

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 9584 OF 2015

Mrs. Catherine Alvares .. Petitioner
vs.
Additional District Collector (E/R)
and ors. .. Respondents

Mr. Dinesh Kadam for the Petitioner.
Ms M.S. Bane, B-Panel Counsel for Respondent Nos.1 and 2.
Mr. Manoj Patil for Respondent Nos.3 and 4.

CORAM : M. S. SONAK, J.
DATE : 26 OCTOBER 2015.

P.C. :-

1] Rule. With the consent of and at the request of learned counsel for the parties, Rule is made returnable forthwith.

2] The challenge in this petition is to the order dated 28 September 2015 made by the Additional Collector (Encroachment/Removal) under the provisions of Section 35 of the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971 (said Act).

3] Mr. Dinesh Kadam, learned counsel for the Petitioner, has submitted that the Respondent-Developer have not executed any agreement with regard to allotment of permanent tenement and

further, compensation of Rs.10,000/- in lieu of temporary alternate tenement is too meager. Mr. Dinesh Kadam also points out that the statement made by the Developer that all slum dwellers, except the Petitioner and another have vacated their respective tenement, is not correct and is not borne out from the site and photographs of the site. For all these reasons, Mr. Dinesh Kadam submitted that the impugned order be interfered with and the directions issued to the Petitioner to vacate the tenement be set aside.

4] Mr. Manoj Patil, learned counsel for Respondent Nos.3 and 4, i.e., Society and Developer, submits that the agreements which have been signed with the slum dwellers, who have vacated their tenements, will also sign and execute with the Petitioner. Besides, Mr. Patil pointed out that the Resolution of the Society, wherein compensation of Rs.10,000/- has been determined. Mr. Patil reiterated that most of the slum dwellers have vacated and it is only the Petitioner and another who are bent upon causing hurdles and delaying the projects.

5] Having considered the rival submissions and perused the record, there is no case is made out to interfere with the impugned

order. The apprehension of the Petitioner can be set rest by the statements made on behalf of Respondent Nos.3 and 4 in the affidavit dated 9 October 2015, filed in this Court. In any case, it is directed that Respondent Nos.3 and 4 to execute the same/similar agreement, which they have executed with remaining slum dwellers within a period of one week from today. In case, the Petitioner does not come forward for such execution, the Respondent Nos.3 and 4 shall be relieved with the compliance of such direction. However, Respondent Nos.3 and 4 shall nevertheless be bound to allot to the Petitioner permanent tenement no sooner the project is completed. This is because, the Petitioner has been admittedly to be eligible to participate in the benefits of scheme. Insofar as the issue of compensation in lieu of alternate temporary tenement is concerned, at this stage, it is not possible to entertain the submission that the amount of Rs.10,000/- is too meager. This is the amount determined by the Society, which is evident from the Resolution of the Society. If the majority of the members have determined and accepted this amount, it is not possible to vary the same only insofar as the Petitioner is concerned. There is accordingly, no merit in this petition and same is dismissed. However, the statements/undertakings on behalf of Respondent Nos.3 and 4 with regard to allotment of

permanent tenement and payment of compensation at the rate of Rs.10,000/- per month orally given through their advocate is accepted as Undertaking to this Court. In any case, in terms of law as well as Respondent Nos.3 and 4 are duty bound to provide permanent tenement and compensation in lieu of alternate tenement.

6] Finally, learned counsel for the Petitioner seeks two months time to vacate the tenement. Considering that most of the other slum dwellers have vacated, it is not possible to accede his request. However, if the Petitioner files an Undertaking before this Court, within a period of one week from today, that the Petitioner shall herself handover the possession of the tenement to Respondent Nos.3 and 4 within a period of six weeks from today, the Authorities may not execute the eviction/demolition orders. However, if the Petitioner fails to file such Undertaking, the Authorities can proceed with action in terms of law, at any time, after expiry of period of one week from today. Copy of such Undertaking to be furnished to the learned counsel for the Respondents before the same is filed in the Registry.

7] Rule is disposed of to the aforesaid manner and to the aforesaid extent. There shall be no order as to costs.

8] All concerned to act upon an authenticated copy of this order.

(M. S. SONAK, J.)

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