

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

**WRIT PETITION NO.4864 OF 2015
ALONG WITH
CIVIL APPLICATION NO.1199 OF 2015**

Ramakant Ramdeo Pathak : Petitioner.
Versus
The State of Maharashtra and ors. : Respondents.

Mr. A A Siddiquie i/by A A Siddiquie & Associates for the Applicant.
Mr. Ajay Khiare for the Respondent No.2.
Mr. S D Rayrikar, AGP, for the State/Respondents Nos.4 to 6

CORAM : R. M. SAVANT, J.
DATE : 12th June 2015

P.C.

1 The writ jurisdiction of this court is invoked against order dated 18/4/2015 passed by the Additional Collector (Removal/Encroachment), Eastern Suburbs by which order the Appeal filed by the Petitioner came to be dismissed and resultantly the order dated 18/3/2015 passed by the Deputy Collector (Encroachment/Removal) and Competent Authority came to be confirmed.

2 The issue involved in the above Petition is as regards the Petitioner's entitlement to the allotment of permanent alternate accommodation for residential user. The Petitioner had his structure which was affected by Anik Panjarapol Link Road which is now popularly known as

Eastern Free Way which project was implemented by the Respondent No.2 herein. It seems that a survey was carried out in the year 2006 and in the said survey it was revealed that the Petitioner had one structure which was being used both for residential and commercial purpose. The said structure was identified by ID No.155 in the said survey. The Petitioner was accordingly allotted permanent alternate accommodation by way of shop at the site designated for rehabilitation. The same was done some time in the year 2010. However, prior thereto, it seems, that the Petitioner was given a provisional allotment of a tenement for residential user. However, in view of the fact that the Petitioner was contending that the said structure was being used for commercial purpose and the Petitioner was desirous of getting a commercial premises as and by way of permanent alternate accommodation, that the said allotment for commercial user was made. It seems that after the said allotment for commercial user was made, the Petitioner started making a grievance as regards his entitlement to the allotment of permanent alternate accommodation for residential user. In support of the said case, before the Competent Authority i.e. the Deputy Collector (Encroachment/Removal) the Petitioner relied upon two electricity bills. In so far as the Electricity Connection No.G-16941301 is concerned, the same was disconnected in the year 2001 and the second Electricity Connection No.G-68941432 is concerned, the same was disconnected in the year 2007. The Deputy Collector therefore on the basis of the said documents came to a conclusion that the Petitioner had

only one structure wherein he was residing as well carrying on business and since the Petitioner has been allotted permanent alternate accommodation for commercial user, the Petitioner would not be entitled for a separate allotment for residential user. The Deputy Collector accordingly by his order dated 18/3/2015 has rejected the Petitioner's case.

3 Aggrieved by the said order dated 18/3/2015, the Petitioner filed an Appeal before the Additional Collector (Removal/Encroachment). The Additional Collector in the penultimate paragraph of the impugned order has referred to the documents relied upon by the Petitioner in support of his case that he is entitled to be rehabilitated permanently with a premises meant for residential user. The Additional Collector has adverted to the disconnection of the electricity supply in the year 2001, and on the said basis has recorded a finding that after the year 2001, the Petitioner had only one structure wherein he was carrying on both the activities and since the Petitioner has already been allotted premises for commercial user as and by way of permanent alternate accommodation, the order passed by the Deputy Collector (Encroachment/Removal) dated 18/3/2015 could not be faulted with. The Additional Collector has accordingly by the impugned order dismissed the Appeal filed by the Petitioner.

4 The learned counsel appearing for the Petitioner sought to

reiterate the case of the Petitioner urged before the authorities below. The learned counsel for the Petitioner also sought to place reliance on the compilation of documents which it seems were the documents relied upon by the Petitioner before the Additional Collector in Appeal. In my view, the said documents cannot further the case of the Petitioner that he had an independent residential structure for which he is required to be allotted permanent alternate accommodation. In any event, since the authorities on the basis of the documents on record have recorded a finding of fact that the Petitioner had only one structure, this Court in its writ jurisdiction under Article 227 of the Constitution of India does not deem it appropriate to interfere with the same.. The above Writ Petition is accordingly dismissed.

5 In view of the dismissal of the above Writ Petition, Civil Application No.1199 of 2015 filed for stay does not survive and the same to accordingly stand disposed of as such.

6 At this stage, the learned counsel for the Petitioner prays that the Petitioner may be given some time to vacate the temporary alternate accommodation provided to him by the Respondent No.2 which is for residential purpose. In the facts and circumstances of the present case, the Petitioner is granted time up to 15/07/2015 to vacate the said premises on the usual undertaking to be filed by the Petitioner in this Court within one week

from date. It is made clear that the said undertaking would also contain a statement that the Petitioner would not deal with the temporary alternate accommodation in question in any manner whatsoever. If the said undertaking is not filed within the time stipulated herein above, the benefit of this order would not enure to the Petitioner and the authorities would then be free to evict the Petitioner in accordance with law.

[R.M.SAVANT, J]