



MAHARASHTRA STATE HUMAN RIGHTS COMMISSION

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MSHRC/MAS/ 11 /2016/

Date: 05 /11/2016

MAS/Case No.– 2546/2011-12

Name of the Complainant : Raja Hegde
Aadarsh Gharkul Society,
Rawli Camp, Salamati Hill,
Sion Koliwada, Mumbai - 37

V/s.

Name of Respondents : Asst. Commissioner,
F/North Ward, B. M. C.,
Matunga

Order Date : **04th November, 2016**

Coram : **M. A. Sayeed, Member**

ORDER

Scrutinized the record. After having considered the merits of rival contentions, the only point which needs to be looked into by the Commission is whether a case of violation of human right is made out by the complainant and if yes, then what relief and recommendations can be passed by this Commission by virtue of powers conferred on it u/s. 18 of the Act.

2. The peculiarity of the case is that two elite Civic Authorities have been making attempts to pass the buck on each other, by contending that once appropriate steps is taken by one authority then it would be in a position to accomplish the request made by the complainant. This is the stand of the BMC. Infact, it would be relevant to reproduced the orders passed by this Commission dated: 13.10.2016 and 21.10.2016 with specific reference to the request made to the Ld. Municipal Commissioner Shri Ajoy Mohta by Ld.

MMRDA Commissioner and Addl. Chief Secretary Shri U. P. S. Madan in his letter dated: 17.10.2016.

Order passed on 13.10.2016: Office of MMRDA is directed to take final decision in week's time by taking and considering the request made by the office of the Municipal Corporation Mumbai in its letter dated: 06.10.2016. Necessary follow up report be submitted on 21.10.2016 (on request of Shri Swami), failing which, further necessary order as per law shall be passed by this Commission.

Order passed on 21.10.2016: Pursuant to the directions passed on 13.10.2016, today Shri Swami Incharge Social Welfare Officer has submitted letter dated: 17.10.2016 addressed to Ld. Municipal Commissioner Shri Ajoy Mehta by Ld. Metropolitan Commissioner and Addl. Chief Secretary Shri U. P. S. Madan requesting for considering the request for providing water connection to the users-complainant in the present matter as water or electric connection are issued in the name of the users and not in the name of land owners.

The officer from Municipal Corporation Shri Narayan Meghare, Asst. Eng. has submitted that his office has not yet received the aforesaid letter though the copy of the letter indicates that it was received by his office on 18.10.2016 but it appears that the letter is yet to reach the concerned dept. However, the copy of the letter has been served on him today itself before this Commission. Much time is been wasted in requesting the concerned authorities to take appropriate action as per law and adjournments are only resulting into exchange of communication between the two authorities. Therefore keeping in mind the background of the case and the fact that it has been pending before this Commission since 2011, matter is adjourned for final orders to 04.11.2016.

In its letter dated: 17.10.2016 Metropolitan Commissioner & ACS Shri U. P. S. Madan addressed to Ld. Municipal Commissioner Shri Ajoy

Mehta it is stated at para no. 2 as under: “You will appreciate that majority of slums in Mumbai are on lands owned by Govt. or different government undertakings. Civic amenities have been provided by MCGM on all such places directly to the users. Water connections or electric connections are issued in the names of users and not in the name of the land owners. Hence it would not be fair to insist that MMRDA should take water connections in its name. MMRDA cannot take any responsibility with regards to payment of user charges in respect of encroachers.”

3. Today, Asst. Eng. Shri Shinde has placed on record communication dated: 23.01.2001 addressed by Slum Rehabilitation Authority to the Architect Smt. Sushma Deodhar, sanctioning the construction of the building on the said plot – with certain terms and conditions. In particular contents stated in para nos. 11 & 17 which reads as under:

“Para no. 11: That the tenements in the proposed rehabilitation bldg. to be allotted to the existing slum tenants shall be first completed in all respects. The occupation permission for the rehabilitation bldg. shall be obtained and temporary structure i.e. Transit Camp under reference shall be demolished after shifting the tenants to their respective tenements in the new bldg.

Para no. 17: That the structure under reference shall be removed immediately after the stipulated time period is over or even earlier if so required by this office.”

4. This Commission right from first day of hearing has been emphasizing that its primary concern is about ensuring protection of human rights of the residents of that area, particularly with reference to the nature of the complaint with which they came before the Commission. It is an admitted position that water connection to the residents have been disconnected for whatsoever reason and this has created an embargo on the rights of the residents of that locality to avail one of the basic amenities which every civic

authority is duty bound to provide to them. Now the question whether they are encroacher/trespassers, whether they are entitled to such rights or not has to be answered in bold affirmative, as Sup. Court in way back in the year 1985, highlighted on this basic fundamental right, emanating from Art. 21 of the Constitution, by making following observations:

“Olga Tellis & Ors vs Bombay Municipal Corporation & ... on 10 July, 1985

Equivalent citations: 1986 AIR 180, 1985 SCR Supl. (2) 51

Author: Y Chandrachud

Bench: Chandrachud, Y.V. ((Cj), Fazalali, Syed Murtaza, Tulzapurkar, V.D., Reddy, O. Chinnappa (J), Varadarajan, A. (J)

OLGA TELLIS & ORS.

