

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

WRIT PETITION (STAMP) NO.3152 OF 2015

Razia Shaikh and others

.. Petitioners

Versus

The Additional Collector

(Encroachment/Removal)

Eastern Suburb, Mumbai Suburban and others

.. Respondents

Mr. S. M. Shah, for the Petitioners.

Mr. V. D. Patil, for the Respondent No.2.

Mr. Rushabh Sheth i/by M. S. Bodhanwalla & Co., for the Respondent No.6.

Mr. Chirag Balsara i/by Mr. A. S. Patil, for the Respondent No.5.

Mrs. V. S. Nimbalkar, AGP for the Respondent Nos.1 & 3.

CORAM : R.M. SAVANT, J.

DATE : 10th JUNE, 2015

PC.

1. The Writ Jurisdiction of this Court is invoked against the order dated 16.01.2015 passed by the Additional Collector (Encroachment/Removal), Eastern Suburb by which order the Appeal filed by the Petitioners against the order of eviction passed by the Deputy Collector (Encroachment/Removal), Eastern Suburbs came to be dismissed.

2. The Respondent No.4 society is a society comprising of slum

dwellers on the plot of land in question being CTS No.200 (part) and CTS No.103 (part) of village Wadhavali, Chembur. A scheme under Section 33(10) of the Development Control Regulations 1991 is in the process of being implemented by the Respondent No.5 herein who has been appointed as a developer by the Respondent No.4 society. It seems that there are 2473 slum dwellers on the said plot of land in question, out of which 1833 slum dwellers have vacated that structures in question to facilitate the implementation of the said slum scheme. In view of the reluctance of the Petitioners herein to vacate the structures in question that proceedings were required to be adopted under the Slum Act for their eviction. An order of eviction came to be passed by the Deputy Collector (Encroachment /Removal) on 16.12.2014 and by the said order the Deputy Collector held that the Petitioners are liable to be evicted to facilitate the implementation of the said scheme. Against the said order dated 16.12.2014 the Petitioners filed an Appeal under Section 35 of the said Act. The said Appeal came to be dismissed by the Appellate Authority i.e. Additional Collector (Encroachment/Removal), Eastern Suburb for the reasons mentioned in the said order. The Appellate Authority has in the said reasons reiterated the finding of the Deputy Collector as also has recorded the fact that more than 80% of the slum dwellers have vacated their structures and that the slum scheme has been accepted by majority

of the slum dwellers.

3. At the hearing of the above Petition, the Learned Counsel for the Petitioners sought to urge contentions as regards the entitlement of the Respondent No.5 to undertake the implementation of the said slum scheme as according to the Learned Counsel for the Petitioners the land belongs to the Central Government. However, the Learned Counsel for the Petitioners later on contended that the Petitioners would be interested in their permanent rehabilitation under the said slum scheme. Upon this, the Learned Counsel appearing on behalf of the Respondent No.5 Shri. Chirag Balsara would contend that out of the present 30 Petitioners, 5 have been declared eligible and 25 have been declared ineligible in terms of the policy of the State Government for allotment of permanent alternate accommodation. The Learned Counsel further stated that in so far as the ineligible slum dwellers are concerned, the Respondent No.5 would extend the facility of payment of monthly compensation in lieu of alternate accommodation to them as paid to the eligible slum dwellers till the Appeal if any filed by the said ineligible slum dwellers is decided. The Learned Counsel for the Petitioners was not able to make any definite statement as to the number of Appeals which are filed by the slum dwellers who have been declared as ineligible. In view of the statement made by the Learned Counsel appearing for the Respondent No.5 and in

view of the fact that against the declaration of ineligibility a remedy by way of Appeal is available. In my view, interest of justice would be served if the Petition is disposed of by the following directions :-

I) In view of the statement made by the Learned Counsel for the Petitioners that the Petitioners are interested in their permanent rehabilitation, it would be open for such of the Petitioners who have been declared ineligible to file Appeals against their ineligibility within 20 days from date.

II) In so far as the ineligible slum dwellers are concerned, they would be extended the facility of payment of compensation in lieu of allotment of temporary alternate accommodation till such time as their Appeals are decided. The same would be on the same basis as the eligible slum dwellers.

III) The Petitioners herein i.e. slum dwellers to hand over vacant and peaceful possession of the structures in question within a period of four weeks from date. All the Appeals which are filed within the time stipulated by this Court in terms of clause (I) above as also the pending Appeals that are already on file would be disposed of by the Appellate Authority within three months from date by giving proper

opportunity to the parties.

IV) Needless to state that the contentions of the parties are kept open for being agitated before the Appellate Authority.

V) If the Appeals are not filed within the time stipulated by this order the right to file the Appeals would then stand forfeited unless the time for the same is extended. In the said event of the Appeals being not filed, the payment of compensation to such slum dwellers would come to an end and the said slum dwellers would thereafter have no right to claim permanent alternate accommodation. With the aforesaid directions, the above Writ Petition is disposed of.

[R.M. SAVANT, J]