

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

**WRIT PETITION NO.10411 OF 2014**

Ramakant Rajaram Rajbhar ).. Petitioner.

V/s

Additional Collector, Ench/Rem and 3 ors. ).. Respondents.

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S.M. Shah, for petitioner.

Vaishali Nimbalkar-AGP, for respondents No.1 and 2.

Gor Kapil, for respondent No.3

Pravin Samdhani, Sr. Advocate a/w Ms Kausar Boratwala i/b Tushar  
Gorodia, for respondent No.4.

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**CORAM : M.S. SONAK, J.**

**DATE : JANUARY 12, 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 to this petition is basically to the order Nil (received by the petitioner of 09 July, 2014), made by the Asstt. Commissioner, 'N' Ward (Respondent No.2.), which was confirmed by Additional Collector (Encroachment & Removal), Eastern Suburb (Respondent No.1) by order dated 13 October, 2014.

3] The impugned orders records that name of the petitioner's father does appear in Annexure II, though there is some

error in the manner of record. Instead of the correct name, which is Rajaram Kalu Rajbhar, the Annexure II makes reference to Rajbhar Ramlal Laku. The impugned orders permits corrections of such error but remands the matter to the Authorities to satisfy, whether the petitioner is indeed a sole legal heir of late Rajaram Kalu Rajbhar and only thereafter enter the petitioner's name in Annexure II, which is basic document to declare the petitioner as eligible to avail the benefits of Slum Rehabilitation Scheme. The impugned order also rejects the petitioner's contention that the petitioner be allotted a transit accommodation, as pre-condition of vacating the structure occupied by him. Such rejection is on the basis that most of other eligible slum dwellers have opted to accept the compensation in lieu of transit accommodation.

4] Shri Shah, the Learned Counsel for the petitioner made the following submissions in support of the petition :-

(a) Petitioner's father late Rajaram Kalu Rajbhar expired on 20 February, 1998. The scheme in question was approved in the year 2000. At that stage, thus only the petitioner was in occupation and possession of the structure in question. Beside, the petitioner is only sole legal heir of Late Rajaram Kalu Rajbhar. In such circumstances, the petitioner's name ought to have been directly included in Annexure II, rather than the remand for fresh consideration, as to inclusion.

(b) In terms of law, before any structure can be

demolished or its occupants are evicted, the Authority/Developer is required to provide a transit accommodation. In the present case, as is evident from the order dated 30 November, 2011, in Writ Petition No. 8527 of 2011, the developers have atleast to some of the occupants, provided for transit accommodation. In such circumstances, the petitioner too, was entitled to transit accommodation, as pre-condition for demolition of his structure or his eviction therefrom.

5] Having heard the Learned Counsel for the parties and perused the record, there appears to be merit in the petitioner's contention that the petitioner being eligible his name ought to have directed to be recorded in Annexure II, without there being any necessity of remand. There is no serious dispute that the name of the petitioner's father was recorded in Annexure II, although there were some errors in the matter of record of the same. The errors were not only insignificant, but further impugned orders themselves directed the corrections of the same. Accordingly, there is no dispute that the errors in record of the petitioner's father's name were only ministerial in nature and the same deserved to be corrected. Further, there is no doubt that petitioner's father expired on 20 February, 1998 and the scheme in question was approved sometimes in the year 2000. At the stage when the scheme was approved, it is the petitioner, who was in actual occupation of the structure in question. Beside, the petitioner has asserted on oath that he is the sole legal heir of Late Rajaram Kalu Rajbhar. The respondent No.2 had itself on

24 April, 2004 transferred the structure in the name of the petitioner. Therefore, upon consideration of all such factors cumulatively, there was no reason for the Authorities to direct any further inquiry or investigation in the matter of inclusion of the petitioner's name in Annexure II. The petitioner, in his own right, was entitled to inclusion of his name in Annexure II. At the highest, the Authorities could have required the petitioner to furnish an indemnity bond to the effect that apart from himself, there are no other legal heirs, claiming through Late Rajaram Kalu Rajbhar.

6] In support of the second contention, Shri Shah, the Learned Counsel for the petitioner pointed out that there are almost 60 structures existing at the site and therefore, it is not correct to state that 235 out of 241 eligible slum dwellers have vacated the site, after accepting the compensation in lieu of transit accommodations. Further, the respondent No.4-developer, in other cases has actually offered transit accommodation to some of the persons concerned with the present scheme.

7] The impugned orders categorically record that from out of 241 eligible slum dwellers, almost 235 slum dwellers have vacated the site after accepting the compensation in lieu of transit accommodation. This position is asserted by the respondent No.4-developer, as also the respondent No.3, which is Society of slum dwellers. There is no reason to doubt these findings of the facts recorded by two Authorities in the impugned orders. There is no

perversity demonstrated by the petitioners, in the matter of record of such findings of facts. It is well settled that unless perversity is demonstrated, this Court, in exercise its extra ordinary jurisdiction would be loathe to upset the findings of the facts.

8]           The order dated 30 November, 2011 in Writ Petition No.8527 of 2011, no doubt records the statement made by and on behalf of the respondent No.4-developer that the petitioners in the said petition, would be offered the transit accommodation. Shri Samdhani, the Learned Senior Counsel submitted that such statement was made in view of the peculiar position that the petitioners in that petition were found to be eligible in respect of the commercial premises. Be that as it may, it is clear that in the said petition, there was no direction as such issued by this Court, in the matter of provision of transit accommodation. Although, it is true that normally it is for the Authority/Developer to provide for the transit accommodation to eligible slum dwellers, in a situation, where almost 235 out of 241 eligible slum dwellers have vacated the site after accepting the compensation in lieu of transit accommodation, no useful purpose would be served, if the impugned orders, which direct the demolition of the petitioner's structure or orders the petitioner's eviction therefrom, is interfered with at this stage. Rather, any interference with the same at this stage would delay the completion of the scheme to the utmost prejudice of almost 235 slum dwellers, who have already vacated the site after accepting the compensation in lieu of transit accommodation. Accordingly, no

case is made for interference with the orders to the extent they direct the demolition of the petitioner's structure or eviction of the petitioner there from, as against the payment of compensation in lieu of transit accommodation.

9] In view of the conclusion that the petitioner's name ought to have been included in Annexure II, it is only proper that the respondent No.4-developer pays the petitioner the compensation in lieu of transit accommodation at par with what is offered and paid to other eligible slum dwellers. Infact, the impugned order served upon the petitioner on 09 July, 2014, directs the respondent No.4-developer to pay the advance compensation @ Rs.12,000/- per month for 11 months within 14 days from the date of the order. The said direction shall operate and the respondent No.4-developer to implement the same within a period of 14 days from the date of this judgement and order. In addition, the respondent No.4-developer to ensure that the petitioner is allotted permanent accommodation, once the scheme is completed. Until such permanent accommodation is allotted to the petitioner, the respondent No.4-developer shall continue to pay to the petitioner the compensation at par with that offered or paid to the other eligible slum dwellers. Within two weeks from the receipt of 11 months advance compensation @ Rs.12,000/- per month, the petitioner to vacate the suit structure. In case, the petitioner declines to vacate the suit structure, action can be taken in terms of impugned orders. Further, upon petitioner furnishing the indemnity bond before the respondent Nos. 2 and 3, the said respondents to include the name of the petitioner in Annexure II

within a period of four weeks from the date of furnishing indemnity bond.

10] Rule is made absolute to the aforesaid extent only.

11] Parties to act on the basis of authenticated copy of this order.

( M.S. SONAK, J. )