PETITIONER:

Vs.

BOMBAY MUNICIPAL CORPORATION & ORS. ETC. RESPONDENT:

DATE OF JUDGMENT: 10/07/1985

BENCH:

CHANDRACHUD, Y.V. ((CJ)

BENCH:

CHANDRACHUD, Y.V. ((CJ)

FAZALALI, SYED MURTAZA

TULZAPURKAR, V.D.

REDDY, O. CHINNAPPA (J)

VARADARAJAN, A. (J)

The argument which bears on the provisions of [Article 21](#) is elaborated by saying that the eviction of pavement and slum dweller will lead, in a vicious circle, to the deprivation of their employment, their livelihood and, therefore, to the right to life. Our attention is drawn in this behalf to an extract from the judgment of Douglas J in Baksey v. Board of Regents, 347 M.D. 442 (1954) in which the learned Judge said:

"The right to work I have assumed was the most precious liberty that man possesses. Man has indeed, as much right to work as he has to live, to be free and to own property. To work means to eat and it also means to live."

The right to live and the right to work are integrated and interdependent and, therefore, if a person is deprived of his job as a result of his eviction from a slum or a pavement, his very right to life is put in jeopardy. It is urged that the economic compulsions under which these persons are forced to live in slums or on pavements impart to their occupation the character of a fundamental right.

It is further urged by the petitioners that it is constitutionally impermissible to characterise the pavement dwellers as "trespassers" because, their occupation of pavements arises from economic compulsions. The State is under an obligation to provide to the citizens the necessities of life and, in appropriate cases, the courts have the power to issue order directing the State, by affirmative action, to promote and protect the right to life. The instant situation is one of crisis, which compels the use of public property for the purpose of survival and sustenance. Social commitment is the quintessence of our Constitution which defines the conditions under which liberty has to be enjoyed and justice has to be administered. Therefore, Directive Principles, which are fundamental in the governance of the country, must serve as a beacon light to the interpretation of the Constitutional provisions. Viewed in this context, it is urged, the impugned action of the State Government and the Bombay Municipal Corporation is violative of the provisions contained in Articles 19(1)(e), 19(1)(g) and 21 of the Constitution. The paucity of financial resources of the State is no excuse for defeating the fundamental rights of the citizens.

We must, therefore, reject the preliminary objection and proceed to consider the validity of the petitioners' contentions on merits.

Two conclusions emerge from this discussion: one, that the right to life which is conferred by [Article 21](#) includes the right to livelihood and two, that it is established that if the petitioners are evicted from their dwellings, they will be deprived of their livelihood. But the Constitution does not put an absolute embargo on the deprivation of life or personal liberty. By [Article 21](#), such deprivation has to be according to procedure established by law. In the instant case, the law which allows the deprivation of the right conferred by [Article 21](#) is the Bombay Municipal Corporation Act, 1888, the relevant provisions of which are contained in [Sections 312\(1\), 313\(1\)\(a\) and 314](#).

It is far too well-settled to admit of any argument that the procedure prescribed by law for the deprivation of the right conferred by [Article 21](#) must be fair, just and reasonable. (See [E.P.Royappa v. State of Tamil Nadu](#), [1974] 2 S.C.R. 348; [Maneka Gandhi v. Union of India](#), [1978] 2 S.C.R. 621; [M.O.Hoscot v. State of Maharashtra](#), [1979] 1 S.C.R. 192; [Sunil Batra, I v. Delhi Administration](#), [1979] 1 S.C.R. 392; [Sita Ram v. State of U.P.](#), [1979] 2 S.C.R. 1085; [Hussainara Khatoon, I v. Home Secretary, State of Bihar, Patna](#), [1979] 3 S.C.R. 532,537; [Hussainara Khatoon, II v. Home Secretary, State of Bihar, Patna](#), [1980] 1 S.C.C. 81; [Sunil Batra, II v. Delhi Administration](#), [1980] 2 S.C.R. 557; [Jolly George Verghese v. The Bank of Cochin](#), [1980] 2 S.C.R. 913,921-922; [Kasturi Lal Lakshmi Keddy v. State of Jammu & Kashmir](#), [1980] 3 S.C.R. 1338,1356; and [Francis Coralie Mullin v. The Administrator, Union Territory of Delhi](#), [1981] 2 S.C.R. 516,523-24.) “

5. Pertinent to note that in this case the question was about the removal of the squatters from the pavements in Mumbai and the Court very heavily came down on the civic authorities that it is the duty of every state to ensure proper use and occupation of civic amenities by every citizen and paucity of the finances cannot be a ground for displacing them. The Court further

observed that eviction of a squatter or a trespasser can be only in accordance of due process of law as enshrined in Art. 21 of our Constitution.

