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Marathwada Society Chawl Committee & Others v/s The State of Maharashtra & Others

Writ Petition No. 1036 of 2017

decided on

26-09-2017

at

High Court of Judicature at Bombay

by

THE HONOURABLE JUSTICE SHANTANU KEMKAR & THE HONOURABLE JUSTICE ANUJA PRABHUDESSAI

advocates

For the Petitioners: Hasanuddin Ansari, Advocate. For the Respondents: R1, Abhay Patki, Addl. G.P., R2, Abhijeet A. Desai, R3 & R4, Tejesh Dande a/w. Bharat Gadhavi i/b. Tejesh Dande & Associates, Advocates.

Judgment

Anuja Prabhudessai, J.

1. Rule. Rule made returnable forthwith. By consent of parties taken up for final hearing.

2. By this petition under Article 226 of the Constitution of India, the petitioners have impugned the Government Notification bearing No. RNI No. MAHBIL/2009/37831 dated 16th July, 2016 in exercise of the power under Section 14(1) of the Maharashtra Slums Area (Improvement, Clearance and Redevelopment) Act, 1973 (for short "Slums Act").

3. Heard Mr. Ansari, the learned Counsel for the petitioner. The main contention of the petitioner is that being the owners of the property, they ought to have been given preference to develop the said property. It was contended that the petitioners are nowhere concerned with and have not appointed the respondent no.4 to redevelop the property under SRA scheme. It is further submitted that the respondent no.3 and 4 have no right and authority to make an application for acquisition of the said property. It is urged that the acquisition is illegal and is liable to be quashed.

4. The learned Counsel Mr. Abhijeet Desai for the SRA, has contended that as a consequence of final notification under Section 14(1) of the Slums Act the property vests in the Government and the petitioners can at the most apply for compensation in the manner provided under the Act.

5. We have considered the submissions. It appears that the plot of land, along with the structures standing thereon, being Original Plot no.38, final plot no.42 and corresponding CTS No.73, sub division 1 to 11, 22 to 37 admeasuring 639 sq meters situated at 3rd Road, Santa Cruz (East), Mumbai was originally owned by Jeevanbhai Gopalbhai Fanaswala. It is not in dispute that by notification dated 15.10.1977 published in the official gazette of the State of Maharashtra dt. 27.10.1977 under Section 4(1) of the Slums Act, the said property was declared as slum. The erstwhile owner Shri Fanaswala had not filed any appeal in terms of sub sec(3) of Section 4 of the Slums Act, challenging the declaration of the said property

as slum.

6. The petitioners claim that by Deed of Conveyance dated 6.6.1985 (Exh-B1), the erstwhile owner Shri. Fanaswala had transferred the property in favour of the petitioner no.1 which is a registered Cooperative Society. The petitioners contend that the persons whose names are shown as purchasers in Deed of Conveyance, were in fact the Committee Members of the petitioner no.1 and had purchased the said property on behalf of the petitioner no.1. The petitioners have stated that the respondent nos.5 to 18 are the legal representatives /successors of the aforesaid Committee Members/purchasers and that they have no right to the said property.

7. A perusal of the Deed of Conveyance dated 6.6.1985 and form II (Exh-C2) indicates that the erstwhile owner had transferred the property in the names of Shaikh Azimoddin, Ramji Ghoshar, Mohd. Sharif, George D'souza, Shankar Naik and Shetty Devraj and the names of these persons are recorded in the survey record. It appears that there is a dispute between the Petitioners and the Respondent Nos.5 to 18 over the title of the property and the said dispute has led the Petitioner into filing a civil suit seeking to restrain the Respondent Nos.5 to 18 from creating third party rights and/or selling or transferring the said property in favour of any other person. The said suit is pending before this Court and as a result the dispute between the Petitioner and the Respondent Nos.5 to 18 over the title of the said property is not yet resolved.

8. Be that as it may, the property was declared as a slum, way back in the year 1977. Sub Section 3 of Section 4 of the Slums Act confers powers on the aggrieved person to challenge the declaration by filing an appeal before the Tribunal 30 days from the date of declaration in the official gazettee. This section specifically bars filing of the appeal after the expiry of 30 days as aforesaid. In the instant case, as stated earlier, the erstwhile owner had sold the property by deed of conveyance executed in the year 1985. He had not filed any appeal challenging the declaration of the land as slum. The affidavit in reply filed on behalf of Respondent No.2 indicates that Shaikh Riyazuddin had challenged the said declaration by filing an appeal No.41 of 2012. The said appeal, apparently filed after more than 30 years of declaration was dismissed on 11.2.2013; as a consequence thereof the property continues to be a slum.

9. The fact that the property has been declared as a slum is a clear indication of the fact that the competent authority was satisfied that the said property was over crowded, was lacking basic civic amenities and sanitation facilities. Due to lack of such facilities and conveniences the property and the structures thereon were unfit for human habitation. As a result thereof the property had become a source of danger to the health, safety or convenience of the public of that area or its neighborhood. It was under such circumstances that the property was declared as slum.

