

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

WRIT PETITION STAMP NO.16929 OF 2015

Uttam Ramchandra Pawar : Petitioner
versus
Dy. Collector (Encroachment & Removal)
and Competent Authority and ors. : Respondents

Mr. Manoj P Mhatre for the Petitioner.

Mr. R A Thorat, Senior Advocate i/by Mr. Shrishail Sakhare for the Respondent Nos.2 and 3.

Mr. A I Patel, AGP for the Respondent No.1 and 8.

CORAM : R. M. SAVANT, J.

DATE : 14th July 2015

P.C.

1 The writ jurisdiction of this Court is invoked against the order dated 26/06/2015 passed by the Additional Collector (Encroachment/Removal) Western Suburbs, Mumbai by which order the Appeal filed by the Petitioner came to be dismissed. The said Appeal was filed against the order dated 27/05/2015 passed by the Deputy Collector (Encroachment/Removal) Western Suburb, Mumbai.

2 The Petitioner's structure is on the plot of land on which a slum rehabilitation scheme is being implemented through the Respondent Nos.2 and 3 herein for the Respondent No.5 Society which is a Society of slum dwellers. It is required to be noted that the rehab building in the said scheme is having four wings i.e. A, B, C and D. In so far as rehab Wings A and B are concerned,

the learned Senior Counsel appearing on behalf of the Respondent Nos.2 and 3 Shri Thorat states that the said Wings A and B are in the process of construction and in so far as Wings C and D are concerned, they could not be commenced in view of the fact that the Petitioner's structure is obstructing the construction of the said C and D wings. In view thereof the proceedings were adopted under Section 33 of the Slum Act for the eviction of the Petitioner before the Deputy Collector (Enc. & Rem.). Pursuant to the said initiation a show cause notice came to be issued to the Petitioner, and pursuant to the said show cause notice the proceedings commenced. Before the Deputy Collector (Enc. & Rem.), the Petitioner raised the following contentions that the consent of the slum dwellers has been obtained by playing a fraud and misrepresentation, approval has been got from the Slum Rehabilitation Authority on the basis of false and bogus documents, a FIR has been registered against the office bearers of the society and the developers pursuant to which a criminal case is pending and that proceedings are pending before the high power committee which is vested with the powers to look into the legality of the slum scheme. The said contentions raised on behalf of the petitioner did not commend acceptance to the Deputy Collector (Enc. & Rem.) in view of the fact that the proceedings were one under Section 33 of the Slum Act wherein the said considerations are not relevant. The Competent Authority i.e. the Deputy Collector (Enc. & Rem.) accordingly by his order dated 27/05/2015 directed eviction of the Petitioner from the site in question.

3 The Petitioner thereafter carried the matter in Appeal to the Additional Collector (Enc. & Rem.). The Additional Collector (Enc. & Rem.) having regard to the findings recorded by the Deputy Collector (Enc. & Rem.) did not deem it appropriate to interfere with the order passed by the Deputy Collector (Enc. & Rem.) and accordingly dismissed the Appeal by the impugned order dated 26/06/2015.

4 The learned counsel appearing for the Petitioner Shri Mhatre sought to reiterate the case of the Petitioner before the authorities below by once again placing reliance on the contentions which are urged before the authorities below revolving around the allegations made against the developers as also the criminal case registered against the office bearers of the society and the developers.

5 In my view, in the light of the findings recorded by the authorities below and especially the finding that the said facts are not material for determining the issues which arise under Sections 33 and 38 of the Slum Act, the said contentions cannot be countenanced. It is required to be noted that Letter of Intent for the present slum scheme came to be issued as long back as on 16/10/2009, IOD came to be issued on 14/2/2011, part Commencement Certificate came to be issued on 19/10/2012 and the full Commencement

Certificate has now been issued on 19/5/2015 which is for rehab building having 17 floors.

6 It is also required to be noted that there were 210 structures on the site in question out of which 209 structures have been removed and the slum dwellers have been paid compensation so that they can provide themselves with temporary alternate accommodation till the permanent alternate accommodation is made available to them in case they are eligible. Hence in the present case the interest of 209 slum dwellers, who have vacated the structures in question and whose structures have been demolished would also be a relevant consideration. As indicated above the Petitioners structure is obstructing the construction of 'C' and 'D' wing of the rehab building. The Petitioner is therefore a person who is seeking to delay the rehabilitation of 210 slum dwellers including himself. The Petitioner as observed by the authorities below has not produced any order of any Competent Court/Authority staying the implementation of the said slum rehabilitation scheme. The learned Senior Counsel for the Respondent Nos.2 and 3 i.e. the developers states that the Petitioner would be treated on par with other slum dwellers who have been paid the amount so as to make arrangements for temporary alternate accommodation. The said amount is already deposited with the Deputy Collector (Enc. & Rem.). The said amount is as and by way of compensation for a period of 6 months so as to enable the Petitioner to apply

to the Competent Authority to get his eligibility determined for allotment of permanent alternate accommodation. In my view, having regard to the aforesaid facts, no case for interference in the writ jurisdiction of this Court is made out. The above Petition is accordingly dismissed.

7 At this stage the learned counsel for the Petitioner prays for continuation of the ad-interim order. In the facts and circumstances of the present case as stated herein above, the said prayer is rejected.

[R.M.SAVANT, J]