

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

WRIT PETITION NO.11403 OF 2015
WITH
WRIT PETITION NO.11404 OF 2015
WITH
WRIT PETITION NO.11405 OF 2015
WITH
WRIT PETITION NO.11406 OF 2015
WITH
ORIGINAL SIDE WRIT PETITION (L) NO.2835 OF 2015

WP NO.11403 OF 2015

Mr. Kiransingh B. Purohit.	..	Petitioner
Vs		
The State of Maharashtra and Others.	..	Respondents
—		

WP NO.11404 OF 2015

Mr. Jitendrakumar Pandey.	..	Petitioner
Vs		
The State of Maharashtra and Others.	..	Respondents
—		

WP NO.11405 OF 2015

Mr. Ramesh V. Thakkar.	..	Petitioner
Vs		
The State of Maharashtra and Others.	..	Respondents
—		

WP NO.11406 OF 2015

Mr. Rohit Umanath Pandey. .. Petitioner
Vs
The State of Maharashtra and Others. .. Respondents
—

Shri Yuvraj D. Patil for the Petitioners in the aforesaid A.S.Writ Petitions.
Shri V.S. Gokhale, AGP for the Respondent Nos.1 and 2 in the aforesaid
A.S. Writ Petitions.
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OSWP (L) NO.2835 OF 2015

Mr. Bharat Dhansingh Purohit. .. Petitioner
Vs.
The State of Maharashtra and Others. .. Respondents
—

Shri Yuvraj D. Patil for the Petitioner.
Shri U.S. Upadhaya, AGP for the Respondent No.1.
Shri S.U. Kamdar, Senior Counsel along with Mrs. Shobha Ajitkumar for
the Respondent Nos.2 to 4.
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CORAM : A.S. OKA & G.S. PATEL, JJ
DATED : 20TH NOVEMBER 2015

PC.

. Not on board. Taken on board.

2. Heard the learned counsel appearing for the Petitioners in
the Appellate Side as well as Original Side Writ Petitions, the learned
Senior Counsel appearing for the Second to Fourth Respondents in the
Original Side Writ Petition and the learned AGP for the First and Second
Respondents in the Appellate Side Writ Petitions.

3. On the basis of the order passed by this Court in Public Interest Litigation No.140 of 2006, the Mumbai Municipal Corporation has undertaken the work of making an open corridor having a width of 10 metres on both the sides of Tansa Pipeline. The issue which arises in these Petitions is whether the Petitioners whose structures have been affected by the said work are entitled to rehabilitation by allotment of premises.

4. In all the aforesaid Petitions, the hearing was given to the Petitioners in the proceedings styled as an "Appeal" by the Assistant Commissioner, "T" Ward of the Mumbai Municipal Corporation. The Assistant Municipal Commissioner found the Petitioners to be ineligible. The Petitioners purported to file a Second Appeal before the Deputy Commissioner of the Municipal Corporation. Even the Deputy Commissioner of the Municipal Corporation found the Petitioners ineligible. Thereafter, the Petitioners purported to prefer Appeals before the Additional Collector (Removal and Encroachment) by invoking the provisions of the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971 (for short "the Slum Act").

5. The learned senior counsel appearing for the Mumbai Municipal Corporation submitted that it is only the Municipal

Corporation which can decide the issue of eligibility which has been already decided by passing the orders by the Assistant Commission as well as Deputy Commissioner of the Municipal Corporation. He submits that there was no reason for the Petitioners to thereafter approach the Additional Collector who had no jurisdiction.

6. We agree with the learned senior counsel appearing for the Municipal Corporation to the extent that the action sought to be taken was not under the provisions of the Slum Act. The action has been initiated on the basis of the order passed by this Court in Public Interest Litigation No.140 of 2006.

7. We have perused the orders passed by the Assistant Commissioner and the Deputy Commissioner of the Municipal Corporation. We find that both the orders have been passed in a pre-conceived format in which the only details filled in are the names of the Appellants, the Appeal numbers, the date of hearing of the Appeals and the date of decision of the Appeal. No reasons have been assigned for rejecting the claim of the Petitioners and it is merely mentioned that the documents produced by the Petitioners have been examined. Hence, the impugned orders are illegal.

8. For the Petitioners, it is a very important question of making available a shelter to them in lieu of their respective residential accommodation which is sought to be taken away. Therefore, the Assistant Commissioner of the Municipal Corporation after scrutinizing the documents produced by the Petitioners ought to have recorded the reasons while deciding the issue of their eligibility.

9. The learned senior counsel appearing for the Mumbai Municipal Corporation clarified that only the Assistant Commissioner of the Municipal Corporation will decide the issue of eligibility and there is no question of filing any further Appeal by the Petitioners to a Deputy Municipal Commissioner.

10. Hence, we pass the following order:

ORDER :

- (a) Both the impugned orders passed by the Assistant Commissioner and the Deputy Commissioner of the Municipal Corporation as well as the Additional Collector (Removal and Encroachment) are hereby quashed and set aside;

- (b) We direct the Petitioners to appear before the Assistant Commissioner, "T" Ward of the Mumbai Municipal Corporation on 15th December 2015 at 11.00 a.m.;
- (c) The Petitioners will be entitled to produced the additional documents in support of their claims;
- (d) `After considering the documents and after giving an opportunity of being heard to the Petitioners, appropriate orders shall be passed by the Assistant Commissioner of the Mumbai Municipal Corporation within a period of six weeks from the date fixed for appearance of the Petitioners;
- (e) If the Petitioners are still in possession of their respective structures, the same shall not be demolished till the service of the orders passed by the Assistant Commissioner of the Mumbai Municipal Corporation on the concerned Petitioners;
- (f) If the orders be adverse to the concerned Petitioners, the action of demolition shall not be taken in respect

of their structures for a period of two weeks from the date on which the orders are served upon the concerned Petitioners;

(g) All questions on merits are kept open;

(h) The Petitions are disposed of on above terms.

(G.S. PATEL, J)

(A.S. OKA, J)