
(2010) 08 BOM CK 0071

In the Bombay High Court

Case No : Writ Petition (Lodging) No. 1915 of 2010

Mr. Balasaheb Arjun Torbole and Others

APPELLANT

Vs

The Administrator and the Divisional Commissioner, Konkan
Division and Others

RESPONDENT

Date of Decision : 31-08-2010

Acts Referred:

Constitution of India, 1950 — Article 226
Development Control Regulations for Greater Bombay, 1991 — Regulation 11(4),
33(10), 7.8
Maharashtra Regional and Town Planning Act, 1966 — Section 152, 2(19), 37(1B)
Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971 —
Section 135, 136, 3, 33, 37

Citation : (2011) 1 BomCR 304 : (2010) 112 BOMLR 4224

Hon'ble Judges : Mohit S. Shah, C.J.;D.Y. Chandrachud, J

Bench : Division Bench

Advocate : Anil V. Anturkar and Ravinder Sethi, instructed by Anjali R. Awasthi, for the Appellant; D.A. Nalawade, Government Pleader for Respondent Nos. 1 to 3, 11, 13, 14, 19 to 21, S.G. Surana, for Respondent No. 10, Chirag Balsara, instructed by Divya Shah, Associates for Caveator (C. No. 1014/10), Shyam Mehta and Vaibhav Mehta for Respondent No. 15, for the Respondent

Final Decision : Dismissed

Judgement

Mohit S. Shah, C.J.—What is challenged in this writ petition under Article 226 of the Constitution of India is the order dated 17 April 2010 of the High Powered Committee of the Government of Maharashtra, dismissing Appeal No. 62 of 2010 of the present petitioners. In the appeal, the petitioners challenged the sanction of a scheme by the Slum Rehabilitation Authority on lands bearing CTS No. 106, 106/1 to 5, 107/1 to 9, 108(pt), 111(pt), 111/1 to 77, 80 to 132 & 112 (pt) of village Kurla, Hutatma Prabhakar Keluskar Marg (Match Factory Lane), Kurla (West), Mumbai. A Letter of Intent was issued for the whole plot on 29 April 2006. Out of the above plots, plot Nos. 106, 107 and 108 are the plots in question which were earlier owned by respondent No. 8 and were subsequently

declared as slums. The other lands are of the Municipal Corporation of Greater Mumbai. The petitioners herein are residents in the slums on private plots owned by respondent No. 8.

2. The competent authority declared the above private plots as well as Mumbai Municipal Corporation plots to be slum areas u/s 4(1) of the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971 (for short 'Slum Act') by a notification dated 29 January 2003. The slum dwellers residing on both municipal plots and private plots formed a society in the name of respondent No. 10 and requested respondent No. 8 to implement the slum scheme. Respondent No. 8 is owner-cum-developer and respondent No. 10 being their developer as per their own proposal to the Slum Rehabilitation Authority (for short 'SRA'). On 30 June 2004, the competent authority decided the eligibility of the slum dwellers of the private plots and held that out of the occupants of 124 structures, occupants of 76 structures were eligible and that out of those, only 19 had given consent which amounted to 25%. Thereupon, on 13 January 2004, the respondent-Municipal Corporation issued Annexure-II for the BMC Plots certifying that out of 367 slum dwellers, 251 were eligible and all of them have given their consent which represented 100% of the eligible slum dwellers. Since there was one proposal submitted by respondent Nos. 8 and 10 for both the plots i.e. BMC plots and private plots, the officers of SRA prepared a report and on taking the consent of the slum dwellers of both BMC plots and private plots, came to the conclusion that the consent was given by 81.32% of the slum dwellers of all the plots taken together for which one common scheme was submitted. On 29 June 2006, SRA approved the Slum Rehabilitation Scheme and issued a Letter of Intent in favour of respondent Nos. 8 and 10. On 14 February 2007, SRA approved the building plans for composite development of the Municipal plots as well as private plots. On 9 September 2009, SRA issued a revised Letter of Intent with a condition that respondent Nos. 8 and 10 shall rehabilitate all eligible slum dwellers as held by the competent authority/Municipal Corporation. Condition No. 23 of the Letter of Intent provides that individual agreements of at least 70% of the eligible slum dwellers shall be submitted prior to the Commencement Certificate.

