Mansoor Ali Farida Irshad Ali vs The Tahsildar-I, Special Cell on 27 February, 2025

Author: Sudhanshu Dhulia

Bench: Sudhanshu Dhulia

REPORTABLE

IN THE SUPREME COURT OF INDIA

2025 INSC 276

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. OF 2025

(ARISING OUT OF SLP (C) NO.1665 OF 2023)

MANSOOR ALI FARIDA IRSHAD ALI & OTHERS …APPELLANTS

Versus

THE TAHSILDAR-I, SPECIAL CELL
& OTHERS …RESPONDENTS

WITH

CIVIL APPEAL NO(S). OF 2025
(ARISING OUT OF SLP(C) NO(S). OF 2025)
DIARY NO.40035 OF 2024

AND

CIVIL APPEAL NO(S). OF 2025
(ARISING OUT OF SLP(C) NO(S). OF 2025)
DIARY NO.49187 OF 2024

JUDGMENT

SUDHANSHU DHULIA, J.

1. Delay condoned. I.A(s) seeking permissions to file Special Leave Petitions are allowed.

2. Leave granted.

3. These appeals challenge the order dated 04.01.2023 where the High Court of Bombay dismissed a writ petition filed impugning a notice dated 06.12.2022, issued by Slum Rehabilitation Authority (hereinafter 'SRA'), directing appellants to vacate their respective premises located in the plot of land in question as the same is to be redeveloped.

4. The brief facts of the case are as follows:

> a) The SRA issued a notice dated 28.01.2019 under sections 33 and 38 of the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971 (hereinafter 'Slum Act') and directed appellants to vacate their respective premises within 15 days for the reason that appellants were occupying a slum area which was to be redeveloped.

b) The challenge to the notice dated 28.01.2019 before the Apex Grievance Redressal Committee (hereinafter 'AGRC') under section 35(1A) of the Slum Act was dismissed vide order dated 12.06.2019.

c) Despite the affirmation of notice dated 28.01.2019 by the AGRC, appellants did not handover their premises to the developer for the redevelopment of the area and thus, SRA issued another notice on 06.12.2022 under sections 33 and 38 of the Slum Act, directing appellants to vacate their premises within 48 hours. This notice of 06.12.2022 was challenged before the High Court by filing a Writ Petition which has been dismissed vide the impugned order dated 04.01.2023. Aggrieved by the same, the appellants are before us.

5. We have heard both sides and perused the material on record.

6. Before we deal with the facts of the present case, we would like to discuss some of the provisions of the Slum Act which govern the redevelopment of slum areas. The term 'slum area' is defined under section 2(ga) of the Act, which reads as follows:

> "slum area" means any area declared as such by the Competent Authority under sub□ section (1) of section 4; and includes any area deemed to be a slum area under section 4A."

7. The Competent Authority, appointed under section 3 of the Slum Act, is empowered to declare any area as a slum area under section 4 of the Slum Act. The Slum Act is a welfare legislation enacted in 1971 with the object of rehabilitating slum dwellers in order to improve their living conditions. The subsequent amendment to the Slum Act in the year 1996 inserted an entirely new Chapter i.e. Chapter I□A for the purpose of Slum Rehabilitation. Under Section 3A of this new Chapter of the Slum Act, the State has appointed a Slum Rehabilitation Authority ('SRA') which prepares and implements Slum Rehabilitation Schemes as per section 3B of the Slum Act.

8. There is another State statute relevant here which is Maharashtra Housing and Area Development Act, 1976 ('MHAD Act'). The Act focuses on providing affordable housing across the State of Maharashtra and like SRA which is created under the Slum Act, Maharashtra Housing and Area Development Authority ('MHADA') was formed under MHAD Act. There are well□defined areas in which the MHAD Act and Slum Act operate. However, there are some overlapping areas as well. Be that as it may, we are not required to get into the details of this aspect.

