
(2000) 02 BOM CK 0051
In the Bombay High Court
Case No : Writ Petition No. 352 of 2000

M/s. Pooja Enterprises and another	Vs	APPELLANT
The Chief Executive Officer and others		RESPONDENT

Date of Decision : 29-02-2000

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Maharashtra Regional and Town Planning Act, 1966 — Section 1
Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971 — Section 3

Citation : (2000) 3 ALLMR 65 : (2000) 3 BomCR 421 : (2000) 3 MhLj 147

Hon'ble Judges : F.I. Rebello, J

Bench : Single Bench

Advocate : Siraz Rahimtulla, Vaibhav Krishna and Nachiket G. Bhatt, for the Appellant; S.G. Surana and J.S. Kini, for the Respondent

Judgement

F.I. Rebello, J.—Rule.

2. Learned Counsel for respondents waive service. By consent, heard forthwith.

3. The petitioners approached this Court to impugn order dated 2nd February, 2000 passed by the President, Maharashtra Slum Area (I.C. and R.) Special Tribunal, Mumbai. By the said order the tribunal was pleased to grant interim relief in terms of prayer Clause (a) which reads as under :-

"Pending the hearing and final hearing of this appeal the respondents be restrained by an order and injunction of this Honourable Court from carrying on any Slum Rehabilitation work of any nature whatsoever without Slum Rehabilitation declaration u/s 3-C(1) of Maharashtra Slum Areas Act, in respect of C.T.S. Nos. 1492 of 1527 at Village Kirol, Ghatkopar (W), Mumbai."

The said appeal was filed before the tribunal purportedly u/s 3-C(2) of the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971, hereinafter referred to as the Slum Redevelopment Act.

4. At the hearing of the petition it is principally contended on behalf of the petitioners that the 4th respondent had no jurisdiction to grant any relief as there was no order passed u/s 3-C(1) of the Slum Redevelopment Act and consequently the order is without jurisdiction and liable to be quashed and set aside. It is further contended, the permission granted was subsequent to the area being declared as a slum area u/s 4 of the Slum Redevelopment Act and a general scheme had been framed for the area. Once it was so declared the Slum Clearance Scheme as framed by notification of 16th October, 1997 was applicable. The petitioners applied for permission which was granted and as such the petitioners are entitled to carry on with the work. It is further contended that pursuant to the permission granted, petitioners have constructed transit accommodation. No Objection Certificate for the transit accommodation has been obtained. The persons entitled to be rehabilitated have shifted to the transit accommodation and the area has been cleared. The petitioners obtained Letter of Intent on 7th April, 1999. Commencement Certificate for Building A-1 was also given on 7th April, 1999. Pursuant to that construction has also commenced. It is pointed out that the petitioners by agreeing to the terms imposed have agreed to rehabilitate the persons covered by the project. It is further pointed out that out of 87 persons entitled 78 of them have had written agreements with the petitioners to avail of the benefit. In this context it is contended that as more than 70% of the persons entitled have agreed to the scheme and the area declared as Slum Rehabilitation Area permission was legally granted and as such the petitioners are within their jurisdiction to carry out the scheme. In these circumstances, it is contended that the order of the 4th respondent is without jurisdiction and or discloses error of law apparent on the face of the record and consequently this Court should interfere in the exercise of its extra ordinary jurisdiction under Articles 226 or 227 of the Constitution of India,

On behalf of the respondent No. 3, who is a person covered by the scheme and has an agreement with the petitioner, it is contended by his learned Counsel that the Government of Maharashtra by a notification in the Maharashtra Gazette of 19th April, 1998 has framed the general scheme. Once the scheme is framed, it is contended that the petitioners were bound to apply u/s 3-C of the Slum Redevelopment Act for development of the area. They having not so applied are not entitled to go ahead with the construction until permission is obtained.