3. In the meantime, the petitioners who are residents in the slums on the private plots, were not shifting to the transit tenements. The Deputy Collector, Kurla issued show-cause notices to the petitioners and after hearing them, passed the impugned order dated 25 May 2009 under Sections 33 and 38 of the Slum Act requiring the petitioners to vacate the slums. Aggrieved by the said order, the petitioners filed an appeal before the Appellate Authority viz. Divisional Commissioner, Konkan Division, Mumbai who dismissed the appeal on 13 August 2009 after hearing the petitioners. The petitioners thereafter filed a writ petition before this Court and the petitioners were relegated the alternative remedy for filing an appeal before the Committee. The petitioners, accordingly, filed appeal No. 62 of 2010 before the High Powered Committee on 15 March 2010. The High Powered Committee issued notice to the respondents and respondent Nos. 8 and

10 filed their reply. The petitioners as well as respondent Nos. 8 and 10 filed their written statement. After the hearing concluded on 17 April 2010, by an order dated 17 April 2010, the High Powered Committee dismissed the appeal. Hence the present writ petition which came to be filed on 17 August 2010.

4. At the hearing of this petition, the learned Counsel for the petitioners raised the following contentions:

i) The appeal was heard on 17 April 2010 and thereafter, as permitted by the High Powered Committee, the petitioners had given written submissions on 23 April 2010. Still however, the High Powered Committee has purportedly passed the order on 17 April 2010 after referring to the petitioners' written submissions given on 23 April 2010. The impugned order, therefore, deserves to be set aside and the matter is required to be remanded to the High Powered Committee;

ii) Respondent Nos. 8 and 10 obtained consent of only 25% of the slum dwellers on the private plots and, therefore, the SRA could not have sanctioned the scheme in respect of the private plots. The SRA committed a serious error in not obtaining 70% consent separately for the private plots and for the Municipal plots;

iii) SRA is not a Planning Authority for redevelopment of the private plots;

iv) The private plots have not been declared as slum rehabilitation area by SRA u/s 3C of the Slum Act and, therefore, SRA could not have sanctioned the slum scheme for the private plots;

v) The authority which has passed the impugned order under Sections 33 and 38 of the Slum Act is not a competent authority.

5. On the other hand, the learned Counsel for SRA as well as the learned Counsel for respondent Nos. 8 and 10 have opposed the petition and submitted that it is open to the SRA to sanction one common scheme for a number of plots including the Municipal plots and private plots. Strong reliance is placed on Clause 7.7 of the Development Control Regulations for Greater Mumbai, 1991 which provides that wherever slum and municipal/MHADA property are found together or adjoining, it would be eligible for redevelopment using provisions of both DCR-33(7) and of DCR-33(10). Similarly, regulation 7.8 is also relied upon and the same reads as under:

7.8 In case of two or more number of slums taken up for development by same owner/developer/NGO/Co-operative society of the slum dwellers, both Rehab and Free Sale components of the said slums can be combined and located in any proportion in those plots provided in any plot, the FSI does not exceed 2.5 subject to the condition that the said slums have the same ratio of Rehab component to Free Sale component as laid down in the Clause 3.3 to 3.5 of this Appendix.

6. The learned Counsel for SRA has also submitted that Section 3A of the Slum

Act specifies the objects and functions of SRA and u/s 2(19) read with Section 37(1-B) and Section 152 of the MRTP Act, SRA is the Planning Authority for redevelopment. By amendment of the MRTP Act, SRA as a Planning Authority has also been declared as Local Authority for the area under its jurisdiction and by notification dated 13 September 1996, the State Government has delegated the powers exercisable under various provisions under MRTP Act to the CEO, SRA.

