

2. The grievance, which was raised before us by Mr. Surana and Mr. Samdani, learned senior counsel appearing for the petitioner, during the course of their arguments, for preponement of the date is that at the instance of a local representative, namely, a member of the State Legislative Assembly, the statutory authorities are refusing to act in accordance with law and thereby, implementation and execution of a slum rehabilitation project is stalled. The petitioners have specifically impleaded the said MLA as respondent no. 8 to this writ petition.

3. This court, on this writ petition, had, on 18th November, 2016, passed the following order:-

“1. On the prayer made by the learned counsel appearing for the Petitioners, we grant leave to amend the Petition. Amendment to be carried out within a period of one week from the date on which the order is uploaded.

2. Issue notice to the respondents, returnable on 15th December 2016. The learned AGP waives service for the Respondent Nos. 1 to 4. The Advocate for the Respondent Nos. 5 to 7 waives service.

3. Letter dated 15th November 2016 addressed by the Assistant Commissioner of Police, Bhandup Region, to the Deputy Collector-cum-Competent Authority is tendered on record by the learned AGP. It is taken on record and marked “X1” for identification. In addition to the service through Court, private service is permitted to Respondent Nos. 8 and 9.”

4. Mr. Samdani submits that the petitioner had to approach this court because the authorities were not exercising their

powers and removing those eligible/ineligible persons/occupants, who were obstructing implementation and execution of the project. It is common ground, according to Mr. Samdani that under the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971 (for short "the Slum Act") any such project is undertaken and implemented when the statutory pre-requisites are complied with. The object and purpose of the statute is to remove the unauthorised slums and slum like structures for they endanger public safety and public health. Mr.Samdani submits that such slums or dilapidated structures pose a threat to the life and property not only those occupying them but to passersby or people residing in the vicinity. Since basic amenities like drinking water, sanitation etc. are lacking in such areas, it causes immense inconvenience to those residing in the whole area and results in, at times, serious illness. That is the root cause for polluting the city. He, therefore, submits that once there is a project, duly sanctioned, whereafter all approvals and permissions have been obtained from the statutory authorities, then, their main duty is to render assistance to parties like the petitioner. The assistance has to be rendered so as to ensure removal of those obstructing the project. The eligible and ineligible occupants have to be removed and shifted. It is a complete scheme under the law, according to Mr. Samdani, which

ensures that the issue of eligibility is decided by a competent authority and based on the order of the competent authority, the parties like the petitioner, the developer engaged by it and the Slum Rehabilitation Authority should proceed. Some persons are included in the project after they have proved and established their eligibility to be a part of it. Even that process in this matter is complete. Now, all that remains is to remove those persons who are obstructing the project. Mr. Samdani has taken us through the entire record and including the letter of the competent authority addressed to Bhandup Police Station, requesting for police assistance while implementing and enforcing their own orders. Mr. Samdani submits that the notice was issued on this petition on 18th November, 2016. The petition has been appearing on board thereafter. However, till date, the Deputy Collector (Encroachment and Removal) and Competent Authority has not enforced and implemented the order passed by him though it is upheld in appeal. In these circumstances, Mr. Samdani would submit that the inaction and delay is resulting in those occupants, who have voluntarily surrendered their structures for demolition and their rehabilitation, being deprived of all the benefits and fruits of the redevelopment project. He, therefore, submits that this court should pass necessary orders in terms of the original and amended prayers.

5. Prayer clause (dd) of this writ petition, which was inserted by amendment reads as under:-

“(dd) This Hon'ble Court in its jurisdiction under Article 226 of Constitution of India, be pleased to direct and/or order Respondent Nos. 3 & 4 to implement order dated 2/6/2016 passed by Respondent No. 4 u/s 33 & 38 of Slum Act which is confirmed by Judgment & Order dated 4/7/2016 passed by Respondent No. 3 in Slum Appeal No. 23 of 2016 and submit its Report to this Hon'ble Court.”

