

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.1288 OF 2014

Shantabai Kacharu Rote and others

.. Petitioners

Versus

Deputy Collector (Enc / Rem) and others

.. Respondents

**Mr. Altaf Khan i/b Ms. Anjali Awasthi & Mr. Yousuf Khan, Advocate
for the Petitioners.**

Mr. S. D. Rayrikar, AGP for Respondents No.1, 2 & 14.

Mr. Nikhil Chavan i/b Mr. V. D. Patil, Advocate for Respondent No.5.

CORAM : R.M. SAVANT, J.

DATE : 13th JANUARY, 2015

PC.

1. The writ jurisdiction of this Court is invoked against the two orders both dated 05.09.2013 passed by the Learned Judge of the City Civil Court, Bombay. By the said orders, the applications seeking leave under Order 1 Rule 8 of the CPC and seeking exemption from the notice under Section 80 of the CPC came to be rejected.

2. The suit in question has been filed by the Petitioners questioning the notice of demolition issued by the Deputy Collector of Encroachment. The said notice has been issued as the plot of land in question is to be taken for development under the Slum Rehabilitation Scheme. The Petitioners

have challenged the Annexures-II issued by the Deputy Collector of Encroachment which Annexures-II is inter-alia a list of the slum dwellers who are eligible for permanent alternate accommodate and those who are not eligible in terms of policy of the State Government. In so far as the application under Order 1 Rule 8 of the CPC is concerned, by the said application the Petitioner was seeking leave to prosecute the suit on behalf of the slum dwellers similarly situated. As indicated above in so far as the second application is concerned, the Petitioners are seeking leave from giving notice under Section 80(2) of the CPC.. In so far as the first application is concerned, the Trial Court has rejected the said application on the ground that the challenge to the Annexures-II issued by the Deputy Collector of Encroachment cannot be a common challenge. There are some slum dwellers who are eligible for permanent alternate accommodate and some who are not eligible. Hence, the Trial Court declined to grant leave under Order 1 Rule 8 of the CPC.. In so far as the second application is concerned, i.e. the application seeking exemption, the said order is not annexed to the petition. The petition was adjourned on a number of occasions and was also adjourned at the request of learned counsel for the Petitioner on 6th January, 2015 and was kept today. However, in spite of the said adjournment, the copy of the said order passed on the application seeking exemption from giving notice under

Section 80 is not produced. It was also made clear to the learned counsel that the matter would be proceeded on the next date. In so far as the application seeking exemption is concerned, it is required to be noted that the Deputy Collector of Encroachment who is the author of the said Annexures-II is a party defendant to the suit being Defendant No.1. The Administrator and Divisional Commissioner-Konkan Division, Mumbai who has passed the appeal is also a party Defendant to the suit. The Trial Court therefore, was right in rejecting the application seeking exemption from giving notice under Section 80 of the CPC. It seems that the Petitioners i.e. Original Plaintiffs want to array the State of Maharashtra as parties to the suit. The learned counsel for the Petitioner seeks to rely upon the judgment of the Apex Court reported in **JT-1990-1-7** in the matter of **Chairman, Tamil Nadu Housing Board, Madras Vs. T. N. Ganapathy**. In my view, the said judgment would have no application in the facts of the present case as in the present case as indicated above, there are certain slum dwellers who are eligible for permanent alternate accommodate and some who are not eligible, hence, they can not be said to be having the same interest. In the facts before the Apex Court, the Plaintiffs had the same interest in respect of demands which were made by the Housing Board and it is in the said context the Apex Court discountenanced the submissions made on behalf of the Housing Board

questioning the grant of leave by the Trial under Order 1 Rule 8 of the CPC. It is required to be noted that in the instant case that the Trial Court has permitted the Plaintiffs No.1 to 54 to prosecute the suit.

3. The learned counsel also relies upon judgment of the Apex Court reported in **AIR(SC)-2007-0-11** in the matter of **State of Andhra Pradesh Vs. Pioneer Builders, Andhra Pradesh**. In so far as the leave under Order 80 is concerned, in my view the said would have no application in the facts and circumstances of the case as the Deputy Collector of Encroachment and the Additional Commissioner are already parties to the suit. In that view of the matter, no case for interference in the writ jurisdiction of this Court is made out. The Writ Petition is accordingly dismissed.

[R.M. SAVANT, J]