct survey but could not carry out, due to stern oppose by 56, slum dwellers. As a result, Slum Re-development Authority, vide communication dated 25th January, 2017 intimated Executive Engineer, Slum Rehabilitation Authority, that, although the Slum Rehabilitation Scheme was to be implemented on land admeasuring 3402.25 sq.mtrs. for re-habilitation of 136 slum dwellers but since 56 slum dwellers have opposed the survey, it could conduct the survey of 80 structures only. As a consequence, Slum Authority, certified that only 80 slum dwellers could be rehabilitated, occupying area admeasuring 1248 sq.mtrs, which includes suit premises 18, 19 and 21 occupied by the appellants-plaintiffs.

9 Herein, although SRA drew the list of eighty slum dwellers, occupying land admeasuring 1248 sq.mtrs., dispute is whether structures/huts occupied by plaintiffs fall within the boundary of plot, sought to be developed by defendant no.1- Developer. Primary evaluation of evidence, indeed shows some part of CTS No.231-A, was purchased by Sainath Society, as well as, by Developer, a fact which is discernible, from their respective sale-deeds. However, their plots have not been demarcated by the Revenue Authorities. Infact, after notifying Plot No.231-A, admeasuring 1100 sq.mtrs, owned by Sainath Co-operative Society under Section 4 of the Slum Act, in March 1997, Additional Collector, Encroachment and Controller, Slums, issued site plan of hutment dwellers thereon, which includes suit premises 18, 19 and 21 occupied by the respective appellants. Therefore, once Competent Authority issued a site plan in respect of Plot No.231-A, admeasuring 1100 sq.mtrs including therein the suit premises, then, how these premises could be excluded therefrom and would form plot, sought to be developed by the Developer under the Slum Rehabilitation Scheme.

Thus, dispute is, whether suit premises are falling with the alignment of Rehabilitation building for which, plinth Certificate has been issued by the Slum Rehabilitation Planning Authority. It is a matter of record that, after scaling down and revising the list of slum dwellers from 136 to 80, Survey Officer although, visited the site for measuring and demarcating the land on which scheme is to be implemented, however, he could not carry out the survey and demarcate the land due to objection taken by the members of Sainath Society.

10 Thus, from the facts stated above, it is to be stated, that although boundary dispute was apparent, authorities, without first measuring and demarcating the land, on which Slum Rehabilitation Scheme was to be implemented, issued final Annexure-II on 13th January, 2017, whereby appellants/plaintiffs were held ineligible for free alternate accommodation, for want of survey tabulation and proof that, structures were existing, prior to 1st January, 2000. Thus, appellants were held ineligible for want of survey, without first ascertaining whether suit premises fall on plot of land, purchased by Developer or by Sainath. The issue needs to be resolved. Thus, in consideration of the facts of the case it would be appropriate, if Revenue Authorities are directed to measure and demarcate the boundaries of plots, purchased by Sainath Society, vide Deed of Conveyance dated 21st November, 1969 as rectified and plot purchased by Developer, vide sale-deed dated 24th December, 2014 in accordance with law, and at the cost of Developer.

11 In the backdrop of the aforesaid facts, it is appellant's case that, in view of resolution passed by Sainath Society, withdrawing consent and revoking appointment of defendant no.1 as a developer and further since structures/huts occupied by them do not fall in alignment of Rehabilitation Building, they cannot be forced to be a part of the Rehabilitation Scheme sought to be implemented by the Developer-Defendant No.1. In other words, it is appellant's case that the Developer in connivance with the Rehabilitation Authority without conducting the survey and demarcation of the plot illegally shown their structures within the boundary and alignment of the rehabilitation building for which SRA has issued plinth certificate dated 11th January, 2019.

12. In my view, once plots are measured and demarcated, controversy in respect of 'boundary line' would get resolved. Thereafter, other issues as, whether Development Agreement dated 30th December, 2014 binds plaintiffs and/or whether consent-cum-affidavit and tripartite agreements dated 19th July 2015, bind the plaintiffs, could be answered independently by the trial Court, on merits, if Survey and demarcation of plots, show suit premises do fall within the boundary of plot sought to be developed by the Developer under Development Control Regulations 33.10, in the fresh Motions, if moved by the plaintiffs. In the facts of the case, respondent no.2-Developer shall move, appropriate application for measuring and demarcating the lands, as ordered, within two weeks from the date on which this order is uploaded on the website. Whereafter concerned authority shall measure and demarcate the land, as ordered, expeditiously and

preferably on/or before 31st July, 2022 in accordance with law at the cost of Developer. As such, till then, notice dated 7th March, 2019 issued by the Slum Rehabilitation Authority (respondent no.2) under Sections 33/38 of the Slum Act, shall not be executed. Having regard to the facts of the case and since monsoon is approaching fast, in case in survey, it is found that suit premises are falling within the boundary line of rehabilitation building for which plinth certificate has been issued, the Notice dated 7th March, 2019 issued under Sections 33/38 of the Slum Act, shall not be implemented for a period of 30 days. However, in case, survey reveals that suit premises do not fall within the boundary line of rehabilitation building, necessary consequence shall follow, at the cost of Developer. As such, without addressing the other issues on merits, canvassed in the Appeal, Appeals are partly allowed and disposed of on the limited issue, as discussed above.

13. With disposal of the Appeals, Interim Applications fled therein, do not survive. The same also stand disposed of.