REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.1973 OF 2019

(ARISING OUT OF SLP (C) 15944 OF 2018)

LULLU VAS (SINCE DECEASED) THROUGH LRS ...APPELLANT(s)

VERSUS

STATE OF MAHARASHTRA & ORS. ...RESPONDENT(S)

WITH

CONTEMPT PETITION (C) NO. 123 OF 2019 IN SLP (C) 15944 OF 2018

LULLU VAS (SINCE DECEASED) THROUGH LRS ...APPELLANT(s)

VERSUS

DEVCHAND PIRAJI WAGHMARE & ORS. ...ALLEGED CONTEMNOR(S)

JUDGMENT

N.V. RAMANA, J.

1. Leave granted.

2. The present appeal arises out of the impugned judgment dated 07.06.2018, passed by the High Court of Judicature at Bombay in Writ Petition No. 1507 of 2011 with Notice of Motion No.206 of 2018, wherein the High Court allowed the Writ Petition preferred by the respondent nos. 4 and 5 and set aside the order of the High-Power Committee (*hereinafter referred to as "**HPC**"*) dated 5.02.2011 along with the consequential orders of the Slum Rehabilitation Authority (*hereinafter referred to as "**SRA**"*) (respondent no. 3). Further, the High Court also directed respondent no. 3 to undertake necessary actions for the redevelopment of the suit property.

3. Brief facts necessary for the adjudication of the case are as follows: The Government of Bombay acquired the disputed property (now Worli Estate Scheme No. 58) prior to 1945, and vested the same in the Municipal Corporation of Greater Mumbai (*hereinafter referred to as "**MCGM**"*). Thereafter, on 04.06.1945, the appellants' predecessor-in-interest, Lullu Vas, submitted an application to the MCGM seeking lease of the said land for residential purposes and paid an earnest money of Rs. 8,232. The appellants contend that the MCGM decided to give leasehold rights in perpetuity to Lullu

Vas. At that time, about 70 slum structures were pre-existing on the said land. Since Lullu Vas demanded possession, on 05.11.1965, the MCGM handed over symbolic possession of the said plot on "as is where is basis"- when it was still occupied by the encroaching hutments.

4. In 1971, the Maharashtra Slum Areas Act (*hereinafter referred to as* "**Slum Act**") was enacted. Subsequently, in 1976 photo-passes were issued to the slum dwellers who were residing in the disputed area and the said area attained the status of the declared slum, entitled for redevelopment under Regulation 33 (10) of the Development Control Regulations read with the provisions of the Slum Act.

5. In 1996, the slum dwellers residing on the said land formed a co-operative housing society "New Sagar Vihar" (respondent no. 4) and submitted a proposal for slum rehabilitation to the SRA, and the same was approved by issuing a Letter of Intent (*hereinafter referred to as* "**LoI**") and an Intimation of Approval (*hereinafter referred to as* "**IoA**") on 16.06.1999. In furtherance of the above, a commencement certificate was issued on 13.10.1999 and respondent no. 4 appointed a developer (respondent no. 5) and

promoter for the implementation of the slum rehabilitation scheme and to build new flats.

6. Meanwhile, Lullu Vas and her family started residing outside India. Lullu Vas expired on 04.02.1997. In 2008, Mr. Shailesh Chheda, who claimed that he was the general power of attorney holder of the appellants (legal representatives of Lullu Vas), filed W.P No. 2714/2008 before the High Court against the State of Maharashtra and six others challenging the order of the SRA dated 16.06.1999 whereby the SRA had issued the LoI and IoA to respondents no. 4 and 5. The writ petition was withdrawn *vide* order dated 17.12.2008, with liberty to the appellants to file a representation before the HPC.

7. Mr. Shailesh Chheda thereafter approached the HPC in Appeal No. 148 of 2008, seeking quashing of the order dated 16.06.1999 granting LoI in favour of the respondents no. 4 and 5. The HPC, upon hearing the parties, *vide* order dated 20.06.2009 concluded that the land belonged to the respondent no. 3 (MCGM) and the appellants are lessees for 999 years. However, as the LoI had lapsed and respondents no. 4 and 5 had filed a separate application for revalidation of the LoI dated 16.06.1999 before the

SRA, the HPC directed the SRA to hear both the parties and pass orders on the merits of the case. It may be noted that the aforesaid first order of the HPC has not been challenged by the Respondents.