9. Coming back to the facts of the case, SRA sanctions a rehabilitation scheme in 2010 and appoints Respondent No.3 ('developer') to redevelop the area for Respondent No.9 i.e. the proposed society

named Bharat Ekta Co-Operative Society ('Bharat Ekta Society') in terms of the Slum Act and Development Control Regulations for Greater Mumbai, 1991 ('hereinafter DCR'). Under the scheme, the plot in question was joined with two other adjoining plots and an amalgamated scheme for slum rehabilitation was to be implemented. The developer initiated the redevelopment project in two phases. After completing Phase-I, when the developer sought to vacate the present plot in Phase-II during construction, the present appellants did not cooperate and consequently, the developer requested the competent authority to initiate necessary action against the appellants among others under sections 33 and 38 of the Slum Act. The relevant portions of these sections are as follows:

> "33. Power of eviction to be exercised by Chief Executive Officer.— Where the Competent Authority is satisfied either upon a representation from the owner of a building or upon other information in its possession that the occupants of the building have not vacated it in pursuance of any order or direction issued or given by the Authority, the Authority shall, by order, direct the eviction of the occupants from the building in such manner and within such time as may be specified in the order, and for the purpose of such eviction, may use or cause to be used such force as may be necessary: Provided that, before making any order under this section, the Competent Authority shall give a reasonable opportunity to the occupants of the building to show cause why they should not be evicted therefrom.
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> 38. Order of demolition of buildings in certain cases.— (1) Where the erection of any building has been commenced, or is being carried out, or has been completed, in contravention of the provisions of section 8 or of any restriction or condition imposed under sub-section (10) of section 12, or a plan for the redevelopment of any clearance area or in contravention of any notice, order or direction issued or given under this Act, the Competent Authority may, in addition to any other remedy that may be resorted to under this Act or under any other law, make an order directing that such erection shall be demolished by the owner thereof within such time not exceeding two months as may be specified in the order, and on the failure of the owner to comply with the order, the building so erected shall be liable to forfeiture or to summary demolition by an order of the Competent Authority and the expenses of such demolition shall be recoverable from the owner as arrears of land revenue: Provided that, no such order shall be made unless the owner has been given a reasonable opportunity of being heard..." In exercise of its power under the abovementioned sections, the competent authority issued the initial notice dated 28.01.2019 by which appellants were directed to vacate the premises within 15 days.

10. Against this notice, appellants filed an application before AGRC questioning the entire slum rehabilitation project on the grounds that the plot is a MHADA layout and only MHADA can redevelop the said plot of land as per Regulation 33(5) of DCR. In other words, as per the appellants, it is not a project that can be undertaken by the SRA under Regulation 33(10) of DCR. In other words, the appellants tried to raise doubts about the legality of the slum rehabilitation project itself. Appellants also raised a question that the scheme was being implemented without obtaining the consent of 70% of occupants which is mandatory under the DCR. Moreover, the Appellants claimed

that they are the tenants of MHADA and are residing there by paying rent to MHADA.

11. AGRC in its well-considered order dated 12.06.2019 dealt with all the points raised by appellants and dismissed their application. It was rightly held that the contention of the appellants to the effect that the said plot is a MHADA layout and thus, required to be redeveloped by MHADA as per Regulation 33(5) of DCR instead of SRA under Regulation 33(10) of DCR, has no substance because MHADA has been consistent in its stand that the plot was never a MHADA layout. Moreover, the appellants were never the tenants of MHADA and they were just staying there as transit camp tenants. There is no landlord-tenant relationship between the appellants and MHADA and what the appellants were paying to MHADA was not rent but transit fee and other service charges. AGRC also observed that appellants are ineligible slum dwellers and some of them along with others had filed a Writ Petition before the High Court way back in the year 2010 raising identical issues and that petition was dismissed on 20.07.2011.

12. The AGRC order dated 12.06.2019 was never challenged before any forum. After four years of passing of this order when SRA issued the second notice dated 06.12.2022 the appellants approached the High Court in writ jurisdiction leading to the impugned order dated 04.01.2023.

13. The High Court notes that the appellants did not approach the Court with clean hands inasmuch as they did not disclose the earlier notice even when the later notice of 2022 refers to the previous notice of 2019.

14. There is no satisfactory explanation on behalf of the appellants as to why they never challenged the AGRC order, except for making a bald statement that they were not aware of that order. The High Court rightly disbelieves this and further notes that AGRC order has attained finality. In fact, from 2019 to 2022, instead of challenging the AGRC order, appellants were busy filing complaints against Bharat Ekta Society i.e., respondent no.9 here, and made an unsuccessful attempt to question the credibility of the society by calling it a 'bogus society'. The appellants had challenged the order of AGRC where they had participated in the proceeding and ACRC had closed the proceedings and reserved its order. Under these circumstances their contention of being unaware of the final order, would only commend us to conclude that the appellants were not diligent enough. Further they cannot feign ignorance of the structures raised before their own eyes, wherein settlement of other slum dwellers was carried out.