5. I have heard learned Counsel for the petitioners-respondent Nos. 1 and 2 and respondent No. 3. To deal with the issue which arises herein certain dates and events will have to be referred to. On 20th February, 1991 the Development Control Regulations for Greater Bombay, 1991 were published. The regulations came into force with effect from 25th March, 1991. The relevant regulation in so far as slum projects are concerned was Regulation 33(10) read with Appendix IV of the slum scheme. On 2nd August, 1995 a declaration was made u/s 4 of the Slum Redevelopment Act. The Slum Redevelopment Act was amended with effect from 24th October, 1995. By the said amendment, Chapter I-A was inserted by Maharashtra Act 4 of 1996. Pursuant to the said amendment the definition of

Planning Authority as contained in section 2(19) of the Maharashtra Regional and Town Planning Act was amended to include the Slum Rehabilitation Authority appointed u/s 3-A of the Slum Redevelopment Act. Section 1-B was added to section 37 of the Maharashtra Regional Town Planning Act, 1966 (hereinafter referred to as the M.R.T.P. Act) by an amendment effected on 23rd November, 1995. On 16th December, 1995 a notification was issued in exercise of powers conferred by section 3-A(I) and (2) of the Slum Redevelopment Act, whereby the Slum Rehabilitation Authority was appointed. By a notification dated 13th September, 1996 Chief Executive Officer of the Slum Rehabilitation Authority has been delegated powers exercisable under sections 44, 45, 46, 51, 53, 54, 55, 56, 135 and 136 of the M.R.T.P. Act. On 5th October, 1997 by a Notification No. D.C.R. 1095/ 1209/C.R.-273/95/U.D-11 the Development Control Regulations for Greater Bombay were amended in so far as Regulation 33(10) was concerned. Slum Rehabilitation Scheme as framed by the Slum Rehabilitation Authority was approved by the said authority at the meeting held on 15th January, 1998. The said scheme was Gazetted in the Government of Maharashtra Gazette on 19th April, 1998. The petitioners submitted an Architect's proposal dated 27th May, 1998, 8th September, 1998 and 20th May, 1999 respectively. On 20th March, 1999 the application of the petitioners for setting up of the transit camp was allowed and on 7th April, 1999 the Letter of intent was granted in terms of the scheme,

6. With the above background the contentions as now raised can be considered.

The entire contention on behalf of respondent No. 4 is that apart from the general Slum Rehabilitation Scheme framed u/s 3-B of the Slum Redevelopment Act, it is also necessary that in respect of area notified or declared as a slum rehabilitation area a special scheme has to be framed u/s 3(c). If the special scheme is not framed, it is contended that even if permission has been obtained by the petitioners based on the general scheme, such permission is not valid and the petitioners cannot proceed with the construction as approved or which was granted under general Slum Rehabilitation Scheme.

Let us examine whether considering the provisions of the Slum Redevelopment Act, the provisions of the M.R.T.P. Act and the various notifications, whether such permission is required.

7. The Development Control Regulations for Greater Bombay had been notified and have been brought into force as far back as 25th March, 1991. The Development Control Regulations contain Regulation 33(10) with Appendix IV for the slum scheme. The amendment to the Slum Redevelopment Act was brought into force on 24th October, 1995. By the said amendment amongst others Chapter 1-A has been introduced. In terms of Chapter 1-A sections 3-A, 3-B, 3-C, 3-D and 3-E have been introduced. In terms of section 3-A(I), the State Government has been empowered to appoint an authority to be called as the Slum Rehabilitation Authority for such area or areas as may be specified in the notification. The State Government has also been conferred powers to appoint