6. Mr. Upadhyay learned AGP appearing for respondent nos. 1 to 4 would submit that the competent authority is making all endeavors to implement and enforce its orders, but it is the police assistance which is not forthcoming. He admits that the order was passed by the appellate authority on 4th July, 2016, but on account of festivals, the police force could not be provided. Now, the matter would be taken up and is rather taken up with the police, but still no police assistance is provided. Mr. Upadhyay, therefore, submits that this court may give him an opportunity to file an affidavit of the competent authority so that he will enlist the steps taken by him till date. There are no lack of bonafides nor is the authority deliberately not implementing its orders. It is purely because of the circumstances beyond its control that the enforcement and implementation is delayed.

7. It is surprising that respondent no. 8, who is the representative of the people and has engaged an advocate is

requesting for time to file an affidavit. Mr. Bhatt appearing for him would submit that the affidavit is required to be filed to clarify the stand of this respondent no. 8. As a representative of the people and being attentive and responsible to their problems, he took up their cases and addressed a letter to the competent authority. That competent authority took cognizance of the same and thereafter passed the necessary orders, under which, further persons or occupants were held to be eligible for rehabilitation. Therefore, far from interfering with or obstructing the project, this respondent is acting bonafide. Yet, some issues about the project needs to be brought before this court and this court's attention ought to be directed towards the same. That is how he would pray for time to file an affidavit.

8. It is strange that somebody, who seeks to intervene in this petition, has suddenly become aware of the preponement of the date of the matter and Mr. Sawant states that he has instructions to intervene on behalf of 70 occupants and bring to the notice of this court their plight. It is the petitioner society which has foisted the project on them. They are sought to be evicted and thrown out of their structures. It is stated by him that the project of redevelopment was to be undertaken by M/s. Aakaar Nirman Private Limited. Now, suddenly, a partnership firm of the same

name is stated to be the developer. These interveners have no trust and faith in the society and its office bearers and there are serious allegations of malpractices and equally a fraud being perpetrated on them. Therefore, this court should not pass any order, which may result in eviction of the said 70 persons. Today, none of them are present, according to Mr. Sawant to give him proper instructions. He would also pray for time.

9. After having heard all these parties, we are satisfied that this is indeed a deserving case. The preponement of the scheduled date deserves to be granted on account of the following facts and circumstances emerging from the record.

10. Post directions of this court, it is evident that there is an endeavor made to examine the issue of not only the eligibility of the occupants, but also move in right earnest to implement the project. During the course of the enforcement and implementation of this project and in exercise of their powers conferred by sections 33 and 38 of the Slum Act, the authorities have found that the power of eviction deserves to be invoked.

11. In that regard, what we have before us is an order made in exercise of this power by the Deputy Collector (Encroachment and Removal) and Competent Authority, Bhandup. He has

passed a detailed order and assigning reasons. That order, copy of which is at page 139C Exhibit "BB" is dated 2nd June, 2016. It is the said order, of which, implementation is sought by the amended prayer clause (dd).

12. Against this order, an appeal was filed invoking the appellate powers conferred by the Slum Act. That appeal was placed before the appellate authority and after a detailed hearing, the appellate authority has passed a speaking order dismissing the same on 4th July, 2016.

13. The appellate authority as also the competent authority, while passing these orders, have perused the records maintained by the statutory authorities as also produced before them by the private parties. They have noticed that a survey was carried out of 269 huts. In the first exercise, 99 residential occupants and 6 non-residential occupants, totaling 105 were found to be eligible. 94 occupants were found to be ineligible. The decision with regard to 70 occupants was kept in abeyance. Thereafter, the occupants produced the documents and which are relevant and germane for the inquiry. These documents, including a perusal of the voters list etc. enabled the authorities to hold that 148 occupants are eligible. Still, the issue of eligibility of others and arising during the course of the exercise was not complete.

