

(2012) 09 BOM CK 0181

In the Bombay High Court

Case No : Writ Petition No. 148 of 2012 with Notice of Motion No. 127 of 2011
and Notice of Motion No. 54 of 2012

Sher Mohammad Dost Mohammad Khan and others

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 25-09-2012

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2012) 6 BomCR 374

Hon'ble Judges : D.Y. Chandrachud, J;A.A. Sayed, J

Bench : Division Bench

Advocate : Vijay A. Thorat, with Mr. Manoj Kumar Upadhyay instructed by Mr. Mahindra Deshmukh, for the Appellant; D.A. Nalavade, GP with Mr. Milind More, AGP for Respondents 1 and 7, Mr. Vinod Mahadik for Respondent No. 2, Mr. G.D. Utangale with Mr. B.V. Phadnis instructed by M/s. Utangale and Co. for Respondents 3 and 8, Mr. S.G. Surana for Respondent No. 4, Mr. S.U. Kamdar with Mr. Pravin Samdani instructed by Mr. C.N. Gole, for the Respondent

Final Decision : Dismissed

Judgement

Dr. D.Y. Chandrachud, J.—Twenty-one persons, claiming to be occupants, have instituted these proceedings under Article 226 of the Constitution to challenge a Slum Rehabilitation Scheme under DCR 33(10) in respect of a property described as Meer Hussain Tangewala Chawl situated on C.T.S. No. 65 (Part), 66, 66/1 to 51 at Andheri (West), Mumbai. The land belongs to the Municipal Corporation of Greater Mumbai and there is admittedly a reservation for the purposes of a fish market. The scheme which has been sanctioned by the Slum Rehabilitation Authority ("the SRA") envisages inter alia the rehabilitation of the slum dwellers, the construction of a municipal market and other amenities including a Madrassa, balwadi, welfare center and the construction of tenements for project affected persons. The implementation of the scheme has substantially progressed and at this stage, the structure in which the rehabilitation component of the scheme is to be housed has been constructed. In order to appreciate the grievance which

has been urged on behalf of the Petitioners, a reference to some of the basic facts would be necessary. There were about 106 occupants on the land. The Municipal Corporation of Greater Mumbai being the land owner, it was required to certify the list of eligible occupants who were in occupation as on the cut off date of 1 January 1995. Annexure II comprising of the list of eligible slum dwellers was initially issued on 4 May 2006 and 91 occupants were found to be eligible. Following the issuance of Annexure II, the SRA issued a letter of intent on 12 December 2006 and plans were approved on 4 July 2007. A commencement certificate was issued on 23 July 2007. A revised letter of intent was issued by the SRA on 29 October 2009. The revised letter of intent requires that the buildable reservation in respect of the fish market would be handed over free of cost to the Municipal Corporation and that 91 occupants (then found to be eligible) would be rehabilitated. In addition, 81 tenements for project affected persons were required to be handed over to the SRA. The rehabilitation component of the scheme also envisaged the construction of other amenities including a Madrasa, balwadi and welfare center.

2. An appeal was filed before the High Power Committee ("the HPC") constituted by the State Government by three slum dwellers. The appeal was numbered as Appeal 69 of 2009.. During the pendency of the appeal, a group of 19 occupants moved the HPC which was treated by the Committee as a suo motu application. The HPC during the pendency of the proceedings directed the Assistant Commissioner of K-West Ward of the Municipal Corporation by an order dated 28 January 2010 to reverify the eligibility of 32 occupants in respect of whom a specific grievance was made in the appeal before it. A reverification was accordingly made and a reasoned order was passed by the Assistant Commissioner, K-West Ward on 30 August 2010, by which he held that 23 out of the 32 occupants were not eligible. As a result, out of the 91 occupants who had originally been held to be eligible when Annexure II was certified by the Municipal Corporation on 4 May 2006, the number of eligible occupants stood reduced to 68 persons following the reverification that was carried out by the Assistant Commissioner of the Municipal Corporation.