7. As regards the contention that the private plots have not been declared as slum rehabilitation area u/s 3C(1) of the Slum Act, it is submitted that the private plots have been declared as a "slum" by the competent authority u/s 4 of the Slum Act. Therefore, it is not necessary to declare the said plots again as slum rehabilitation area u/s 3C(1) of the Slum Act. It is submitted that the slum rehabilitation scheme to be framed under DCR 33(10) does not require that such scheme can be framed only for the slums declared u/s 3C of the Act. In *Om-Sai Darshan Cooperative Housing Society (Proposed) and Chandrakant Ramchandra Thakur Vs. The State of Maharashtra, SRA Section and Others*, a Division Bench of this Court has already held that issuance of a notification u/s 3C(1) of the Slum Act is not a condition precedent for sanction of slum redevelopment governed by DCR 33 (10).

8. As regards the contention that the Deputy Collector, Kurla (Encroachment) is not the competent authority, it is submitted that by notification dated 3 October 2003, the State Government has amended the notification dated 25 October 2001 relied upon by the petitioners and that, as per the said notification, the Deputy Collector, Kurla is the competent authority for private plots in Kurla and thus, the orders under Sections 33 and 38 have been rightly passed by him.

9. As regards the first contention, it is submitted that admittedly, the hearing took place on 17 April 2010 and after the arguments were concluded, the parties were permitted to submit written statement. The SRA thereafter passed orders and referred to the written statement but the order refers to the date of hearing as the date of its declaration. The very fact that even according to the petitioners, they received the impugned order on 9 August 2010 is sufficient to show that the order was passed after considering the written statement submitted by the petitioners.

10. The learned Counsel for SRA and respondent Nos. 8 and 10 submitted that the consent given by slum dwellers for private plots as well as BMC plots has already been verified. SRA issued letter of intent. The verification to be done before issuance of the occupation certificate is only. The purpose of verification of the original documents of which copies were submitted by the slum dwellers at the time of conveying their consent. Verification has already been done twice. The third verification was to be done for the purpose of ensuring that the person to whom permanent rehabilitation is to be allotted is the rightful claimant as these slum dwellings are occupied by several family members and that any subsequent dispute may not arise amongst the members of the same family or that a person does not get permanent allotment on the basis of incomplete

documents. It is submitted that condition No. 23 of the revised LOI provides that respondent Nos. 8 and 10 are required to submit individual agreements of at least 70% eligible slum dwellers and, therefore, SRA is going to consider the said issue again before granting commencement certificate. It does not mean that verification of 70% consent was not done before issuing the LOI.

11. Counsel appearing on behalf of the Petitioners contended that the developer or the Co-operative Society should have obtained the consent of 70% slum dwellers separately for each plot and since this was not obtained, the scheme should not have been sanctioned by the Slum Rehabilitation Authority. While dealing with the submission, it would be necessary to note that the Petitioners reside on a plot of land which is owned by the Eighth Respondent. The title of the Eighth Respondent has not been disputed by the Petitioners. The slum dwellers who resided on this privately owned land as well as on the land belonging to the Municipal Corporation, together appointed the Eighth Respondent as developer. The proposal for a Slum Rehabilitation Scheme on both sets of plots, namely on privately owned and Municipal land, was submitted. Clause 1.15 of Appendix IV to DCR 33(10) postulates that where 70% 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. Clause 3.14 provides that any land declared as a slum rehabilitation area or on which a slum rehabilitation project has been sanctioned will, if it is spread on a part or parts of survey numbers, be treated as a natural amalgamation or, as the case may be, a sub division thereof for which no separate approval for amalgamation or sub division would be necessary. Clauses 7.7 and 7.8 of Appendix IV provide as follows:

7.7 Wherever slum and municipal/MHADA property are found together or adjoining, it would be eligible for redevelopment using provisions of both DCR 33(7) and of DCR 33(10). Development of slum and contiguous non-slum area under any other provisions may be allowed together in order to promote flexibility of design as well as to raise more resources, provided the FSI on non-slum quantum of area shall be restricted to that permissible in the surrounding zone. Such a project shall be deemed to be a Slum Rehabilitation Project. The power under D.C. Regulation 11(4) for shifting and/or interchanging the purposes of designations/reservations shall be exercised by the Chief Executive Officer, Slum Rehabilitation Authority in respect of slum rehabilitation areas/projects.

