

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION St.NO.16181 OF 2015**

**Haji Rashid Ahmed Haji Mohd. Hasan
C.A. for Mohd. Alim Haji Mohammed Jais**

..Petitioner

Vs.

The State of Maharashtra & Ors.

..Respondents

**Mr. A. H. Singh for the Petitioner
Mr. S. G. Surana i/b Mr. Salik Khan for the Respondent No.3
Mr. S. P. Thorat for the Respondent No.4
Mrs. V. S. Nimbalkar AGP for the Respondent Nos.1, 2 & 5**

**CORAM : R. M. SAVANT, J.
DATE : 20th July, 2015**

P.C.

1 The Writ Jurisdiction of this Court is invoked against the order dated 11-3-2013 and the show cause notice dated 17-6-2015. By order dated 11-3-2013 passed by the Administrator and Divisional Commissioner, Konkan Division, the Appeal filed by the Petitioner being Appeal No.29 of 2013 against the order dated 2-1-2013 passed under Section 33 of the Slum Act came to be dismissed and resultantly the order dated 2-1-2013 came to be confirmed. By show cause notice dated 17-6-2015 issued by the Assistant Municipal Commissioner, G/North Ward, the Petitioner was directed to shift to the transit accommodation C-1 within 48 hours or otherwise the same would be demolished.

2 The Petitioner has his structure on a plot of land on which a Slum Rehabilitation Scheme is being implemented. In respect of the said scheme Annexure-II which contains the names of the eligible slum dwellers for being entitled for allotment of permanent alternate accommodation, came to be published. In the said list 72 persons were declared as eligible for permanent alternate accommodation for residential user and 32 persons declared as eligible for allotment of permanent alternate accommodation for commercial purposes. The Petitioner is indisputedly a person whose name appears in the said Annexure-II and is entitled to the allotment for premises for commercial user as and by way of permanent alternate accommodation. It appears that the Respondent No.4 which is the developer is implementing the said Slum Rehabilitation Scheme pursuant to the permission granted by the Slum Rehabilitation Authority (SRA) which is the planning authority. The Respondent No.4 has constructed "D" wing of the rehab building which is a composite building having both residential and commercial premises. The said building is of ground + six storied and in respect of which a part occupation certificate has been issued on 8-12-2008 for 72 rehab tenanments which have been allotted to the persons who are to be rehabilitated. Since the Petitioner's structure is impeding the further implementation of the Slum Rehabilitation Scheme as a result of which the proceedings under Section 33 of the Slum Act were required to be initiated against the Petitioner as the Respondent No.4

developer is not able to construct the transit accommodation on site. The Petitioner requested the SRA for permission to use the ground floor of the said "C" and "D" wings of the composite building by way of transit accommodation. The SRA has accordingly accorded sanction for the said user as temporary transit accommodation. In so far as the Petitioner is concerned, the Respondent No.4 has offered premises No.C-1 as temporary transit accommodation till the permanent alternate accommodation is constructed. In view of the reluctance of the Petitioner to shift to the said premises offered as transit accommodation, that the proceedings in question were required to be initiated. The Competent Authority i.e. the Assistant Commissioner of the Municipal Corporation of Greater Mumbai, has by his order dated 2-1-2013, has confirmed the show cause notice and directed the eviction of the Petitioner from the site in question.

3 The Petitioner aggrieved by the same, carried the matter in Appeal by filing an Appeal before the Appellate Authority i.e. the Administrator and Divisional Commissioner, Konkan Division, who by the order dated 11-3-2013 has dismissed the Appeal and thereby confirmed the order dated 2-3-2013 passed by the Respondent No.2. By the show cause notice dated 17-6-2015 issued by the Respondent No.2, the Petitioner was directed to shift to the transit accommodation C-1 within 48 hours or otherwise the Petitioner's structure would be demolished.

4 It is required to be noted that an affidavit in reply has been filed on behalf of the Respondent No.4 which is dated 13-7-2015 to which a rejoinder has been filed by the Petitioner which is dated 17-7-2015.

5 The Learned Counsel for the Petitioner whilst assailing the order passed by the Appellate Authority sought to raise various contentions which were revolving around the continuance of the Respondent No.4 as a developer for the said Slum Rehabilitation Scheme. The Learned Counsel drew this Courts attention to the show cause notice dated 22-1-2015 issued to the Respondent No.4 under Section 13(2) of the Slum Act. The Learned Counsel also sought to place reliance on the circular No.67 dated 28-12-2004 issued by the SRA in respect of the schemes which are predating the year 2001. It is the submission of the Learned Counsel that since the show cause notice has been issued to the Respondent No.4, the implementation of the scheme in question is required to be put on hold.

6 In my view, it is not possible to accept the said contentions raised on behalf of the Petitioner. It is required to be borne in mind that the proceedings are one under Sections 33 and 38 of the Slum Act which are undoubtedly in the nature of eviction proceedings to be adopted against the uncooperative occupant of a plot wherein a Slum Rehabilitation Scheme is

being implemented. In the instant case as indicated above the Respondent No.4 has already completed the “D” wing of the composite building and 72 eligible persons have been rehabilitated. In so far as 32 persons who have been declared as eligible for allotment of premises for commercial user, out of the said 32 persons about 10 persons have shifted to the temporary transit accommodation which is being provided by the Respondent No.4. In so far as the Petitioner is concerned, as indicated above he has been offered the premises bearing No.C-1 in the composite building on the ground floor. The Petitioner seems to be opposing the shifting to the said temporary transit accommodation on the ground that it is not suitable for his business. In my view, that cannot be a ground for not shifting to the temporary transit accommodation and thereby stall the implementation of the said Slum Rehabilitation Scheme which would put the interest of the other slum dwellers in jeopardy. A grievance was sought to be made on behalf of the Petitioner’s premises which are offered does not have electricity. Upon this the Learned Counsel for the Respondent No.4 stated that provision for electricity would be made which is also part of the order passed by the Competent Authority. In this Court also the Learned Counsel appearing for the Respondent No.4 assures the Court that the electricity connection would be provided at the earliest to the Petitioner.

6 In my view therefore, the order passed by the authorities below

directing the eviction of the Petitioner does not merit any interference at the hands of this Court in its Writ Jurisdiction under Article 227 of the Constitution of India. The Writ Petition is accordingly dismissed. However, the Petitioner is granted time of two weeks to shift to the temporary alternate accommodation. It is expected that both the parties would co-operate and facilitate the shifting of the Petitioner.

[R.M.SAVANT, J]