3. The HPC decided both the appeal filed by the three slum dwellers and the corresponding proceedings initiated by 19 other dwellers (numbered as a suo motu application) by its order dated 30 October 2010. The salient findings that were arrived at by the Committee were as follows :

i) In pursuance of the directions of the Committee a reverification was carried out in respect of 32 occupants of which 23 were held to be ineligible. Consequently upon the deletion of the names of these 23 persons, 68 were eligible as on the cut off date;

ii) All the occupants had furnished their consents to the redevelopment scheme and even after the deletion of the names of 23 occupants the developer had the consent of more than 70% of the eligible occupants as required by DCR 33(10);

iii) The applicants before the HPC in the application numbered as a suo motu application had submitted that though they had given their consents in favour of the developer earlier, they had now withdrawn their consents. Following the decisions of this Court, the Committee held that a consent once given cannot be withdrawn unless due legal process is adopted;

iv) In this case the occupants had furnished their consents to the Slum Rehabilitation Scheme and the SRA had granted its approval and permission / sanction. The consents could not be allowed to be withdrawn at this belated stage;

v) Out of 106 occupants, 70 vacated their structures which have been demolished and construction upto the plinth level has already been completed;

vi) The Appellants before the Committee stated that they wish to implement the scheme, but want to appoint a new developer. The Committee rejected this request for the appointment of a new developer holding that it was in the larger interest of the slum dwellers that the scheme which had already been sanctioned should continue through the same developer;

vii) The Appellants before the Committee had not come before it with clean hands and have been put up by another developer. The Committee held that a proxy battle between two developers could not be entertained; and

viii) The pendency of a criminal proceeding as a private complaint shall not impede the scheme.

4. These proceedings under Article 226 were instituted before the Court on 19 January 2011. At the present stage, photographs have been produced on the record during the hearing to indicate that the construction of the structure of the rehabilitation component of the scheme has been completed.

5. The following submissions have been urged on behalf of the Petitioners :

i) The HPC has erroneously proceeded on the basis that only three slum dwellers were before it. The Committee has ignored the companion appeal which was filed before it by Petitioners 4 to 14;

ii) The grievance of the Petitioners is that :

(a) A reverification by the Municipal Corporation was carried out only in respect of 23 occupants and not 32 occupants and the documents relating to the remaining ten persons were not verified;

(b) The consents of the Petitioners and others were forged and this aspect has not been decided by the HPC;

(c) The land belongs to the Municipal Corporation of Greater Mumbai and in view of the reservation for a market an NOC of the Municipal Corporation was required which has not been placed on the record; (d) In respect of 26 persons the voters' list was not relied upon and the verification was on the basis of other

documentary material including ration cards which are bogus. The number of occupants has increased and Annexure II would indicate that in certain cases though spouses were shown to be occupants of the same tenement, they are shown separately for the purposes of rehabilitation.

6. There is no merit in the first submission which has been urged on behalf of the Petitioners that the HPC has ignored the appeal filed by companion group of 19 slum dwellers and that the Committee proceeded as if only three occupants were before it. The order passed by the HPC is expressly with reference to both the appeals namely the appeal filed by the three slum dwellers and the proceedings initiated by the other group which was treated as a suo motu application. In the initial part of its order the Committee has adverted to the basic appeal filed by the three appellants in paragraph 1, while in paragraph 3 it has dealt with the companion application. The Committee has recorded the grievance urged before it by the applicants in the companion proceedings that they had given their consents in favour of the developer but that they had since withdrawn their consents. The Committee has dealt with the submission, holding that a consent once furnished cannot be revoked unless due process of law is followed. The final order which has been passed is on both the appeal which was initially filed by the three slum dwellers as well as on the proceeding which was initiated by the other group of 19 occupants. There is therefore no merit in the first submission.

