

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 53 OF 2015

Smt. Sukharajidevi Sochan Rajbhar .. Petitioner
vs.
The Additional Collector Ench. / Rem.
& Ors. .. Respondents

Mr. S. M. Shah for Petitioner.
Mr. S. D. Rayrikar - AGP for Respondent No. 1.
Mr. Kapil Gor for Respondent No. 4.
Mr. Bhavik Manek with Mr. Tushar Gordia for Respondent No. 5.

CORAM : M. S. SONAK, J.
DATE: 20 JANUARY 2015

P.C. :-

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

2] The challenge in this petition is to order dated 21 July 2014 (Exhibit 'H' at page 35) made by the Assistant Commissioner, 'N' Ward (respondent no. 3), which was confirmed by the Additional Collector (Encroachment & Removal) Eastern Suburbs (respondent no. 1) by order dated 22 October 2014.

3] Mr. Shah, the learned counsel for the petitioner submitted that the name of the petitioner's late husband had been recorded in Annexure II. Upon his demise, without necessity of any further enquiry, the petitioner's name ought to have been entered in Annexure

II. This is because in terms of DCR 33(10)(III) reconstructed tenement is required to be of the ownership of the hutment dweller and is spouse conjointly. In as much as the impugned orders direct further enquiry in the matter, prior to the inclusion of the petitioner's name in Annexure II, they warrant interference.

4] 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 at least 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 her structure or her eviction therefrom.

5] Having heard the learned counsel for the parties and perused the record, it does appear that there is merit in the petitioner's contention that her name ought to have been entered in Annexure II, without necessity of any further enquiry or investigations. There is no dispute that the petitioner is the widow of late Rajbhar Sochan Panchu. DCR 33(10)(III) provides that reconstructed tenement shall be of the ownership of the slum dweller and spouse conjointly, and shall be so entered and be deemed to be so entered in the records of co-operative society, including share certificates or other relevant documents. Although this clause may not be directly relevant, nevertheless applying the same principle, it is clear that once there is no dispute that the petitioner is indeed the widow of late Rabhar, whose name appeared in the Annexure II, there can be no difficulty in directing that the name of the petitioner be now entered into

Annexure II. Accordingly, the impugned orders are modified. There shall be a direction to the Authorities to enter the name of the petitioner in Annexure II within a a period of four weeks from today. In case the Authorities require the petitioner to furnish any indemnity bond, the petitioner shall do so within the said period.

6] In so far as the second contention of Mr. Shah is concerned, the impugned orders record that from out of 241 eligible slum dwellers, almost 235 hutment dwellers have vacated the site by accepting compensation in lieu of transit accommodation. There is no reason to doubt the correctness of such finding of fact. In fact such finding has been upheld by this Court in connected writ petition, which is writ petition no. 10411 of 2014. Nevertheless, taking into consideration the circumstance that the petitioner was a widow aged above 70 years, respondent no. 5 developer was requested to look out for transit accommodation, in which the petitioner could be accommodated pending the completion of the slum redevelopment scheme and the allotment of permanent rehab accommodation to the petitioner.

7] To the credit of respondent no. 5 as also the petitioner, such transit accommodation has been identified being building no. 89, room no. 2671 Pant Nagar, Ghatkopar (East), Mumbai 400075. Accordingly, the petitioner to avail such transit accommodation, in respect of which respondent no. 5 developer shall pay rent and continue to pay rent until the development scheme is complete and permanent rehab accommodation is duly allotted to the petitioner. In view of said agreement between the parties, the impugned orders stand modified to the aforesaid extent only.

8] Respondent no. 5 shall pay to the petitioner advance compensation for eleven months. Within a period of one week from the date of receipt of such compensation, the petitioner to vacate the suit structure. In case the petitioner does not vacate the suit structure, then the Authorities are at liberty to secure the petitioner's eviction as well as demolition of the suit structure, as directed by the impugned orders. The Authorities accordingly, in such a situation would be free to take action in terms of the impugned orders.

9] It is made clear that this order has been made in peculiar circumstances of the present case, as it was found that the petitioner is a widow over 70 years of age. Accordingly, the apprehension expressed by the learned counsel for respondent no. 5 that this order may be used as a precedent, does not survive.

10] Rule is made absolute accordingly.

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

(M. S. SONAK, J.)

Chandka