

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

WRIT PETITION NO.52 OF 2015

Sanjay Bhikaji Pagare).. Petitioner.

V/s

The Additional Collector Ench/Rem)
Mumbai Eastern Suburb and ors.).. Respondents.

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Mr. S.M. Shah, for petitioner.

Ms. Vaishali Nimbalkar, AGP, for respondents No.1 and 3.

Mr. Gor Kapil, for respondent No.4.

Mr. G.B. Walawalkar i/b S.P. Thorat, for respondent No.2 SRA.

Mr. Tushar Gordia a/w Miss Kausar Baratwala, for respondent No.5.

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CORAM : M.S. SONAK, J.

DATE : JANUARY 12, 2015

P.C.

1] Rule.

2] With the consent of both the parties, Rule is made returnable forthwith.

3] This petition is directed against the impugned orders dated 09 July 2014 and 22 October, 2014, which in effect directs the demolition of the petitioner's structure and his eviction therefrom under the provisions of Maharashtra Slum (Improvement, Clearance & Redevelopment) Act, 1971.

4] The record would reveal that petitioner had been declared as eligible slum dweller in Annexure- II prepared on 22 May, 2000. It is case of the petitioner that after the period of almost eight years, in the Annexure-II which was re-prepared, the name of the petitioner has been excluded unjustifiably and in breach of principle of natural justice and fair play. As against this exclusion, the petitioner had already preferred an appeal before the Additional Collector. Infact, the High Power Committee (HPC) in Application No.565 of 2009, has already directed Secretary, SRA, which was then appointed Authority to expeditiously dispose of the appeal. The Learned Counsel for the petitioner contends that such directions ought to ennure and apply to the Additional Collector before whom an appeal is presently pending. The Learned Counsel contends that until his appeal is decided, there was no question directing the demolition of the structure or eviction of petitioner therefrom. In the alternate, the Learned Counsel also contends that without prejudice, the petitioner is willing to move from the structure in question, provided he is offered a transit accommodation. In this regard, the Learned Counsel for the petitioner placed reliance upon the decision of this Court dated 10 February, 2009 in Writ Petition No. 934 of 2008 and connected petitions, where the similar orders for providing transit accommodation were made during the pendency of appeal to decide the issue of inclusion in Annexure II.

5] Having heard the Learned Counsel and perused the record, it is clear that the petitioner has made out a case to obtain

directions for expeditious disposal of the appeal pending before the Additional Collector. The appeal is pending since year 2008. There was already direction in the matter of expeditious disposal. Merely, because there is some change in the Appellate Authority, the directions for expeditious disposal of the appeal could not have been ignored. Accordingly, the Additional Collector before whom appeal is pending is directed to dispose of such appeal within a period of six months from the date of this order. The petitioner to appear before the Additional Collector alongwith the authenticated copy of this order on 21 January, 2015 at 11.00 a.m., and thereafter obtain appropriate direction/date, in the matter of expeditious disposal of the said appeal.

6] In so far as demolition of the petitioner's structure of eviction of the petitioner therefrom is concerned, there is no reason to interfere with the impugned order, particularly, since the respondent No. 5 (Developer) has today undertaken to offer to the petitioner the house rent/compensation pending the final hearing of the appeal and final decision in the appeal as aforesaid. The respondent No.5 has also agreed to pay to the petitioner 11 months house rent/compensation in advance within one week from the receipt of the same. The petitioner to vacate the structure in question. In case, the petitioner does not vacate the structure, the Authorities to take action in terms of impugned order. This payment shall be subject to any final order that will be made in the appeal by the Additional Collector. Needless to mention that the petitioner

shall be entitled to permanent accommodation at par with other eligible slum dwellers. The same shall be position with regard to house rent/compensation until the allotment of the permanent accommodation.

7] Though this Court in its order dated 10 February, 2009 in W.P. No. 934 of 2008 and other connection petitions, has directed the petitioners in the said cases to provide for transit accommodation, it is not possible in the present case in the said case to make such directions. It appears that from out of 241 eligible slum dwellers, almost 235 have vacated the flats by accepting the house rent/compensation in lieu of transit accommodation. This fact of the matter has been dealt with in the order disposing of the Writ Petition No.10411 of 2014. The reasoning therein will cover the present case as well.

8] Rule is made absolute to the aforesaid extent.

9] There shall be no order as to costs.

(M.S. SONAK, J.)