8. *Vide* order dated 23.08.2010, the CEO, SRA, after hearing both sides, revalidated the LoI in favour of the respondents no. 4 and 5. The above order of revalidation by the SRA was challenged by the appellants in Appeal No. 2 of 2011 before the HPC. This appeal was allowed by order dated 05.02.2011 and consequently, the order of the CEO, SRA dated 23.08.2010, was set aside. Consequently, *vide* order dated 06.09.2013, the SRA allowed the application preferred by the appellants seeking to record the scheme.

9. Subsequent to the aforesaid order of the SRA, respondent no. 2 (MCGM) issued letter dated 17.01.2015 withdrawing/cancelling its earlier orders, decisions and communications which were claimed as acceptance of the claim of late Lullu Vas as lessees, observing that the claims were founded upon erroneous representation based on legally inadmissible documents. It was found that not only were the lease documents invalid for want of adequate seal

and signature, but also that the appellants had failed to make any effort to remove the encroachments. Moreover, in the absence of a registered lease deed, neither the original applicant nor the appellants herein have any rights whatsoever in the disputed property.

10. Aggrieved, the appellants filed LC Suit No. 456 of 2016 in the City Civil Court, challenging the aforesaid letter dated 17.01.2015 issued by respondent no. 2 to be illegal and void. Additionally, the appellants also sought for a declaration that they are the lessees of MCGM. It is to be noted that this suit is still pending final adjudication. In the said suit, the appellants had filed Notice of Motion No. 1110 of 2016 seeking temporary injunction against the respondents from obstructing or disturbing the appellants' possession. *Vide* order dated 07.03.2018, the Notice of Motion was partly allowed and the respondent no. 2 and 4 were temporarily restrained, pending suit, from acting upon or implementing the decision/communication dated 17.01.2015.

11. In the meantime, in 2011, respondents no. 4 and 5 filed Writ Petition No. 1507 of 2011, which is the subject matter of challenge before us. By way of this Writ Petition, respondents no. 4 and 5

challenged the second order passed by the HPC dated 05.02.2011 cancelling the LoI issued in their favour. Subsequent to the order dated 07.03.2018 in Notice of Motion No. 1110 of 2016 in LC Suit No. 456 of 2016 wherein the temporary injunction was granted in favour of the appellants, the respondents no. 4 and 5 preferred Notice of Motion No. 206 of 2018, seeking stay of the order dated 05.02.2011 in Appeal No. 2 of 2011 before the HPC.

12. *Vide* order dated 07.06.2018, the court disposed of the Writ Petition filed by respondents no. 4 and 5 by setting aside the order of the HPC dated 05.02.2011, and quashing and setting aside the consequential orders or letters of the SRA dated 06.06.2011 and 06.09.2013.

13. The High Court, while disposing of the Writ Petition, observed that at the time the application was preferred by Lullu Vas, the disputed property was already encroached upon by slum dwellers. The numbers of these slum dwellers kept on increasing due to the inaction of the appellants. In light of the same, the appellants' plea seeking execution of the lease in their favour stood frustrated and the appellants therefore could not object to the redevelopment of the said land. Moreover, the slum dwellers agreed to join the

rehabilitation scheme and 70% of the dwellers appointed respondent no. 5 as their developer in compliance with Clauses 1.11 and 1.15 of Appendix-IV of the Development Control Regulations. On the other hand, the appellants failed to show any such compliance. Furthermore, taking into account the delay in implementation of the rehabilitation scheme, the High Court rejected the appellants' plea seeking a stay on the redevelopment. Aggrieved by the aforesaid impugned order, the appellants have preferred this Special Leave Petition.

14. The learned Senior Counsel on behalf of the appellants, Dr. A. M Singhvi, submitted that the High Court was not justified in holding that there is no lease granted in favour of the appellants despite the letter dated 22.07.1976 and the subsequent correspondence confirming the lease granted in perpetuity in favour of the appellants. On the contrary, the appellants have the best rights of lease in their favour as the corporation itself has recorded the names of the appellants as lessees, as has the estate department. Further, the corporation has failed to prove that the appellants have breached any terms of the lease agreement. Additionally, respondent no. 2, who has failed to clear the encroachments,

should not be allowed to benefit from its inaction. Therefore, the said land is validly vested upon the appellants-lessees, and being private land, the Slum Act cannot be enforced on the same. The learned counsel also contended that the LoI obtained by respondents no. 4 and 5 was obtained on the false representation that the State of Maharashtra was the real owner of the property. The learned counsel stated that the order passed by the HPC in favour of the appellants, which has attained finality, as well as the order of the Trial Court dated 07.03.2018, wherein the Notice of Motion filed in LC Suit No. 456 of 2016 was partly allowed and the respondent no. 2 was temporarily restrained, strengthens the presumption of *prima-facie* case in their favour. The counsel for appellants rested his submissions by stating that not granting protection at the present stage will make the pending civil suit infructuous.

