

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

WRIT PETITION NO.732 OF 2015

Smt.Savatri Bhanu Nawalu. ..Petitioner.
vs.
The Dy. Collector (Enc. & Evc.)Bandra
and ors. ..Respondents.

Mr. Makarand Kale with Yogesh Sankpal for the Petitioner.
Mr. S.D.Rayrikar, AGP. for Respondent Nos.1,2 and 5.
Mr. Ajay Patil for Respondent No.4.
Mr. Indrajeet Deshmukh, Architect present in Court.

**CORAM : M.S. SONAK, J.
DATE : 10 FEBRUARY, 2015**

PC:

This petition is directed against the order dated 19 August 2014 made by the Competent Authority and order dated 6 January 2015 made by the Appellate Authority under the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971 (hereinafter referred to as the "Slum Act").

2) This Court relying upon the solemn statement made by the learned Counsel for the petitioner that the suit structure in no manner affects the development, granted ad interim relief dated 21 February 2015. Ultimately, it transpires that a building is scheduled to come up

precisely at the spot where the suit structure stands. This is sufficient ground to reject this petition. However, the petition is not being rejected on this ground alone.

3) Learned counsel for the petitioner had pointed out that the petitioner is 72 years of age and therefore, irrespective of the contentions of the rival parties, if some transit accommodation will be provided at or near the site, rather than require the petitioner to accept rent in lieu of such accommodation. As the request appeared reasonable, this Court called upon learned counsel for the respondent – developer to explore the possibility of providing such alternate transit accommodation. In pursuance thereof several premises were examined, however, the petitioner expressed dissatisfaction with the same. Ultimately, one premises was identified at Santacruz, but the petitioner chose to reject the same on the ground that it is almost 1 Kilometer away from the site and the same would cause inconvenience her grand children.

4) Learned counsel for the petitioner, thereafter raised the following contentions:

(a) That the Competent Authority in the present case, who had prepared Annexure-II, has itself made the orders under Section 33 and 38 of the Slum Act, directing the petitioner's

removal from the site. This according to the learned counsel constitutes breach of the principles of natural justice;

(b) That the developer, in terms of law, original allotment letter and LOI is duty bound to provide transit accommodation at or near the site. In fact, the original order of allotment specifies that such transit accommodation or rent in lieu of transit accommodation has to be provided depending upon the resolution of the Cooperative Societies. In the present case, the Cooperative Society has resolved to opt for transit accommodation;

(c) The impugned orders rely upon MOU. Such MOU is a forgery and in any case since the same is unstamped and unregistered, the same could not have been even looked into by the Authorities.

5) There is no merit in the contentions raised by and on behalf of the petitioner. The Competent Authority had merely prepared Annexure-II indicating the list of eligible occupants. The petitioner was also adjudged as an eligible occupant. Thereafter the Competent Authority, upon being satisfied that the parameters of Sections 33 and 38 of the Slum Act have been specified, has made the impugned order. There is no question of any bias or breach of principles of natural justice.

6) There is material on record which suggest that the occupants had agreed to accept rent in lieu of transit accommodation. The petitioner herself entered into an agreement dated 23 February 2013 with the developer and Clause 7 thereof indicates that there was agreement to accept rent in lieu of alternate transit accommodation. The petitioner suppressed this agreement though it was her duty to have disclosed the same in the petition. Besides, offer of accommodation hardly at a distance of 1 Kilometer from the site, was also, in the circumstances, quite reasonable. However, the petitioner chose not to accept such accommodation.

7) In this petition for judicial review, it is not possible to go into the disputed questions of fact with regard to forgery or otherwise. Even if, the MOU were to be excluded from consideration by the Authorities, nevertheless, the agreement dated 23 February 2013 does make reference to acceptance of rent in lieu of transit accommodation. The petitioner, has admitted to the execution of the agreement dated 23 February 2013, though the same was not disclosed in the petition.

8) Learned counsel for the developer has pointed out that rehabilitation building has been constructed upto 7th floor and upon the petitioner vacating the suit structure, the building would be completed

in its entirety within a period of one year from today. This statement has been made on the basis of instructions from the Architect of the builder, who is present in the Court. Learned counsel for the developer submits that once the rehabilitation buildings is completed, it would be ensure that the petitioner will be allotted permanent accommodation in the said building.

9) In view of the aforesaid, it is not possible to detect any jurisdictional error or perversity in the impugned order. Accordingly, there is no reason to entertain the present petition. The petition is dismissed. There shall be no order as to costs.

10) The interim orders granted earlier to stand vacated.

(M.S. SONAK, J.)