

Ram Prasad Yadav (Deceased) and Bombay Mineral and Allied Industries Employees' Union and
Bombay Coal and Coke Workers' Union

Vs

Chairman, Bombay Port Trust and Others

Special Leave Petition (Civil) No. 7883 Of 1985

(CJI R. S. Pathak, M. H. Kania JJ)

29.03.1989

JUDGMENT

KANIA, J. –

1. Heard counsel.

2. 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.

3. Original petitioner 1 who is dead was a hutment dweller and petitioner 2 is a Union representing hutment dwellers having their hutments in lands belonging to the Bombay Port Trust. Respondents 1 to 3 to the petition are the Chairman of the Bombay Port Trust, Union of India and the State of Maharashtra respectively.

4. 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.

5. 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 right 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 Governments 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 May 30, 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.

6. Certain interim order 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 land 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 Bombay Port Trust lands along with their families for the said period shall not be thrown out unless and until occupation. The Division Bench appointed a commission for the purpose 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 year prior to January 1, 1981. A plain reading of the said order makes it clear that the State Governments was directed to provide alternative sites only to those hutments 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 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, of namely January 1, 1981. The other hutment dwellers were unable to satisfy the commission with their evidence. The commissioner, however, started 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.

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

8. It was contended by Mr. Bhandare, learned counsel for the petitioners that although the cut off date was fixed as January 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 his Court in making the aforesaid order which was to protect only those hutment dwellers who had been in occupation for at least two year prior to January 1, 1981. Although the policy of the government of the State of Maharashtra was referred to, no policy statements 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 occupations of the government, either the Central Government or the State Government Under the circumstances we direct 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, January 1, 1981, shall not be demolished except after provisions 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 alternatives sites to these hutment dwellers, the Port Trust will be at liberty to remove these hutments.

9. We realise that the problems of hutments dwellers is a human problems 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 protections will not be demolished for a period of six month 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 protections on the basis set out earlier.

10. The special leave petition is disposed of by this order. There will be no order as to costs.

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