15. On the contrary, the learned Senior Counsel Mr. Shekhar Naphade, appearing for respondent no. 3 (SRA), submitted that the appellants have no locus as they, being prospective lessees, do not have any interest in the property. In the present case, the land-owning authority is the municipality, and hence the appellants

have no role to play. Even if they had any semblance of a right in equity, it stands extinguished by the application of specific provisions of the Slum Act which, being a welfare legislation, takes precedence over the rights of the appellants and gives the government the power to acquire property in the slum rehabilitation area. Furthermore, the Slum Act also empowers the competent authority to declare a certain area as a slum rehabilitation area. The statute itself gives preferential rights to the society of the slum dwellers by providing that where 70 % or more of the eligible hutment-dwellers in a slum agree to join a rehabilitation scheme, it may be considered for approval. Hence, the entire statutory scheme cannot be frozen at the instance of the appellants and a statutory authority cannot be injuncted from performing its duty. Moreover, in the pending civil Suit being LC Suit No. 456/2016 before the City Civil Court, preferred by the appellants seeking a declaration that they are lessees, they have not made respondent no. 3 (SRA) a party to the suit, although the injunction sought is intended against the SRA. Moreover, any declaration made therein may bind respondent no. 2 (MCGM), but not the SRA. The counsel rested his argument by stating that the prolongation of this dispute is contrary to public interest.

16. Learned Counsel Mr. A.N. Nadkarni, Additional Solicitor General appearing on behalf of respondent no. 2 concurred with the submissions made by Mr. Naphade, wherein he averred that the appellants do not have any locus as they have no interest in the said property. Mr. Nadkarni further submitted that the appellants do not have any right in the suit property, be it factual or legal. In order to substantiate his claim, the counsel relied upon Section 107 of the Transfer of Property Act, 1882, which mandates that a lease of immovable property for a period exceeding one year should be registered. He also relied on Sections 70 and 71 of the Mumbai Municipal Corporation Act, 1888 (*hereafter* ***Municipal Act***), which prescribe the mode of executing contracts and indicate that any contract made in contravention to the same shall not be binding on the corporation. However, the appellants have not complied with any of the aforesaid provisions. Moreover, the physical possession was never vested on the appellants as the land was encroached upon by the slum dwellers. Hence, the entire purpose of the lease stood completely frustrated. Further, the Slum Act being a special statute enacted for redevelopment of the slum areas takes precedence over the Municipal Corporation Act. The

counsel submitted that once the SRA comes into the picture, the MCGM vanishes as the entire management will be taken up by the SRA. In the absence of any established interest over the suit property, the appellants may be entitled for the grant of certain damages only. In the present case, public interest takes dominance over the half-baked rights of the appellants.

17. Learned Senior Counsel Mr. Shyam Divan, appearing on behalf of respondent no. 4 submitted that respondent no. 4 (society) has a membership of 106 slum dwellers. It is the statutory right of the respondent no. 4 (society), acting in furtherance of the interest of the slum dwellers to be rehabilitated *in situ,* to selecting the developer through which they will implement the scheme. The respondent no. 4- Society has the overwhelming support of more than 70% of the slum dwellers for the implementation of the SRA Scheme. On the contrary, the appellants have not applied for any rehabilitation scheme nor is there anything on record to show that they are supported by 70% of the hutment dwellers so as to redevelop the said land. There is already a pending civil suit being LC Suit No. 456 of 2016, wherein the appellants sought for the specific performance of the lease agreement based on the

application of allotment dated 04.06.1945, which is hopelessly time barred as the same was preferred after 71 years. Lastly, the appellants have not accrued any rights in their favour as there is no registered document. The court should decide the matter on the balance of convenience as granting the relief to the appellants will be tantamount to defeating the object of the Slum Act which provides the slum dweller the right to seek for *in situ* rehabilitation. Any relief in favour of the appellants will cause hardship to the slum dwellers whose accommodation have been demolished for redevelopment.