7. The basic issue that falls for determination is as regards the process of certifying the list of eligible occupants and the validity of the consents which were issued in favour of the scheme. The initial process of certification was carried out by the Municipal Corporation and Annexure II was issued on 4 May 2006. As a result of that certification 91 occupants were found to be eligible. During the pendency of the proceedings before the HPC, a grievance was made specifically with reference to 32 occupants on the ground that they were not eligible. By its order dated 28 January 2010 the HPC directed a reverification of the cases of 32 occupants in terms of the list which was furnished in the appeal before it. In other words, it is evident that it was on the basis of the complaints made by the appellants before the Committee that it directed a fresh verification in respect of 32 occupants. The submission which was urged on behalf of the Petitioners, that a verification took place only in respect of 23 occupants is factually incorrect. The report of the Assistant Commissioner, K-West ward forms a part of the record. The Assistant Commissioner in his order dated 30 August 2010 considered the cases of each of the 32 occupants in respect of which an objection as to eligibility was raised separately. The Assistant Commissioner found that 23 of those occupants were not eligible and as a result only 9 out of the 32 could participate in the scheme. Consequent upon the decision of the Assistant Commissioner, the number of eligible occupants stands reduced from 91 to 68. There has therefore been a due application of mind and the original list of certified occupants has been corrected after a reverification. There has been an application of mind to the objection that in some cases, such as spouses living together, the certified list treated each separately though both would be entitled

to one unit. Insofar as the developer is concerned the balance 23 tenements in respect of those found ineligible would have to be handed over to the SRA for being utilized by the SRA for accommodating project affected persons.

8. The Petitioners sought to urge that the HPC has not enquired into whether the consents which were obtained were genuine or, as the Petitioners allege, were fabricated. Now insofar as this aspect of the matter is concerned, it would be necessary to closely scrutinize from the record as to whether this grievance is sustainable. In paragraph 23 of the writ proceedings before this Court the Petitioners have relied upon a chart annexed at Exhibit V to the Petition which according to the Petitioners should be read as a part of the writ petition. The chart at Exhibit V contains the names of each individual occupant, whether they have been found to be eligible or otherwise and whether the consent agreement is shown to have been signed or not. Of the 21 Petitioners before this Court, the chart at Exhibit V would indicate that in respect of Petitioners 1, 2, 4, 5, 6, 10, 11, 13, 14, 17, 20 and 21 it has been stated that the consent agreements of these Petitioners are shown to have been signed, but that they are now not supporting the scheme. Once consents have been granted, they cannot be withdrawn save by following due process of law. Otherwise, sanctioned schemes would be liable to be obstructed and slum dwellers would become only instruments in proxy battles between rival developers. In respect of Petitioners 7, 8, 9 and 16 it has been stated that the consent agreements were shown to have been signed and that they are supporting the scheme.

9. An affidavit in reply was filed in these proceedings on behalf of the developer in March 2011 in which the following averment has been made :

I say that out of 21 Petitioners, 19 Petitioners have given their written consent in favour of Respondent No. 5 for implementation of Slum scheme. I say that out of 21 Petitioners, names of 20 Petitioners are in Annexure II and out of 20 such Petitioners, 17 Petitioners are eligible and all 17 Petitioners have given their written consent in favour of Respondent No. 5 for implementation of Slum Scheme.

Subsequently an additional affidavit was filed on behalf of the developer on 20 March 2012 in which it was stated that out of the 21 Petitioners, the names of 20 Petitioners appear in Annexure II all of whom had given their consent to the scheme. Out of the 20 Petitioners, it has been stated that 17 have been found to be eligible and all of them have consented to the scheme and to the redevelopment by the Fourth and Fifth Respondent developer. The individual consents have been brought on the record. In the affidavit in rejoinder that was filed on 7 April 2012, the consents which have been brought on record have not been specifically dealt with.

