

PETITIONER:
RAM PRASAD YADAV & ORS.

Vs.

RESPONDENT:
CHAIRMAN, BOMBAY PORT TRUST & ORS.

DATE OF JUDGMENT 29/03/1989

BENCH:
PATHAK, R.S. (CJ)
BENCH:
PATHAK, R.S. (CJ)
KANIA, M.H.

CITATION:
1989 SCALE (1) 716

ACT:

Constitution of India 1950: Article 136. Problem of hutment dwellers--A human problem--removal of hutments--Causes untold hardship and misery--Provision of alternative sites--Whether a condition precedent.

Practice and Procedure: Hutment dwellers--Removal of--Appointment of Commission for identification of beneficiaries in terms of 'cut off date fixed by interim order of Court--Whether ground for extending 'cut off date.

Bombay Rents, Hotels and Lodging Houses Rates (Control) Act, 1947--Applicability of--To Bombay Port Trust Lands.

HEADNOTE:

In May 1985, some of the hutments in the Bombay Port Trust lands were cleared by the Port Trust and these hutments were demolished. The petitioners filed a writ petition in the Bombay High Court for restraining the Bombay Port Trust from carrying out any further demolition of the hutments. The writ petition was dismissed by a Single Judge of the High court. An appeal preferred against the order of the Single Judge was dismissed by a Division Bench. Hence the appeal by special leave to this Court.

By an interim order dated 27th January 1986 a Division Bench of this Court fixed a cut off date as January 1, 1981 for the purpose of granting relief in the form of providing alternative sites to the hutment dwellers and directed that those hutment dwellers who have been continuously in occupation for at least two years prior to January 1, 1981 shall not be thrown out unless and until, alternative sites are provided to them for occupation. A Commission was also appointed to identify the persons who were eligible for alternative sites in terms of the aforesaid interim order. In its report submitted on 4th November 1986, the Commission pointed out that only 50 hutment dwellers could satisfy the Commission that they were living on the site for a period of two years prior to the cut off date. The other hutment dwellers were unable to do so.

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It was contended on behalf of the petitioners that (i) in view of the time which has gone by, cut off date fixed by this Court should be extended, and (ii) the policy of the State of Maharashtra was not to evict unauthorised occupants on public lands except after providing them alternative

accommodation.

Disposing of the special leave petition, it was,

HELD: 1. The problem of hutment dwellers is a human problem and the removal of hutments is bound to cause an untold hardship and misery to the occupants. However, on that consideration, the Bombay Port Trust cannot be prevented from putting its land to its own use. [178C]

2. Once the cut off date has been fixed by this Court, there is no basis for extending the cut off date merely because time has gone by since that would render the entire task given to the Commission futile. Moreover, doing so would run counter to the intention of this Court in making the aforesaid order which was to protect only those hutment dwellers who had been in occupation for at least two years prior to 1.1.1981. In view of the fact that no policy statement of the Government of the State of Maharashtra was pointed out it cannot be taken into account. Moreover, the Port Trust land cannot be regarded as public land in occupation of the Government, either the Central Government or the State Government. [177E-H]

2.1. Under the circumstances, directed that the said 50 hutment dwellers along with their families who had been identified by the Commission as having occupied the said hutments for two years or more prior to the cut off date, namely, 1.1.1981, shall not, be removed from their hutments and their hutments shall not be demolished except after provision of alternative sites for them. The Port Trust will be at liberty to remove these hutments after giving alternative sites to these hutment dwellers. [177H; 178A-B]

3. It is not possible for this Court to say whether there would be a greater injury to public interest by the removal of the unauthorised hutment dwellers or by preventing the Port Trust from putting its own land to a proper use. [178C-D]

4. The State Government or the Central Government or even the Bombay Port Trust may make some provision for providing alternative sites at least to some of these hutment dwellers. However,
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the provision of such alternative sites is not made a condition precedent to the removal of the hutment dwellers or the hutments in question other than those who are entitled to protection on the basis set out earlier.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Special Leave Petition (Civil) No. 7883 of 1985.

From the Judgment and Order dated 24.5.1985 of the Bombay High Court in Appeal No. 461 of 1985.

M.C. Bhandare, G.S. Chatterjee and Ms. C.K. Sucharita for the Petitioners.

B. Datta, G. Ramaswamy, Additional Solicitor Generals, A.S. Bhasme, Praveen Kumar, R.P. Srivastava, Mrs. Sushma Suri, U.J. Makhija, B.S. Bhasania, Mrs. A.K. Verma, and Turn Bangs for the Respondents.

The Judgment of the Court was delivered by
KANIA, J. Heard Counsel.

This is a Petition under Article 136 of the Constitution for special leave to appeal against a judgment and order of a Division Bench of the Bombay High Court dated May 24, 1985.

Original Petitioner No. 1 who is dead was a hutment dweller and Petitioner No. 2 is a Union representing hutment

dwellers having their hutments in lands belonging to the Bombay Port Trust. Respondents Nos. 1 to 3 to the petition are the Chairman of the Bombay Port Trust, Union of India and the State of Maharashtra respectively.

Some of the hutments in the Bombay Port Trust lands were cleared by the Bombay Port Trust in the first part of May 1985 and these hutments were demolished. The Petitioners filed a Writ Petition No. 992 of 1985 on the Original Side of the Bombay High Court inter alia for restraining the Bombay Port Trust from carrying out any further demolition of hutments and asking for several other reliefs.