different authorities for different areas. Sub-sections (2), (3), (4) and (5) of section 3-A deal with the composition of the authority, its powers, functions and terms. We then have section 3-B. u/s 3-B the State Government or the authority with the previous sanction of the State Government is to prepare a general Slum Rehabilitation Scheme for the areas specified under sub-section (1) of section 3-A for rehabilitation of slums and hutment colonies in such areas. The General Slum Rehabilitation Scheme prepared under sub-section (1) has to be published in the Official Gazette by the State Government or the concerned Slum Rehabilitation Authority as the provisional Slum Rehabilitation Scheme for the area specified u/s 3-A(1) for the information of general public and to invite objections and suggestions. The period for objection has also been set out. It is then provided that the objections have to be considered and after carrying out such modifications as deemed fit or necessary the Slum Rehabilitation Authority with the approval of the State Government will publish the scheme as a Slum Rehabilitation Scheme. The section also provides as to what the scheme must contain. u/s 3-D once a scheme is published Under sub-section (1) of section 3-B, the provisions of certain Chapters of the Act shall not apply to any area declared as the slum rehabilitation area or apply with certain modifications, that is subject to the following modifications, namely:-

(a) Chapters II and III shall be omitted:

By virtue of this one of the important section omitted would be section 4. Thereafter in so far as Chapter IV is concerned various amendments have been carried out to section 12. Section 11 has been omitted. Section 13 has "been substituted by new section. There are also amendments in Chapter V and Chapter VI. For sections 24 and 25 new section 24 has been substituted. I am not adverting to section 3-C for the moment.

The Maharashtra Legislature has also amended the Maharashtra Regional and Town Planning Act, 1966 by the Act Maharashtra 5 of 1996 with effect from 23rd November, 1995. By virtue of the said amendment section 2(19) has been substituted. The aforesaid sub-section deals with planning authority to include a Slum Rehabilitation Authority appointed u/s 3-A of the Maharashtra Slums Areas (Improvement, Clearance and Redevelopment) Act, 1971. Section 37 of the Maharashtra Regional and Town Planning Act is the section pertaining to modification of final development plan. By the amendment Act, Maharashtra 5 of 1996, section 1-B has been inserted to section 37. By the aforesaid sub-section, it is provided that notwithstanding anything contained in sub-section (1), if the Slum Rehabilitation Authority appointed u/s 3-A of the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971 is satisfied that a modification of any part of, or any proposal made in, a Final Development Plan is required to be made for implementation of the Slum Rehabilitation Scheme declared under the said Act, then, it may publish a notice in the Official Gazette, and in such other manner as may be determined by it, invite objections and suggestions from any person with respect to the proposed modification within

the time limit as stipulated from the persons affected by the proposed modification and after hearing such persons submit the proposed modification with amendment, if any, to the State Government. The State Government thereafter after such inquiry, as it may consider necessary, by a notification in the Official Gazette, sanction the modification. By virtue of powers conferred by section 37(1)(b) the State Government by notification dated 15th October, 1997 has approved the modification in so far as Development Control Regulation 33(1) is concerned. Under Annexure II(ii), it is provided as under:-

"If any area fulfils the condition laid down in section 4 of the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971 to qualify as slum area and has been censused or declared and notified shall be deemed to be and treated as Slum Rehabilitation Areas."

Appendix IV contains as to what should be contained in the case of redevelopment/construction of accommodation for hutment/pavement-dwellers through owners, etc. within the limit of Brihan Mumbai. One of the important aspect is that persons eligible would be entitled to a residential tenement free of cost of carpet area of 20-90 sq.m. (225 sq.ft.) including balcony, bath and water closet, but excluding common areas. Subsequent to the said Regulation the Slum Rehabilitation Authority which has been created for Greater Mumbai had prepared a General Slum Rehabilitation Scheme and had invited objection by notification of 17th April, 1996, which Scheme was published in the Maharashtra Government Gazette on 25th April, 1996. The objections received were considered by the authority at a meeting held on 15th January, 1998 under Resolution No. 6.10.7. The Scheme was approved and finally notified in the Gazette on 19th April, 1998.

Therefore the Slum Rehabilitation Authority as planning authority for Greater Mumbai under the M.R.T.P. Act has amended the Development Control Regulations for Greater Mumbai and also as Slum Rehabilitation Authority under the Slum Redevelopment Act has framed the General Scheme u/s 3-B of the Slum Redevelopment Act.