10. The erstwhile owner Shri Fanaswala or the purchasers either in their individual capacity or as committee members, as well as the Petitioner No.1, who claims to be the owner of the property, had not taken any steps to improve the condition or provide basic amenities to the slum dwellers. The petitioners have produced a copy of the letter dated 29.12.2011 (ExhL) addressed to the Principal Secretary of the Chief Minister, Govt. of Maharashtra, objecting to the development of the property by the respondent no.3 and further expressing willingness to develop the property. The petitioners have also relied upon the resolution dated 12.2.2012 and 18.2.2012 (Exh-G) and the development agreement dated 29.2.2012 entered into between the Petitioner No.1 and M/s. Con Arch India (Exhibit-H) to substantiate their claim that they were willing to develop the said property.

11. It is pertinent to note that the intention of the Petitioners to develop the property has not transcended beyond the paper work. The petitioners had admittedly terminated the agreement with M/s. Con Arch Developers on 6.8.2014. The Petitioners had thereafter not appointed any other Developer to develop the said property. The petitioners had not submitted any rehabilitation scheme before the concerned Authority. The petitioners have also not alleged that they had support of 70% of the slum dwellers or that they had approached the slum dwellers and sought their consent for development. Though the Petitioners had addressed several letters to the authorities asserting that they are ready and willing to develop the property, the petitioners had not taken any concrete steps or measures to develop the property, to provide basic amenities and to improve the hygienic and subhuman conditions of the slum dwellers. The Petitioners had thus failed to transform the intentions of development into concrete action. As a result thereof, the slum dwellers continued to reside in unhealthy and unhygienic conditions. It was under such circumstances, that the State Government decided to acquire the property under Section 14(1) of Slums Act, which reads thus:

"14 Power of State Government to acquire land

(1) Where on any representation from the Competent Authority it appears to the State Government that, in order to enable the Authority to execute any work of improvement or to redevelop any slum area or any structure in such area, it is necessary that such area, or any land within adjoining or surrounded by any such area should be acquired the State Government may acquire the land by publishing in the Official Gazette, a notice to the effect that the State Government has decided to acquire the land in pursuance of this section: Provided that, before publishing such notice, the State Government, or as the case may be, the Competent Authority may call upon by notice the owner of, or any other person who, in its or his opinion may be interested in, such land to show cause in writing why the land should not be acquired with reasons therefor, to the Competent Authority within the period specified in the notice; and the Competent Authority shall, with all reasonable dispatch, forward any objections so submitted together with his report in respect thereof to the State Government and on considering the report and the objections, if any, the State Government may pass such order as it deems fit."

12. In *Pratapsingh Shoorji Vallabhdas & Ors. vs. State of Maharashtra and ors.*, (WP 2110 of 2014) the Division Bench of this Court while considering the scope of this Section has observed thus;

"97. A bare perusal of section 14 would indicate as to how certain words were substituted therein by Maharashtra Act 11 of 2012. By Sub-Section (1) of section 14, the State Government, which has the power to acquire, on any representation from the competent authority, may consider acquisition of the property in order to enable the authority to execute any work of improvement or to redevelop any area or any structure in such area. It can, if necessary, acquire such area or any land within, adjoining or surrounded by such area and then it can publish a notice to that effect. That is a notice which is to be published in the official gazette indicating that the State Government has decided to acquire the area or land in pursuance of this section.

98. The proviso to Sub-Section (1) of section 14 states that before the notice is published, the State Government, as the case may be, the competent authority may call upon by notice the owners of or any other person, who, in its opinion, may be interested in such land to show cause in writing why the land should not be acquired with reasons therefor and the competent authority, upon considering the cause shown, namely any objections, together with his report in respect thereof, forward all this to the State Government. On considering the report and the objections, if any, the State Government may pass such order as it deems fit. 99. By Sub-Section (1A), it has been clarified that the acquisition of any of the land for any purpose mentioned in Sub-Section (1) shall be deemed to be a public purpose. By Sub-Section (2), the land shall, on and from the date of which the notice is so published vest absolutely in the State Government free from all encumbrances."

13. In *Sara Harry D'Mello vs. State of Maharashtra*, 2013 (5) Bom. Case Reporter 167, the Division Bench of this Court while upholding the Constitutional validity of Section 14 of the Slum Act has observed thus:

"75. Acquisition of slum lands under the provisions of the Slum Act are not merely for the benefit of a large number of persons residing in subhuman conditions in slums but also to ensure that improvement of their living conditions will lead to improvement of the urban economy which is very much dependent upon the labour force being supplied by the occupants of hutments in the slums. As per the settled legal position, scope of judicial review in such cases is to find out whether the principles for valuation set out in the legislation are relevant to the principles for determination of value of the land and since we find that the principles are relevant, the scope of the judicial review stops here and we are not concerned with the final outcome or the actual amount of compensation arrived at by the Competent Authority."