10. More significantly it will be necessary for the Court at this stage to advert to the conduct of Petitioners 19, 20 and 21. Petitioners 19, 20 and 21 were found to be eligible, but did not vacate their premises for the redevelopment work. Orders

of eviction came to be passed against them by the Collector, which were confirmed by the Commissioner. Against the orders of eviction a writ petition was filed before this Court under Article 226 of the Constitution Writ Petition 776 of 2009. By an order dated 29 July 2009 a Learned Single Judge of this Court disposed of the petition by consent of parties (except of the State of Maharashtra and the Municipal Corporation). The consent order recorded that the developer had agreed to give to each of the three Petitioners (Respondents 5, 6 and 7 to those proceedings) two tenements admeasuring 269 sq. ft. in the rehab building taking into consideration the number of members of the family. Petitioners 19, 20 and 21 therefore agreed and undertook to vacate their premises against the developer agreeing to handover additional tenements. Since the three Petitioners did not vacate despite this order, contempt proceedings were initiated. On 19 December 2009 a consent order was passed by which the developer agreed to pay 24 months' compensation and the three Petitioners agreed to handover vacant and peaceful possession, failing which it was stated that the Court Receiver shall take physical possession of the premises. A review petition was thereafter dismissed on 28 January 2010. Since possession was not handed over the Court Receiver submitted a report to the Learned Single Judge on which an order was passed on 29 January 2010 permitting the Receiver to take forcible possession. Subsequently a Motion was taken out for vacating that order. On 9 February 2010 the Learned Single Judge while dismissing the Motion held that Petitioners 19 to 21 were avoiding complying with the orders passed by the Court which was unfair to all the other occupants who had handed over their tenements several months earlier for the purpose of redevelopment against the developer paying monthly compensation towards alternate accommodation. The order of the Learned Single Judge was challenged in appeal, but the appeal was dismissed on 16 February 2010 by the Division Bench. In a Special Leave Petition, time to vacate was granted by the Supreme Court on 19 February 2010 until 10 April 2010. The diverse orders passed by this Court would indicate that Petitioners 19, 20 and 21 have taken the benefit of the scheme and have entered into a consensual arrangement with the developer under which they would be provided additional tenements over and above their statutory entitlement and would be paid monthly compensation. We find merit in the contention which has been urged on behalf of the Respondents that these Petitioners, in any event, having taken the benefit of the scheme cannot be heard to challenge the validity of the scheme.

11. The net result of the discussion in the earlier part of this judgment is that there is a finding of fact by the HPC that the Petitioners have furnished their consents to the redevelopment scheme and that at a belated stage, they cannot be permitted to resile from their consents. The scheme has been acted upon and as noted earlier the structure representing the rehabilitation component of the scheme has been constructed. The large body of occupants has vacated their structures in anticipation of the redevelopment. All the 21 Petitioners having furnished their consents to the scheme are now seeking to resile therefrom only

with a view to introducing a new developer. The HPC was therefore justified in coming to the conclusion that the proceedings represented only a proxy battle between two developers and did not represent a genuine attempt on the part of the occupants to ventilate the grievances of the slum dwellers. Several of the Petitioners, as the chart at Exhibit V would indicate have in fact stated that they are supporting the scheme. Petitioners 19, 20 and 21 have obtained the benefit of the scheme in terms of the orders passed by consent in proceedings before the Court, as noted earlier. In view of the objections raised to the eligibility of some occupants, a reverification was ordered by the HPC with a view to reconsidering the certified list of occupants as a result of which 23 occupants out of the 91 originally certified have been deleted from the scheme. The petition which has been filed before the Court is only an attempt to delay the implementation of the scheme which has been sanctioned by the SRA. The Municipal Corporation is evidently a party to the scheme having completed the process of certification of Annexure II initially and thereafter the process of reverification under the orders of the HPC. As noted earlier, the letter of intent envisages that a built up reservation of a market has to be handed over free of cost to the Municipal Corporation. In the circumstances, no case for interference is made out. The Petition is accordingly dismissed. There shall be no order as to costs.

In view of the dismissal of the Petition, Notice of Motion 127 of 2011 and Notice of Motion 54 of 2012 do not survive and are accordingly disposed of.