7.8 In case of two or more number of slums taken up for development by same owner/developer/NGO/Co-operative Society of the Slum dwellers, both Rehab and Free Sale components of the said slums can be combined and located in any proportion in those plots provided in any plot, the FSI does not exceed 2.5 subject to the condition that the said slums have the same ratio of Rehab component to Free Sale Component as laid down in Clause 3.3 to 3.5 of this Appendix.

(emphasis supplied)

12. Under Clause 7.7 where a slum and Municipal property are adjacent properties, they would be eligible for redevelopment under DCR 33(7) and DCR 33(10). The development of a slum and a contiguous non-slum area is also permissible to promote flexibility of design and to raise resources. Under Clause 7.8 where the same owner, developer or co-operative society of slum dwellers takes up two or more slums for development, the rehab and free sale components can be combined and located in any portion of those plots subject to the condition that the FSI does not exceed 2.5 in any plot. From these provisions, it is clear that the consent of 70% slum dwellers in a slum or pavement, "in a viable stretch at one place" has to be considered for approval. The requirement under DCR 33(10) is not that the consent of 70% of the slum dwellers residing on each survey number must be given separately. Such a restriction will defeat the object and purpose of the Slum Rehabilitation Scheme. 70% consent in one viable stretch is what is necessary for approval. The High Powered Committee, in the present case, after considering the submissions urged on behalf of the Petitioners declined to accede to them. The Committee noted that the private land and the Municipal land are contiguous and one scheme can be sanctioned taking into consideration both the private and public land as a whole since 70% of the slum dwellers had consented to the scheme. The sanction granted by the SRA was found not to suffer from any illegality. For the reasons which we have indicated above, we do not find any merit in the first submission.

13. It may also be noted here that the co-operative society and the developer have to comply with the express condition, Condition 23, of the Letter of Intent which stipulates that individual agreements of at least 70% of the eligible slum dwellers must be obtained before a commencement certificate is granted. This is an additional safeguard to ensure that the verification which has already been done is supported by documentary evidence relating to the execution of individual agreements by at least 70% of the slum dwellers.

14. The second submission which has been urged by Counsel appearing on behalf of the Petitioners is that the Slum Rehabilitation Authority is not a planning authority for the redevelopment of the plots in question. Now, the SRA has been constituted by and under the provisions of Section 3A of the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971. The powers of the Slum Rehabilitation Authority under Sub-section (3) of Section 3A are:

- (a) to survey and review existing position regarding slum areas;
- (b) to formulate schemes for rehabilitation of slum areas;
- (c) to get the Slum Rehabilitation Scheme implemented;
- (d) to do all such other acts and things as may be necessary for achieving the

objects of rehabilitation of slums.

15. The SRA is vested with the authority to formulate schemes for rehabilitation of slum areas, to get the Slum Rehabilitation Scheme implemented and to do all acts necessary for achieving the object of rehabilitation of slums. Wide powers have, therefore, been vested by the State Legislature in the SRA in order to achieve the statutory object of rehabilitation of slum dwellers.

16. Section 2(19) of the Maharashtra Regional and Town Planning Act, 1966 defines the expression "planning authority" as follows:

(19) "Planning Authority" means a local authority; and includes, -

(a) a Special Planning Authority constituted or appointed or deemed to have been appointed u/s 40;

(b) in respect of the slum rehabilitation area declared u/s 3C of the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971, the Slum Rehabilitation Authority appointed u/s 3A of the said Act."

17. The provisions of Section 37 were amended by the insertion of Sub-section (1B) by Maharashtra Act 5 of 1996. As a result of the amendment, the Slum Rehabilitation Authority if it is satisfied that a modification of the final development plan is required to be made for implementing the Slum Rehabilitation Scheme declared under the Act, is empowered to publish a notice inviting objections to the proposed modification and after hearing the objections to submit the proposed modification to the State Government. The State Government, u/s 152, may delegate any of the powers exercisable under Sections 44, 45, 46, 51, 53, 54, 55, 56, 135 and 136 to the Chief Executive of the SRA. Having regard to these statutory provisions, it is evident that the SRA is a Special Planning Authority constituted for the purposes of slum redevelopment.

