

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION (St.) NO.23293 OF 2015

Smt. Sumanlata Premachand Jain (expired)
Through Mr. Jitendra Premchand Jain & Ors. .. Petitioners
Versus
The Addl. Collector (Enc. & Rem.)
Appellate Authority, MSD & Ors. .. Respondents

Mr. Sagar Batavia Adv. i/by Mr. A. N. Giri, Adv. for petitioners.

CORAM : R. G. KETKAR

DATED : 29th AUGUST, 2015.

P.C. :

Not on board. At the request of Mr. Sagar Batavia learned counsel for petitioners, taken up for admission.

2. This matter is urgently moved in the Chambers, as on 28th August, 2015, the Competent Authority cum Land Manager, Mumbai Housing and Area Development Board (MHADA) has issued notice to the petitioners asking them to vacate their structures and hand over premises to respondent No.3 (Society) / respondent No.4 (Developers) within 48 hours from the receipt of the notice.

3. Mr. Sagar Batavia submitted that the said notices are received by the petitioners on the same day i.e. 28th August, 2015 and the period of 48 hours expires on 30th August, 2015. He has, therefore, moved this petition today for obtaining urgent interim relief.

4. Heard Mr. Sagar Batavia for the petitioners at length. By this petition under Articles 226 and 227 of the Constitution of India, the petitioners have challenged the Judgment and Order dated 29th April, 2011 passed by the respondent No.2, the Competent Authority cum Land Manager, of MHADA as also the Judgment and Order dated 21st August, 2015 passed by the Additional Collector (Encroachment and Removal), Western Suburbs. By these Orders, authorities below directed the petitioners to vacate the structures in occupation and hand over possession to respondent No.3 Society / respondent No.4 (Developer) failing which the structures will be demolished by the MHADA. In pursuance thereof, respondent no.2 has issued notices dated 28th August, 2015 as indicated earlier.

5. In support of his petition, Mr. Sagar Batavia, strenuously contended that though the impugned orders record that the respondent No.4 Developer has offered temporary alternate premises in the rehab building, actually respondent No.4 has not made available temporary alternate premises to the petitioners. He further submitted that petitioner are occupying commercial structures. They are found eligible. They are entitled to and are eligible for allotment of permanent commercial premises in the newly constructed building. Respondent No.4 has offered commercial premises on the back side of the re-hab building. Respondent No.4 has allotted front side shops to the persons who were illegal occupant of the structures. The petitioners have, therefore, initiated proceedings before the High Power Committee. Mr. Sagar Batavia upon taking instructions from instructing advocate Mr. A. N. Giri, submitted that the petitioners are ready and willing to shift to the temporary alternate premises provided they are first offered

alternate temporary premises. If respondent No.3 and 4 offer temporary alternate premises, petitioners will not cause any obstruction and resistance and will hand over possession of their structures to respondent No.3 / respondent No.4. In short, he submitted that first petitioners should be handed over possession of temporary alternate premises. Upon handing over possession, temporary alternate premises, petitioners on their own will hand over possession of their structures. The allotment of the permanent alternate accommodation may be made subject to the outcome of the proceedings before High Power Committee.

6. Hence, the following order.

1. The impugned orders are confirmed.
2. Respondent No.4 shall first hand over the possession of temporary alternate premises to the petitioners. The petitioners shall accept the premises without any protest and petitioners will vacate and hand over peaceful possession of structures in their possession. Assurance given by Mr. Sagar Batavia that upon handing over possession of a temporary accommodation the petitioner will not cause any obstructions and resistance is recorded.
3. The allotment of permanent commercial premises to the petitioners shall be subject to the outcome of proceedings before High Power Committee.
4. Subject to the above, petition is dismissed. Order accordingly.

The parties to act upon the authenticated copy of this order.

(R. G. KETKAR, J)