18. Learned Senior Counsel Mr. Kapil Sibal, appearing on behalf of the developers submitted that respondent no. 5 (developer) has the consent of 70% of the slum-dwellers, which is a mandatory requirement under the Development Control Regulations. On the contrary, neither does the Power of Attorney provide for the development of the slum nor have the appellants submitted a proposal for the redevelopment scheme. Further, pursuant to its contractual obligations, respondent no. 5 has incurred a huge expenditure on the shifting of the slum dwellers and demolition of the existing structures, as they have provided alternate

accommodation on rental basis by paying an amount of Rs. 8,000/- monthly. Lastly, the learned Senior Counsel has contended that no measures can be enforced against them, as they have not been arrayed as a party in the civil suit.

19. Learned Senior Counsel Mr. Basava Prabhu Patil, counsel on behalf of 83 hutment dwellers being intervenors herein, submitted that I.A No. 167398/2018 and I.A No. 173077 of 2018 have been filed by 82 slum dwellers who have executed individual affidavits in support of the implementation of the SRA Scheme being implemented by respondent nos. 3 to 5. In total, respondent no. 4 society comprises of 106 hutments. The intervenors state that 97.16%, *i.e.*, 103 dwellers out of 106 dwellers support the implementation of the SRA Scheme.

20. Learned Senior Counsel Mr. Niraj Kishan Kaul- appearing on behalf of 26 hutment dwellers being intervenors herein, while supporting the appellants, submitted that 26 individual applications have been filed by these slum dwellers, who are challenging the fundamental basis of the claim, *i.e.*, 70% of the dwellers supporting the respondent nos. 3 to 5. The main contention of the learned Senior Counsel was that the consent of

70% should be proved from the time of the initiation itself, that is from the date of the implementation of the scheme. But the same has not been complied with. In this regard, there is a lack of proper scrutiny.

21. *Per contra*, the counsels on behalf of the respondents stated that the slum dwellers have no right to be impleaded in this SLP as a party. They did not raise any grievance during the pendency of the Writ Petition before the High Court. Further, there exists a specific mechanism for the redressal of grievances under Section 35 of the Slum Act, but the same has not been resorted to. Lastly, it was brought to our notice that of the 26 slum dwellers, constituting the second set of intervenors, 18 have withdrawn their support and are now favouring the SRA for the implementation of the scheme.

22. Even though the parties have argued at length and produced multiple documents regarding the lease-holding rights in dispute, at the outset, we would like to clarify that at this stage of litigation we are not inclined to attempt to resolve conflicts of evidence on affidavit or to decide questions of law on merits which call for elaborate arguments or detailed scrutiny, as these issues are the

subject matter of the trial. The aforesaid contentions raised by the parties are to be resolved during the trial.

23. Heard the learned counsels for the parties.

24. Considering the pending civil suit before the trial court, the limited question before us is whether the impugned order passed by the High Court, allowing the respondents to proceed with the redevelopment of the land, can be sustained in the eyes of law.

25. The adjudication of the dispute before us has to be based on principles of equity. The party seeking the remedy has to make out a prima facie case on merits, and has to satisfy the court that there is some basis to its claim regarding the existence of his right. Further, the court must balance the comparative hardship or mischief which is likely to occur from withholding the relief, against that which would likely arise from granting it. It has to be further established that non-interference by the court would result in "irreparable injury" to the party seeking relief and that there is no other remedy available to the party except to grant the relief sought.

26. In the present case the genesis of the appellants' right is a lease which was allegedly entered into between the appellants' predecessor in interest and MCGM, which allegedly accepted the application and the premium amount on 17.11.1965. Respondent no. 2 has vehemently denied the existence of any lease on the ground that mere filing of an "application" and an endorsement made thereunder of its acceptance does not result in a "concluded contract" which creates any right. Further, counsel for respondent no. 2 averred that the original application can only be treated as an "offer to enter into a lease" and the amount paid i.e., Rs.8,232, was only in the nature of earnest money. Respondent no. 2 further contended that in any event, the offer which allegedly came to be accepted on 05.11.1965 was not in the required form as prescribed under the Municipal Act. Respondent no. 2 has also vehemently argued that Section 70 of the Municipal Act was not complied with as the said document has neither been duly sealed nor does it have the signature of the competent authority. Therefore, respondent no. 2 submitted that as per the provisions of Section 71 of the Municipal Act the said lease is not binding upon the corporation.