It is interesting to note that in the present case the Ld. Municipal Commissioner Shri Mehta by his communication dated: 08.06.2016, made the position very clear by requesting the Ld. MMRDA Commissioner to restore the water connection to the aforesaid Transit Camp till its demolition. For the sake of clarity, the relevant para is reproduced in verbatim as under:

“The water connection of size 300 mm dia was earlier granted in the name of Ex. Engineer, MMRDA, BKC for supply of water to Transit Camp having 3600 tenements. After shifting of PAPs from transit camp to the building constructed by MMRDA, the said transit camp is occupied by illegal encroachers. MMRDA had requested MCGM to cut off the said water connection and accordingly the said water connection was cut off on 24.02.2011. Though the water connection was cut off as mentioned above, encroachers are taking the illegal water connections.

Since, these occupiers/encroachers are neither evicted nor demolition of transit camp is taken by MMRDA, Local political leaders are continuously pressing hard to give water connection for transit camp till the demolition of existing transit camp, provided MMRDA gives such request shouldering the responsibility of making payment of water bills or else MMRDA is requested to demolish the transit camp by vacating the illegal encroachers at the earliest.” 6. Pursuant to this request this Commission by its order dated: 11.08.2016 called upon the Ld. MMRDA Commissioner Shri UPS Madan to submit a detail report /plan on record as to what course of action could be taken by his office and it appears that the Ld. MMRDA Commissioner by his communication dated: 19.08.2016 to the BMC LD. Commissioner Shri Mehta, very categorically and specifically conceded the proposal in following words: **“As regards to provide water**

connection or electric connection to occupants of the said transit camp, MMRDA has no objection if such connections are provided by MCGM. However, MMRDA cannot be asked to pay such bills as that would be the responsibility of the users of these facilities as in case of other slums. If MCGM decides to provide water/electricity to the occupants of this area, the charges for those services should be recovered from these occupants/users.” Pertinent to note that complainant Shri Hegde who has moved the present grievance on behalf of the present locality has undertaken to give an Undertaking on behalf of the residents to bear the water and electricity charges for the user and enjoyment of these basic amenities.

Thus from the above reproduced contents of the MMRDA Comm. It is crystal clear that it in very unequivocal terms gave its **‘NO OBJECTION’** to the office of the BMC for restoration of such basic amenities to the residences, with a further clarification that the office of MMRDA would not be and should not be accepted to pay the bills for the user of these facilities. At this juncture I would like to clarify that this issue is also resolved on the Undertaking filed by the residents of that area through complainant Shri Hegde, assuring, ensuring and promising to make the payment of the bills for enjoyment of these basic necessities.

With such clear picture on record, I don’t think that there should be any impediment on both the authorities to restore the water connection but unfortunately matter seems to have got stuck up because of another technical requirement as the Ld. BMC Commissioner by its communication dated: 06.08.2016, requested the Ld. MMRD Commissioner to move the request for restoration as the land in question is owned by it and this request came to be tactfully turned down by the Ld. MMRDA Commissioner by his communication dated: 17.10.2016, by mentioning as under: **“You will appreciate that majority of slums in Mumbai are on lands owned by Govt.**

or different government undertakings. Civic amenities have been provided by MCGM on all such places directly to the users. Water connections or electric connections are issued in the names of users and not in the name of the land owners. Hence it would not be fair to insist that MMRDA should take water connections in its name. MMRDA cannot take any responsibility with regards to payment of user charges in respect of encroachers.”

Thus it can be seen that on technical grounds, the matter is being delayed and the ultimate sufferer is again the residents of the tenement who cannot be and are not expected to wait indefinitely for avilment of such facilities because of the hurdles been created on one or the other count. This is nothing but a blatant violation of their fundamental rights as highlighted by Sup. Court in the decisions supra above which in other words would amount to and does amount to violation of their human rights.

7. Therefore, bearing in mind the background of the case and the stand taken by both the civic authorities following recommendation is made which I must specify are binding on both the authorities.

a) Ld. Commissioner of BMC is directed to restore the water connection to the aforesaid locality/area within two weeks from the date of receipt of this order and complainant is also directed to submit an Undertaking on behalf of the residents in writing to the concerned authorities, promising and ensuring to pay the necessary/requisite water charges of consumption as per rules and regulations.

b) The concerned authorities should report its follow up action within two weeks as provided u/s. 18 of the MSHRC Act.

The Ld. Secretary of this Commission to forward the copy of recommendation passed by this Commission to the concerned

departments for information and action in accordance with the provisions of section 18(e) reproduced supra above. With these directions the case stands closed and disposed off.

(M. A. Sayeed)
Member