14. In the meanwhile, respondent no. 8 MLA addressed a letter dated 12th May, 2015 and a reference is made to the said letter at page 139J of the paper book. That letter requested the statutory authorities to allow the occupants, who are presently not held eligible, to reside or occupy the structures and no action in the nature of their removal should be initiated. This itself shows that this local representative is aware of the statute. He is aware of a slum rehabilitation project being undertaken and pending implementation. He is aware of the fact that only those eligible can be included therein. He is also aware of those powers by which not only the eligible, but ineligible occupants can be removed from site. It is elementary and respondent no. 8 knows very well that if the rehabilitation project is to come up at the same site, the occupants of the old structure should vacate their premises and handover the same to the statutory authorities or the developer for their demolition. It is in these circumstances that the appellate authority found that those non-cooperating 70 occupants had been made aware of the developer's letter dated 29th April, 2015. They were aware of an order passed by this court in Writ Petition (L) No. 1694 of 2015. In that writ petition, an order was passed by this court that the necessary decision with regard to these non-cooperating occupants should be taken and within a period of 12 weeks from the date of the order. That

order was passed on 23rd June, 2015. Thereafter, the competent authority proceeded to implement this order and direction of this court. He passed an order on 23rd September, 2015 in exercise of his powers under sections 33 and 38 of the Slum Act. His order imposed certain conditions and on those occupants who are not cooperating with the project and its implementation. They were directed to produce, within a period of 30 days, relevant documents and papers so that the competent authority can peruse them and scrutinise them for their evidentiary value. Surely, once the issue of their eligibility is decided, they must, on their own, surrender and handover vacant possession of their premises. After this exercise was completed by the competent authority, it was found that out of 269 structure holders, 212 are eligible, 55 are ineligible and there is one religious structure so also Hut Nos. 51 and 52 together constitute only one structure. That is how the issue of the eligibility was decided and finalised. Once again, it was found that the ineligible slum dwellers approached the Additional Collector (Encroachment and Removal), who is also the appellate authority. He, in deciding the appeal, in order dated 23rd September, 2015, held that 14 more occupants are eligible and thus, the total number of eligible occupants was determined at 226. Since this process of eligibility and which was finalised in these terms, the competent authority

was of the opinion that the implementation of this court's order and directions requires him to ensure the removal of these 70 ineligible and non-cooperating occupants.

15. That is how the matter was moved further and he issued individual notices on these occupants to appear before him on 2nd December, 2015. After the requisite satisfaction, he found that these non-cooperating persons having no documents in their possession, by which they can seek rehabilitation in the project, should be removed forthwith. That is how he passed an order on 2nd June, 2016. Nobody has invented these facts and figures. They are not figment of anybody's imagination. They are based on all the statutory records and duly maintained in the course of their business by the statutory authorities. It is their bounden duty to ensure that the Slum Act is implemented. It is their duty to assist such eligible slum dwellers to undertake a project of redevelopment of the property and their eventual rehabilitation. Such a project, meant for the slum dwellers and to assist them and to ensure better living conditions and humane surroundings, is therefore being implemented. The appellate authority further found from the record that out of these 70 non-cooperating occupants, 60 have been found eligible and 10 are ineligible. However, while implementing the project and which is meant for

the benefit of such dwellers, it is equally their duty to remove themselves. It is impossible to find an alternate accommodation for every such eligible occupants. Given the scarcity of transit accommodations and financial constraints on the developer, as it is impossible for him to find vacant accommodations or vacant land for their housing, the scheme envisages that the builder and developer offer a minimal amount for such occupants for their temporary accommodation. The appellate authority, in para 8 of the order, records that individual offers for making such payments have been made by the developer. He has issued letters to each of these 70 occupants and requested them to collect the cheques. These cheques were kept ready. These cheques, towards the payment of monthly compensation (12 months' compensation in advance) were kept ready, but they refused to accept the same. Now, what the appellate authority found is that out of 269 structures, 145 have accepted these cheques and 135 have vacated their structures on their own. The Slum Rehabilitation Authority has issued its Letter of Intent. An Intimation of Disapproval has also been issued to the developer. It is in these circumstances, on merits, the appellate authority finds that there is no substance in the appeal. He dismissed the same on 4th July, 2016.