15. The appellants have only been using dilatory tactics to delay the project as they were found to be ineligible slum dwellers since they were transit camp tenants, who were given transit accommodation during the widening of the Western Express Highway. Some of the appellants, who were earlier not eligible though have now been found to be eligible and have been offered accommodation under the present scheme. However, they have not accepted the offer and have stuck to their argument that this being a MHADA layout, it should be developed separately and not under Slum Act. The reason for this is that in case MHADA develops it, appellants would get a larger accommodation which is not generally provided for slum dwellers in the redeveloped buidlings.

16. The appellants have also raised a point that no notification has been issued under the Slum Act declaring it to be a slum area. This contention is totally misconceived because the project in the present case relates to a 'censused slum' and it is included in the definition of slums under Regulation 33(10) of DCR for the purpose of redevelopment. As per Regulation 33(10)(II)(i) of DCR, slums for the purpose of redevelopment are defined as follows:

> "...slums shall mean those censused, or declared and notified, in the past or hereafter under the Slum Act. Slums shall also mean areas/pavement stretches hereafter notified as Slum Rehabilitation Areas." 'Censused Slums' are defined under Regulation 33(10)(II)(viii) of DCR as 'those slums located on lands belonging to Government, any undertaking of Government, or Brihan Mumbai Municipal Corporation and incorporated in the records of the land owning authority as having been censused in 1976, 1980 or 1985 or prior to 1st January, 1995'. In the present case, MHADA has submitted before us as well as before the High Court and AGRC that it is their property but it is not as MHADA layout and it has granted a No Objection Certificate to SRA for the redevelopment of the land under Regulation 33(10) of DCR because the site is a slum which had been declared as 'censused slum' way back in the year 1981. Reading of the above regulations also makes it clear that if a slum is a 'censused slum' then it is already included in the definition of slums for the purpose of redevelopment under Regulation 33(10) of DCR and no separate notification is required under the Slum Act. In other words, a censused slum is also a slum as per Regulation 33(10) DCR and a separate notification under section 4 of the Slum Act is not required. MHADA has also never declared this slum as a part of its layout. It may be a MHADA property technically but over the years it has grown as a slum and therefore, for purely practical reasons, it needed to be developed by SRA under Regulation 33(10) of DCR and not as a MHADA layout under Regulation 33(5) of DCR. In fact, as discussed earlier, a No Objection Certificate to SRA for the development of the said property has already been granted by the MHADA.
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> At the risk of repetition, we would like to note that clearly there is no force in the appellants' arguments that it is a MHADA layout and had to be redeveloped under Regulation 33(5) of DCR rather than Regulation 33(10) of DCR. In our view, this redevelopment, which is being carried out under the Slum Act and Regulation 33(10) of DCR, does not suffer from any legal infirmity.

17. For the present slum area, SRA had pointed out before the High Court that there were as many as 2965 slum structures which were surveyed and out of these, 2625 were found to be eligible for rehabilitation. Also, the record shows that Bharat Ekta Society is a bona fide society consisting of 261 slum dwellers and more than 70% of the eligible slum dwellers of the Society have taken a considered decision that they want redevelopment of their slums, and a great deal of progress has already been made in this regard so far. The project has not only been sanctioned but has reached an advanced stage and at this stage, the appellants cannot be allowed to disturb this ongoing project as it would defeat the whole purpose of the redevelopment which is going to benefit a large number of eligible slum dwellers.

18. Only four of the present appellants were there before the High Court and rest of the appellants are fence sitters who have directly approached this Court claiming that they are also affected by the order of the High Court, even though they were never a party before the High Court. In any case, we find no merit in their case.

19. No relief can be granted to these appellants as prayed. These appeals are liable to be dismissed and are hereby dismissed.

20. Pending application(s), if any, stand(s) disposed of.

21. Interim order(s), if any, stand(s) vacated.

.....J. [SUDHANSHU DHULIA] .....J. [KRISHNAN VINOD CHANDRAN] New Delhi.

February 27, 2025.