8. Once such a general Scheme is framed for the area of Greater Mumbai by a statutory authority is it still required that the authority must frame a special scheme for Survey Nos. 1527 and 1492 as is contended on behalf of respondent No. 4. It may be noted that in the Scheme as framed under criteria for Slum Rehabilitation Area it is set out as under:-

"The slum which is censused in the year 1976 and prior to that or thereafter or and which is declared and notified as Slum under Maharashtra Slum (Improvement, Clearance and Redevelopment) Act, 1971 and upon at least 70% of the total slum dwellers from such slum coming together and giving consent to participate in Slum Rehabilitation Scheme and upon such scheme being sanctioned such slum area shall be deemed as Slum Rehabilitation Area."

Para 3.3 of the Scheme sets out that if any area which is fit to be declared as

slum area u/s 4 of Maharashtra Slum Redevelopment Act or any other area for which the Slum Rehabilitation Scheme is necessary to be implemented, is declared as "Slum Rehabilitation Area" by the authority, then such areas shall be treated as Slum Rehabilitation Area. The authority to so declare is the competent authority u/s 3-C(1). It is, therefore, apparent that 3.1 and 3.3 must apply to two different situations. 3.1 is the deeming provision whereas under 3.3. the area will be treated as Slum Rehabilitation Area on a competent authority declaring it as Slum Rehabilitation Area. That the area already declared would not fall under 3.3, is also apparent by a look of section 4 of the Slum Redevelopment Act. Section 4 does not come into play once a general scheme is prepared u/s 3-B. That being the case, the Scheme as framed under 3-B being scheme for Greater Mumbai as framed by the authority for the said area, will be the general scheme in so far as the present area is concerned. This must follow from a reading of section 3-A and 3-D of the Slum Redevelopment Act. Section 3-A as pointed out earlier is appointment of a Slum Rehabilitation Authority for such area or areas. Once the authority is created for such area or areas it has to frame a scheme u/s 3-B. The Slum Rehabilitation Authority has been created for the area of Greater Mumbai. Once the general scheme is framed for the area, under the Annexure to Development Control Regulation No. 33(10) Part II(ii), if an area qualifies u/s 4 of the Slum Rehabilitation Act to qualify as a slum area and has been censused or declared and notified it shall be deemed to be treated as Slum Rehabilitation Area. Under the notification published on 19th April, 1998 under "Criteria" an area which is censused in the year 1975 or prior to that or which is declared and notified as slum under the Act and upon 70% of the slum developer coming together and giving consent to participate in Slum Rehabilitation Scheme shall be deemed as Slum Rehabilitation Area. Whereas u/s 3-C after a general scheme is prepared if the competent authority is satisfied that circumstances exist in respect of any area justifying its declaration as slum rehabilitation area under the said scheme (general scheme), declare such area as slum rehabilitation area. On such happening, a person aggrieved by the said order would have a right to appeal u/s 3-C(2). Therefore u/s 3-B a general scheme is prepared by the Slum Rehabilitation Authority for the area under its jurisdiction. By virtue of Development Control Regulations and Government Notification of 19th April, 1998, certain areas are deemed to be Slum Rehabilitation Areas. Whereas u/s 3-C(1), the Competent Authority after the general scheme has come into force can declare any other area in the area of its jurisdiction as a Slum Rehabilitation Area.

As noted earlier on the scheme being framed under 3-B, section 3-D would apply with the modifications. u/s 3-C it is competent authority and not the Slum Rehabilitation Authority which is entitled to declare any other area as a slum rehabilitation area. Therefore there are two different authorities acting in two different field. u/s 3-A authority is created under the Act for the purpose of framing a scheme u/s 3-B. u/s 3-C the competent authority after the said scheme has come into force u/s 3-B is empowered to declare any other area as a

slum rehabilitation area. In my opinion therefore sections 3-B and 3-C operate in two different fields. Once that be so, it is the Scheme as framed u/s 3-B which would be applicable in so far as the petitioners are concerned as their area was already declared as a slum area by virtue of the deeming provisions. There can be no conflict between section 3-B and section 3-C as was sought to be contended on behalf of respondent No. 4, Therefore, both by virtue of the Development Control Regulations and the Scheme as framed u/s 3-B the petitioner were entitled to develop the area. The petitioners applied for permission in terms of the scheme framed and have been granted the I.O.A. as they satisfied the criteria. Once having held so, it must be clear that the petitioners have a valid permission granted to carry on the project in terms of I.O.A. as granted on 7th April, 1999.