14. In the instant case, the affidavit filed on behalf of the respondent no.2 indicates that since the purported owners of the said property had not provided the basic civic amenities, the occupant/slum dwellers had formed a society in the name and style Shri Siddhi Vinayak CHS (the respondent no.3 herein). The respondent no.3 filed an application dated 5.1.2006 before the Competent Authority for acquisition of the said property under Section 14(1) of the Slum Act. It is stated that 310 Slum Dwellers/Occupants were residing in the said property, out of which 85% slum dwellers had given their consent for acquisition of the said property under Section 14(1) of Maharashtra Slums Act. The records reveal that pursuant to the said application, the Competent Authority had published a notice of acquisition in two Marathi news papers dated 11.7.2007. Hearing was also given to the Petitioner and several other occupants who had objected to the said acquisition. The affidavit filed by the respondent no.2 indicates that the Addl. Collector had forwarded a report to the Chief Secretary on 27.5.2009. Subsequently, the Housing Dept., vide letter dt. 16.2.2013 had directed the respondents to resubmit the proposal of acquisition. The hearing was held on 17.3.2015 and the land owners were directed to submit a proposal for redevelopment within three months. Despite the said directions, no proposal for redevelopment was received and hence notices were issued to the concerned land owners about acquisition of the proceeding. Upon considering the objections and suggestions of all concerned, the CEO, SRA forwarded a report to the Government on 17.11.2015 (Exh-T) for acquisition of the said property.

15. The report clearly states that the subject land was not registered in the name of the petitioner no.1. Though the petitioners had alleged that the land was purchased on behalf of the petitioner no.1 society, they were unable to produce any document or Order of the Court in order to prove the ownership of the petitioner no.1. It is stated that there are encroachments on the property and a portion of the said property would be used for proposed road. Furthermore, by letter dt. 17.1.2008 Shri Nana Devraj Shetty, the Secretary of the petitioner no.1 society had informed that the petitioner no.1 society supports the redevelopment by the respondent no.3 Siddhivinayak Society. Considering all the above factors, including the area of the property, the CEO, SRA has opined that it is not feasible to develop the said property independently.

16. The CEO, SRA has also recorded that since the date of declaration of the land as slum, no land owner had come forward with slum rehabilitation Scheme. While considering the proposal of the respondent no.3, the Authority has also taken into consideration the fact that the proposal of the respondent no.3 society was prior in time. The respondent no.3 society has consent of 85% of slum dwellers and has already entered into a development agreement with the respondent no.4. The CEO SRA further observed that about 100 slum dwellers would be affected by a proposed road in the said seven plots and also in view of reservation for school. The CEO SRA has opined that the above facts necessitate joint rehabilitation of all the plots.

17. The State Government, after considering the report dated 15.11.2015 submitted by CEO SRA considered it expedient to acquire the property in order to enable the SRA to carry out the development under the Slum Rehabilitation Scheme. Accordingly the State Government acquired the said property in exercise of the powers conferred by Sub Section (1) of Section 14 of the Slum Act and published the notification in the Maharashtra Gazette dated 16.7.2016.

18. The records thus reveal that the decision to acquire the property was taken after the authority was satisfied that the concerned land owners had not provided the basic amenities to the slum dwellers. Prior to the issuance of the final notification under Section 14 of the Slum Act, in compliance with the principles of natural justice, notices were issued to all the concerned parties, they were given personal hearing and were also given an opportunity to submit their proposal for redevelopment. Their objections and suggestions were taken into consideration. The State Government has acquired the said property for public purpose and this acquisition fulfills the aim and object of the Slum Act.

19. It is also to be noted that Section 14(1) permits acquisition not merely in respect of an area, which is declared as a slum, but also permits acquisition of any land which is adjoining or surrounded by slum area. In the instant case, the competent authority after considering the area of the property as also the fact that part of the property would be affected by reservation for school and a proposed road, opined that there should be joint rehabilitation. In view of this fact, the challenge to the acquisition on the ground that the petitioners are the owners of the independent plot and have no concern with the adjoining plot which is proposed to be developed by the respondent no.3 cannot be sustained.

20. The petitioners or the erstwhile owners having failed to take any effective steps to improve the condition of the slum dwellers, cannot be allowed to challenge the acquisition, which is for public purpose. Furthermore, the notice of acquisition having been published in the official gazette, in terms of sub section (2) of Section 14 of the Slum Act the property has vested absolutely in the State Government. In such circumstances, the remedy of the petitioners is to apply for compensation in accordance with the provisions of the Slums Act.

21. Under the circumstances and in view of discussion supra, we do not find any flaw in the notification or acquisition of the property under Section 14(1) of the Slum Act. In the facts and circumstances of the case we are of the considered view that this is not a fit case for interference under Article 226 of the Constitution. Hence, the writ petition is dismissed with no order as to costs. Rule discharged.

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