18. The third submission is that the private plot has not been declared as a slum rehabilitation area u/s 3C and hence, it was not open to the SRA to sanction the scheme. There is no merit in the submission. The plot of land with which the Petitioners are concerned, is of private ownership and has been declared as a slum by the Competent Authority u/s 4 of the Slums Act. The expression "slum" in DCR 33(10) means slums which are censused or declared and notified in the past or thereafter under the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment Act, 1971). In *Om-Sai Darshan Cooperative Housing Society (Proposed) and Chandrakant Ramchandra Thakur Vs. The State of Maharashtra, SRA Section and Others*, a Division Bench of this Court held that for sanctioning a scheme governed by Regulation 33(10), it is not necessary to have a declaration of a particular parcel of land as a slum rehabilitation area u/s 3C(1) of the Act. The Division Bench in that context held as follows:

Thus for the purpose of scheme under Regulation 33(10), the following areas are Slum Rehabilitation Areas; (a) any area which fulfills the conditions laid down in Section 4 of the Slum Act which is declared and notified as such and (b) slum

rehabilitation area declared as such by the Slum Rehabilitation Authority fulfilling the conditions laid down in Section 4 of the Slum Act to qualify as slum area and/or required for implementation of any slum rehabilitation project. Regulation 33(10) contemplates that there can be redevelopment of slums including pavements. The slums are defined by Clause 11. The slums mean either censused slums or slums declared and notified as such under the Slum Act.... On plain reading of the Annexure to Regulation 33(10) it is obvious that for sanction of a scheme governed by the said Regulation in respect of a parcel of land, it is not necessary to have a declaration of the particular parcel of land as a slum rehabilitation area in exercise of power u/s 3-C(1) of the Slum Act. The Slum Rehabilitation Scheme can be sanctioned in respect of a slum as defined in Clause 11 of Annexure to Regulation 33(10).

19. The third contention is that the order under Sections 33 and 38 has not been passed by an authorised public functionary. There is no merit in this submission. On 25 October 2001, a notification was issued by the State Government in exercise of powers conferred by Section 3 of the Act. The notification was subsequently amended on 3 October 2003. Entry 16 of the notification reads as follows:

20. Consequently, the Deputy Collector (Encroachment Removal), Chembur, is the Competent Authority in respect of the plot with which the Petitioners are concerned. The subsequent notification dated 21 September 2004 on which reliance has been placed by the Petitioners only clarifies the Competent Authority in respect of plots of the Municipal Corporation. The Petitioners are occupants of a plot of land in private ownership and, therefore, the notification dated 21 September 2004 would not alter the situation.

21. Fourthly, as regards the order of the High Powered Committee, it is not in dispute that a hearing took place before the Committee on 17 April 2010. Parties were permitted to submit written submissions after arguments were completed. In the order passed by the SRA, there is a reference to the written submissions. The fact that the date which is borne in the final order is the date of hearing is not a matter of moment. The Petitioners received the order on 9 August 2010. The High Powered Committee has passed the order after considering the submissions which were urged on behalf of the Petitioners. In any event, we have evaluated the merits of the submissions and have found them to be lacking in substance.

22. Finally, before concluding, it would be necessary to note that the Court has been informed that about 315 occupants of the Municipal plot have vacated their structures. The Petitioners had challenged the declaration of a slum in respect of the Municipal plot by filing an appeal before the Slum Tribunal u/s 4(4). The appeal was dismissed. Against the dismissal of the appeal, a Writ Petition was filed before this Court which was also dismissed by a Learned Single Judge of this Court.

23. In the circumstances, we are of the view that there is no merit in the Petition. The petition is, therefore, dismissed.

24. At this stage, the learned advocate for the petitioners prays for stay of operation of this judgment.

25. Having regard to the fact that out of a total of 443 slum dwellers, 82% slum dwellers have already given consent for redevelopment of the slum and redevelopment is going on by allotment of permanent alternative accommodation to the slum dwellers who will not only get such accommodation on permanent basis without paying any cost, but they also get out of unhygienic condition, we see no reason to grant any stay. Request for stay is, therefore, rejected.