

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

WRIT PETITION (STAMP) NO.21684 OF 2015

Shri. Mahendra M. Chaurasia

.. Petitioner

Versus

**The Additional Collector (Encroachment
and Removal), Western Suburbs and others**

.. Respondents

Mr. S. S. Prabhune, for the Petitioner.

Mr. Hemant Mehta i/by Mehta & Co., for the Respondent Nos.3 & 4.

Ms. M. S. Bane, "B" Panel Counsel for the Respondent Nos.1 & 2.

CORAM : R.M. SAVANT, J.

DATE : 14th AUGUST, 2015

PC.

1. The Writ Jurisdiction of this Court is invoked against the order dated 01.08.2015 passed by the Additional Collector (Encroachment /Removal), Western Suburbs, Mumbai, by which order the Appeal filed by the Petitioner being No.869 of 2013 came to be dismissed and resultantly, the order dated 10.10.2013 passed by the Deputy Collector (Encroachment/Removal), came to be confirmed. The Petitioner has his structure on a plot of land on which a slum rehabilitation scheme is being implemented. It is an undisputed position that the Petitioner has been held eligible for allotment of permanent alternate accommodation as the Petitioner's name appears in the Annexure-II issued by the Competent

Authority after carrying out survey in the year 2008. It appears that substantial portion of the Petitioner's structure falls in the area of the slum rehabilitation scheme and part of the structure is in the area wherein the development plan road is to be constructed. It is an undisputed position that the Petitioner did not take exception to the measurement which was carried out in the year 2008 pursuant to which the Annexure-II was issued by the Competent Authority. In view of the fact that the Petitioner refused to vacate the structure in question that notice under Section 33 of the Slum Act came to be issued to the Petitioner and on the Petitioner showing cause the proceedings were initiated under the said provision for evicting the Petitioner. After following the gamut of the procedure, the Competent Authority having regard to the fact that the Petitioner is impeding the implementation of the slum rehabilitation scheme that the Competent Authority passed the order dated 10.10.2013.

2. The Petitioner aggrieved by the said order dated 10.10.2013 filed an Appeal before the Additional Collector (Encroachment/Removal), Western Suburbs, in which Appeal the Additional Collector (Encroachment/ Removal) did not find any reason to interfere with the order passed by the Deputy Collector and accordingly dismissed the Appeal.

3. It is required to be noted that the Petitioner has also filed a suit in the City Civil Court, Dindoshi (Borivali Division) being LC Suit No.1683 of 2013 seeking an injunction against the defendant Nos.1 and 2 to the said suit i.e. developers from disturbing his peaceful possession. The Petitioner applied for ad-interim reliefs in the said suit which came to be rejected by the Learned Judge of the City Civil Court by order dated 22.05.2013. The Learned Judge of the City Civil Court held that the Petitioner having been already held entitled for permanent alternate accommodation and which the Respondent No.3 is immediately providing did not deem it fit to exercise discretion in favour of the Petitioner.

4. In the above Petition also the Petitioner is challenging the orders passed under Sections 33 and 38 of the Slum Act on the specious ground that some of the conditions of the LOI have not been fulfilled by the developer. The said challenge is raised long after the implementation of the scheme started and after the rehab building is already completed. The attempt appears to be to somehow continue on the site in question and thereby stall the implementation of the scheme to the fullest for the reasons not far to seek. The Learned Counsel appearing on behalf of the Respondent No.3 has stated before this Court that the permanent alternate accommodation being Flat No.1404 has been offered and kept for the Petitioner. However, the Petitioner for the reasons best known to him is not

shifting to the said permanent alternate accommodation though offered. In my view, having regard to the facts as aforestated, the orders passed by the Authorities exercising powers under Section 33 cannot be found fault with, no case for interference in the Writ Jurisdiction of this Court is therefore, made out. The Writ Petition is accordingly dismissed.

[R.M. SAVANT, J]