

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION (L) No. 11345 OF 2021

Alamgir Ali Mohammed Malkani ...Petitioner
Vs.

The Slum Rehabilitation Authority
and Ors.Respondents

Mr. Kirit J. Hakani a/w. Mr. Rahul Hakani a/w. Ms. Niyati
Hakani for Petitioner

Mr. Jagdish G. Aradwad (Reddy) for Respondent Nos.1 to 3

**CORAM: K.K.TATED &
ABHAY AHUJA, JJ.
(VIDEO CONFERENCING)**

DATED : MAY 12, 2021

P.C.

1. Heard the learned counsel for parties.
2. By this petition under Article 226 of the Constitution of India, the Petitioner is challenging the stop work notice dated 28th April, 2021 issued by Respondents in respect of the Petitioner's project.
3. The learned counsel Mr. Kirit Hakani appearing on behalf of the Petitioner submits that on the basis of the complaint filed by the members of Bandongri SRA Cooperative Housing Society Ltd., Malad Mumbai -91, the Respondent SRA issued the said stop work notice dated 28th

April, 2021 for non-payment of monthly compensation. The learned counsel for the Petitioner submits that except 21 members, they have already cleared the monthly compensation of the members of the said society. Therefore, in the interests of justice, this Hon'ble Court be pleased to stay the operation and implementation of the stop work notice dated 28th April, 2021.

4. On the other hand, the learned counsel Mr. Jagdish Aradwad (Reddy) appearing on behalf of Respondent No.1 submits that the petition as it is filed by the Petitioner is not maintainable. He submits that by this petition under Article 226 of the Constitution of India, the Petitioner is challenging the order passed by the Authority under the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971 and the said order is appealable under Section 35 which reads thus:

“35. Appeals

(1) Except as otherwise expressly provided in this Act, any person aggrieved by any notice, order or direction issued or given by the Competent Authority may appeal to the Appellate Authority, who shall be a person holding a post not below the rank of Additional Collector, in respect of the areas of Municipal Corporations and “A” Class Municipal Councils, and not below the rank of Deputy Collector, in respect of areas of other Municipal Councils, to be notified by the State Government, within a period of thirty days from the date of issue

of such notice, order or direction]

[(1A) Any person-

(a) aggrieved by any notice, order or directions issued or given by the Appellate Authority under sub-section (1), within a period of thirty days from the date of issue of such notice, order or direction;

(b) for the purpose of resolving any dispute in relation to matters regarding the declaration of Slum Rehabilitation Area under section 3C and order of slum clearance under section 12 or order under Section 13 against the owner or developer not undertaking and completing the project as per the permission and approval so also within the stipulated time frame or under section 3D, by the Chief Executive Officer and about eligibility of slum dweller, eligible slum dweller being denied tenement, transit accommodation being unavailable or not provided and likewise.] may file an appeal before the Grievance Redressal Committee constituted by the State Government, by notification in the Official Gazette, for such area and consisting of the Chairperson and such number of members as the Government may deem fit. The qualifications of the Chairperson and the members of the Committee and the procedure to be followed for transacting its business shall be such as may be prescribed.]

(2) Every appeal under this Act shall be made by petition in writing accompanied by a copy of the

notice, order or direction appealed against.

(3) Any appeal shall not operate as a stay order appealed from except so far as the Appellate Authority may grant by reasoned order, nor shall execution of any order be stayed by reason only of an appeal having been preferred from, but the Appellate Authority may for sufficient cause order stay of execution of such order and if the notice, order or direction against which appeal is made and is set aside by Appellate Authority on an appeal disobedience thereto shall not be deemed to be an offence.

(4) No appeal shall be decided under this section unless the appellate had been heard or has had a reasonable opportunity of being heard in person or through a legal practitioner.

(5) The decision of the [Grievance Redressal Committee on appeal shall be final and shall not be questioned in any court.]”

5. The learned counsel for Respondent No.1 further submits that unless and until the said Bandongri SRA Cooperative Housing Society Ltd., Malad Mumbai -91 is made a party to this petition, there is no question of entertaining the present petition.

6. We have heard both the learned counsels at length. It is to be noted that in the present proceeding, Respondent -Authority issued the stop work notice dated 28th April, 2021 on the basis of the complaint filed by the members of

Bandongri SRA Cooperative Housing Society Ltd., Malad Mumbai -91. Therefore, unless and until they are made party, there is no question of entertaining the present petition.

7,. In view of this fact, the following order is passed:

ORDER

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- (a) Petitioner is allowed to amend the petition adding Bandongri SRA Cooperative Housing Society Ltd., Malad, Mumbai -91, Mr. Dashrath Magdum and Mr. Rangswami as Respondents and serve the newly added parties and file affidavit of service to that effect.
- (b) Respondents to file their reply on or before 27th May, 2021 with copy to other side.
- (b) Matter to appear on board on 8th June, 2021.

(ABHAY AHUJA, J.)

(K.K.TATED, J.)