16. It is only because we do not want to be charged with an allegation that we obliged the petitioner and the developer for the mere asking that we referred to these documents. Nothing has been brought before us, which would enable us to hold that the order dated 4th July, 2016 has been challenged by anybody. Nothing has been brought on record, which would enable the statutory authorities, namely, respondent nos. 1 to 4 to avoid implementation and enforcement of their own orders and directions and the project as a whole. We have found from a letter addressed to the police station and a copy of which was taken on record on 18th November, 2016, which would enable us to hold that the concerned police station is not rendering assistance, as orally complained. We do not see how there could be any reason not to implement the orders and directions of the statutory authorities and equally this court. This is, thus, an increasing tendency and which needs to be immediately curbed. When questioned about non-implementation and non-enforcement of such orders, the standard reason assigned is that the statutory authorities, namely, the Collectors and Deputy Collectors in-charge of encroachment removal have never been provided the police assistance whenever they seek it. Somebody or other within the statutory framework and statutory machinery is blamed. It is expected of a court of law and that too the highest

court in the State that it must appreciate the difficulties of the statutory authorities. It is surprising that such reasons are placed forward only when the authorities are questioned as to why they have not taken any steps to implement their own orders and why there is enormous delay in the same. We do not see how intervention by non-statutory authorities can be a reason not to implement this court's and equally the statutory authorities' orders. Secondly, the slum like structures and their occupants are increasing because we find that they are supported and assisted by those who claim to be their representatives. We, therefore, would expect respondent no. 8 not to write any letters on behalf of these non-cooperating 70 occupants. He should resist from assisting them and at their instance, should not approach either competent authorities or a police station. That would be construed as an attempt to obstruct not only the project, but the binding orders of this court. Then, that gentlemen, who is stated to be a local representative, must be ready to face consequences, including deprivation of his status as a Member of the Legislative Assembly. We would not hesitate to intimate the higher authorities, including the Election Commission of India to take note of this court's order and take the requisite steps so that such representatives of people are made to demit their office forthwith. We hope and trust that respondent no. 8 hereinafter will not

make any such attempts as are highlighted by the petitioner before us. Respondent no. 8 has done his duty by addressing a letter and we are happy to note that because of his intervention, some more occupants have got opportunity to obtain a decent housing accommodation. Beyond this, we do not expect him to do anything further. He has done his job and we commend him of his efforts till date. Hereafter, none should take any note of his letters and communications as the matter is before this court. None should, therefore, dare to either challenge or impugn orders of this court or that of the statutory authorities by a process unknown to law. We hope this much is enough for such persons and equally the interveners. This project is conceived for their benefit. Those eligible and ineligible must vacate and not willing ought to be evicted for the entire project is going to come up at the very site. It is for their health and safety that they must cooperate with all the authorities. Else, we hope and trust that they are removed forthwith.

17. It is in these circumstances that we direct respondent nos. 1 to 4 to immediately cause the removal of the 70 non-cooperating occupants and submit a compliance report. We place this matter on 16th February, 2017 for reporting such compliance. We direct Mr. Upadhyay to forward a copy of this order, along with his

covering letter to the station in-charge of Bhandup Police Station. In the event the said station in-charge refuses to render any assistance to the competent authorities, we would not hesitate to take action against him as well. After receipt of this communication and a copy of this order, immediately he must take steps to comply with the order of this court. There should not be any delay or laxity on his part. This order and directions would then equally bind him.

(B.P.COLABAWALLA, J.)

(S.C.DHARMADHIKARI, J.)