9. However, one other aspect has to be borne in mind namely section 24 as introduced by section 3-D of the Slum's Redevelopment Act. u/s 24 whenever an occupant of a premises of any area declared as a slum rehabilitation area vacates or is evicted from such premises on the ground that it is required for the purpose of redevelopment under such rehabilitation scheme, the occupant within such time as may be prescribed, must file a declaration with the competent authority that he desires to be rehabilitated in the area after its redevelopment under the said scheme. It is true that the procedure u/s 24(1) has not been followed. However in the I.O.A. the persons who are entitled as beneficiaries have been listed in para 4 read with Annexure II. The said para reads as under :-

"That you shall re house the eligible slum dwellers as per the list certified by the Addl. Collector (Enc.) allotting tenements and shop of area mentioned in Annexure-II, free of cost constructing the same as per specification annexed herewith."

Considering all this, it must be deemed that the beneficiaries are those persons whose names are included in Annexure II. As they have already shifted they will be deemed to have applied u/s 24(1). The competent authority based on the said annexure shall prepare a Register as contemplated by section 24(2) containing the names of such beneficiaries. It may be noted that after the Scheme is approved, it is the competent authority who maintain the Register, who is duty bound to see that development is carried on in terms of I.O.A. granted. If the respondent No. 4 or any other persons eligible whose names are listed in Annexure I to the undertaking have any grievance about the development, it will be open to them to place their grievance before the competent authority who will consider the same and dispose them according to law. The competent authority must bear in mind that it is now the custodian of the rights of the beneficiaries, and it must exercise its powers whenever required for the benefit of such beneficiaries whose names are listed in Annexure II.

10. After having come to the conclusion that there is a valid scheme, the respondent No. 4 had no authority or jurisdiction to entertain the said appeal as the competent authority has not declared any area as a slum area u/s 3-C of the

Slum Redevelopment Act.

11. Petitioner No. 1 is a registered partnership firm. The partners, along with petitioner No. 2 who is also a partner have filed an undertaking in this Court dated 29th February, 2000. In the said undertaking the petitioners have undertaken that they shall carry out the work in terms and conditions contained in Letter of Intent dated 7th April, 1999 and the construction shall be carried out in accordance with I.O.A. dated 26th August, 1999 and the plans as already sanctioned by the Slum Rehabilitation Authority. There is a further undertaking that the slum dwellers whose names are contained in Exhibit "A" shall be rehoused in accordance with the provisions of Slum Rehabilitation Scheme and free of cost. There are some other undertakings. 1 need not refer to them except No. 4 whereby they undertook that the undertaking which has been the undertaking in Writ Petition No. 352 of 2000 (this petition) shall be deemed to have been given as the undertaking in Writ Petition Nos. 360 of 2000 to 408 of 2000 and 474 of 2000 to 482 of 2000. The undertaking as filed is accepted.

12. Having said so the following order:-

(a) Rule made absolute in terms of prayer Clause (a).

(b) The respondent Nos. 1 and 2 to see that the construction is completed in terms of the I.O.A. and the beneficiaries including respondent No. 3 on completion are allotted the tenements as per the I.O.A.

(c) In the circumstances of the case, there shall be no order as to costs.

All authorities concerned to act on the ordinary copy of this order duly authenticated. P.A. to give authenticated copy of this order.

Issuance of certified copy expedited.

13. Rule made absolute.