A learned Single Judge of the Bombay High Court in his judgment and order dated May 15, 1985 disposing of the petition pointed out that the Petitioners' Counsel was unable to point out any legal

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fight in the petitioners. The property admittedly belongs to the Bombay Port Trust and the provisions of the Bombay Rents, Hotels and Lodging House Rates (Control) Act, 1947 are not applicable to the said property. The learned Judge further pointed out that although the petitioners claimed that there was some policy of the State Government for providing alternative accommodation before the hutments on public lands were demolished, no statement of any such policy was brought to the attention of the Court and the learned Counsel for the State denied that there was any such policy for the Bombay Port Trust lands. The learned Judge dismissed the writ petition but directed that status quo should be maintained till and inclusive of 30th May, 1985 on certain conditions. The Petitioners preferred an appeal against the said order which was dismissed by a Division Bench of the Bombay High Court by the order sought to be impugned before us.

Certain interim orders were passed in the said Petition from time to time with which we are not concerned. By an order dated January 27, 1986 a Division Bench of this Court comprising Bhagwati, C.J. and Oza, J. observed that as far as they gathered, about 406 families were involved in the operation relating to the removal of unauthorised hutments on the lands of Bombay Port Trust. They also observed that it was fair and just that some alternative land sites be provided to those who have been continuously in occupation since at least two years prior to a cut off date, fixed by them as January 1, 1981 should be provided with alternative sites before being thrown out of the said land and directed that those hutment dwellers who have been in occupation of the Bombay Port Trust lands along with their families for the said period, shall not be thrown out unless and until, as a condition precedent, alternative sites are provided to them for occupation. The Division Bench appointed a Commission for the purposes of inquiring and determining as to which of the persons whose names and addresses were given in the affidavit filed on behalf of the petitioners were in occupation of hutments in the Bombay Port Trust lands for at least two years prior to January 1, 1981. A plain reading of the said order makes it clear that the State Government was directed to provide alternative sites only to those hutment dwellers who were ultimately found entitled to protection as being in occupation for the period set out earlier i.e. two years prior to the cut off date. The Commission appointed by this Court submitted its Report on November 4, 1986. The Commission pointed out that out of 411 families mentioned in the affidavit filed on behalf of the Petitioners, the Commission could make an inquiry in regard to 302 hutment

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dwellers. 59 of them had already left for Govandi a place in Bombay where alternative sites were presumably allotted to them and the Commission held that these persons were not staying on the Bombay Port Trust lands. The Report makes it clear that inquiry could not be made with certain persons mentioned in the affidavit as they were not available for inquiry despite the fact that the Commission visited the sites at least six times and spent considerable time there. Out of the persons concerned, the Commission found that, on the evidence, only 50 hutment dwellers with their families could satisfy the Commission that they were living on the site for a period of two years prior to the cut off date, namely, 1.1.1981. The other hutment dwellers were unable to satisfy the Commission with their evidence. The commissioner, however, stated that it was possible that some of these persons, who had been unable to establish their residence for the aforesaid period, might have been unable to do so because of their poverty, lack of literacy and want of documentary proof.

It is after that making of this Report that the matter has come up before us. As far as we can see, in view of the aforesaid order of this Court, the main task before us is to implement that order.

It was contended by Mr. Bhandare, learned Counsel for the Petitioners that although the cut off date was fixed as 1.1.1981, we should extend the cut off date in view of the time which has gone by. He further contended that there was a policy of the State of Maharashtra not to evict unauthorised occupants on the public lands except after providing them alternative accommodation. We are unable to accept the submissions of Mr. Bhandare. Once the cut off date has been fixed by this Court by the aforesaid order, there is no basis for extending the cut off date merely because time has gone by since that order because that would render the entire task given to the Commission futile. Moreover, doing so would run counter to the intention of this Court in making the aforesaid order which was to protect only those hutment dwellers who had been in occupation for at least two years prior to 1.1.1981. Although the policy of the Government of the State of Maharashtra was referred to, no policy statement was pointed out to us and the learned Counsel for the State of Maharashtra made it clear that no such policy would be applicable to the Bombay Port Trust lands. In view of this, we are unable to take into account any alleged policy of the State. Moreover, the Port Trust land cannot be regarded as public land as being in the occupation of the Government, either the Central Government or the State Government. Under the circumstances, we direct that the said 50 hutment

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dwellers along with their families who had been identified by the Commission as having occupied the said hutments for two years or more prior to the cut off date, namely, 1.1.1981, shall not be removed from their hutments and their hutments shall not be demolished except after provision of alternative sites for them. As already directed by the earlier order, the duty of carrying out this task is imposed on the State of Maharashtra but, even if either the Central Government or the Port Trust is able to give alternative sites to these hutment dwellers, the Port Trust will be at liberty to remove these hutments.

We realise that the problem of hutment dwellers is a human problem and the removal of hutments is bound to cause an untold hardship and misery to the occupants. However, on that consideration, we cannot prevent Bombay Port Trust,

from putting its land to its own use. It is not possible for this Court to say that whether there would be a greater injury to public interest by the removal of the unauthorised hutment dwellers or by preventing the Port Trust from putting its own land to a proper use. In order to obviate the hardship referred to earlier, although to a limited extent, we direct that even the hutments on the said lands which are not entitled to protection, will not be demolished for a period of six months from the date of signing of this order. We only hope and trust that it will be possible for the State Government or the Central Government or even the Bombay Port Trust to make some provision for providing alternative sites at least to some of these hutment dwellers, if not all. However, we make it clear that the provision of such alternative sites is not made a condition precedent to the removal of the hutment dwellers or the hutments in question other than those who are entitled to protection on the basis set out earlier.

The Special Leave Petition is disposed of by this order. There will be no order as to costs.

T.N.A.

Petition disposed

of.

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