27. It may be noted that the very basis of the appellants' right, *i.e.*, the lease deed, is itself disputed as there exists no registered document to that effect. It is pertinent to note herein that the appellants have taken the plea that by paying consideration towards the leasehold rights they now have a vested interest over the suit property. Hence, without any alleged violation of the conditions of the lease, the appellants claim that the revocation of their rights by the respondent no. 2 is *malafide*. In order to substantiate their claim, the appellants have averred that the name of the appellants appears in the records of the Estate Department as the lessees. Furthermore, our attention has been drawn to the fact that the first order of the HPC, dated 20.06.2009, declares the appellants to be lessees for 999 years. As the aforementioned order has not been challenged by the respondents, it has now attained finality. However, bearing in mind that this very issue is the subject matter of the pending civil suit, we refrain from making any observations regarding the same.

28. While taking into consideration the rights of the appellants, we must also not lose sight of the fact that the Slum Act is a beneficial legislation meant to ameliorate the poor condition of slum

dwellers. (*See* ***Balasaheb Arjun Torbole v. Administrator and Divisional Commissioner.***, **(2015) 6 SCC 534**). The legislative purpose behind this enactment is to provide statutory protection to the rights of slum dwellers in furtherance of their fundamental right to shelter and other basic amenities, enabling them to lead a dignified life as reflected in the Constitution. As such, where the rights of the appellants need to be analysed in light of the Slum Act, it is necessary to balance the interests of the appellants with that of the slum dwellers. In the present case, the slum dwellers, who are the primary beneficiaries of the redevelopment scheme, are not only at risk of losing their shelter, but also their means of livelihood.

29. The averments made by the respondents reveal that pursuant to the implementation of the Slum Act, more than 70% of the slum dwellers formed respondent no. 4 (the housing society) and sought rehabilitation on the site in furtherance of their statutory rights. Further, respondent no. 5 has averred that demolition of the existing structures has already been initiated and the shifting of the slum dwellers is ongoing. The respondent no. 5 has brought to our notice that alternate accommodation for the slum dwellers has

been arranged on a rental basis. But, owing to the ongoing litigation over the suit property, redevelopment has been pending for more than eight years. It is to be noted that ultimately it is the slum dwellers who are suffering. There is nothing on record to show that they have the support of 70% of the slum dwellers as mandated by the statute. Moreover, the appellants can be adequately compensated in the event of their success in the trial and, as such, have failed to prove any irreparable injury which cannot be remedied. In a situation such as this, where rights of the parties have not yet crystalized, and no irreparable injury can accrue to the plaintiff pending trial, the entire case then revolves around the principles of comparative convenience.

30. The balance of convenience in the present case tilts in favour of the respondents, as the completion of the scheme is in greater public interest. However, it is noteworthy to observe that the appellants have vehemently contended that they have paid consideration in exchange of the lease-hold right which is the subject matter of the trial. In order to substantiate their claim, the appellants have produced multiple documents on records, the

genuineness of which is seriously doubted by the respondent authorities.

31. The main grievance of the appellant's counsel is that in case they succeed in the trial, they may not be placed in a position to enjoy the benefits arising out of the suit property. The counsel contended that their interest can be protected only if respondent no. 5 (developer) is injuncted from disposing of 50% of the free saleable area.

32. It is to be noted that no material was produced before us so as to ascertain the quantum of damages that may have accrued to the appellants. Further, we cannot prohibit respondent no. 5 from disposing of the free saleable area, as it is only performing its contractual obligations and cannot be penalized for any irregularity committed by the respondent authorities. A specific averment has been made by respondent no. 2 that, in the event the appellants succeed before the trial court, they shall be entitled to adequate damages.

33. Taking into consideration the facts and circumstances of the case, we grant the appellants the liberty to make such a prayer,

supported by relevant materials, before the trial court in the pending suit being LC Suit No. 456 of 2016. Further, the appellants are granted the liberty to implead necessary parties before the trial court. The trial court is at liberty to consider such relief in accordance with law.

34. In view of the pending civil suit, any observation made by the High Court which affects the merit of the matter is hereby set aside. Any observations made herein shall not act in prejudice against the appellants during the trial on merits.

35. The appeal is disposed of in the aforesaid terms. In light of this Judgment, it is not necessary to pass any orders in the Contempt Petition no. 123 of 2019 preferred by the appellants, which hereby stands disposed of. Pending applications, if any, shall also stand disposed of.

.....J.
(**N. V. Ramana**)

.....J.
(**Mohan M. Shantanagoudar**)

NEW DELHI,
FEBRUARY 22, 2019.