

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

WRIT PETITION NO.3149 OF 2015

**Smt. Nalini Jaywant Dhodi @ Hathi : Petitioner.
Versus
M/s. Muskan Builders & Developers & ors. : Respondents.**

**Mr. Akash Thale i/by Mr. Saroj Shinde for the Petitioner.
Mr. S V Masurkar a/w Ms. Sunitha Perumal for the Respondent No.1.
Mr. M S Bane "B" Panel Counsel for the Respondent Nos.1 and 2.**

**CORAM : R. M. SAVANT, J.
DATE : 09th June 2015**

P.C.

1 The writ jurisdiction of this Court is invoked against the order dated 17/3/2015 passed by the Additional Collector (Encroachment/Removal), Western Suburbs, Mumbai by which order the Appeal filed by the Petitioner herein under Section 38 of the Slum Act came to be rejected.

2 The said Appeal was directed against the order dated 25/8/2014 passed by the Deputy Collector (Encroachment/Removal) by which order the Deputy Collector had directed the removal of the structure of the Petitioner on the plot of land in question.

3 The aforesaid two orders are passed under Section 33 i.e. the order passed by the Deputy Collector and under Section 38 i.e. the order passed by the Additional Collector. The subject matter of the dispute is the

land bearing CTS No.306/A-2 and 306/A-4 originally bearing Survey No.129/A (Part) of village Borivali. On the said land a slum scheme under Regulation 33(10) of the Development Control Regulation, 1991 is being implemented by the Respondent No.1 for the members of two co-operative societies of the slum dwellers. It seems that the said scheme is half complete and it is the Petitioner in the present Petition and the Petitioner in the companion Petition who are opposing the implementation of the scheme.

4 In so far as the Petitioner in the present Petition is concerned, she is the wife of one Jaywant Dhodi who had filed a suit in the Bombay Civil Court being S.C. Suit No.5575 of 1986. In the said suit it was the claim of the said Jaywant Dhodi i.e. the husband of the present Petitioner that he is the owner of the land in question which belongs to his family as they are adivasis. The said suit was compromised between the parties. The Defendants to the said suit were the State of Maharashtra and one M/s. Sawlee Co-operative Housing Society Ltd. in the said consent terms in clause (2) thereof the Plaintiff i.e. the said Jaywant Jivan Dhodi accepted the position that the Defendant No.1 to the said suit i.e. the State of Maharashtra is the owner of the suit property. In the present proceeding also the Petitioner seeks to challenge the orders passed under Sections 33 and 38 of the said Act on the ground that the land belongs to the family of the Petitioner and was allotted to the family being adivasis. In the light of the consent terms and especially

clause (2) thereof the said contention urged on behalf of the Petitioner cannot be countenanced.

5 In so far as removal of the structure of the Petitioner is concerned, it is required to be noted that the eviction order was also passed against the Petitioner's son one Kamlesh Jaywant Hathi by the Deputy Collector and Competent Authority. The said order was challenged by the son of the Petitioner by filing an Appeal before the Divisional Commissioner, Konkan Division, which Appeal came to be dismissed by the Divisional Commissioner, Konkan Division by the order dated 21/12/2013. The Divisional Commissioner in the said order has observed that the structure in question was removed but seems to have been re-erected and therefore directed spot inspection to be made. However, as indicated herein above, the Appeal was dismissed. The matter was not carried further by the son of the Petitioner.

6 The Petitioner in the present Petition who is similarly situated as her son also seeks to challenge the order passed by the Deputy Collector (Encroachment) as confirmed by the order passed by the Appellate Authority directing removal of the structure of the Petitioner.

7 In the background facts as afore-stated there is no merit in the challenge. It is required to be noted that the Petitioner herein has been allotted

two flats for residential purpose in the said scheme as and by way of permanent alternate accommodation and that three premises for commercial user are also allotted. The said fact has been stated in the Affidavit in Reply filed on behalf of the Respondent No.1. The said fact therefore discloses that the interest of the Petitioner is adequately protected. In that view of the matter, no case for interference in the writ jurisdiction of this Court is made out. The above Writ Petition is accordingly dismissed.

[R.M.SAVANT, J]