

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

WRIT PETITION NO.11564 OF 2014

Mr. Vilas Rajaram Haldankar

.. Petitioner

Versus

The State of Maharashtra and others

.. Respondents

**Shri. G. R. Rege with Shri. S. M. Railkar i/by Shri. Swapnil Waradkar,
for the Petitioner.**

Shri. S. D. Rayrikar, AGP for the Respondent Nos.1, 2 & 4.

**Shri. A. G. Damle, Senior Advocate i/by Shri. Rupesh R. Lanjekar, for
the Respondent No.5.**

Shri. Nikhil Chavan i/by Shri. V. D. Patil, for the Respondent No.3.

Shri. Hemant Ghadigaonkar, for the Respondent No.6.

CORAM : R.M. SAVANT, J.

DATE : 23rd APRIL, 2015

PC.

1. At the outset, the Learned Counsel appearing for the Petitioner seeks leave to amend the Petition so as to interchange “CTS No.148” with “CTS No.153” wherever it appears in the Petition. The Learned Senior Counsel appearing on behalf of the Respondent No.5 has no objection to the said amendment being carried out. Hence, leave granted. Amendment to be carried out forthwith.

2. The Writ Jurisdiction of this Court is invoked against the order dated 11.12.2014 passed by the Additional Collector (Encroachment

/Removal), Mumbai Suburban District, by which order the Appeal filed by the Petitioner under Section 35 of the Slum Act came to be dismissed. The said Appeal was filed against the order dated 07.12.2013 passed by the Deputy Collector (Encroachment/Removal) and Competent Authority, Andheri. The issue which arises in the above Writ Petition is as regards the Petitioner's right to continue to be in possession of part of the structure which has been identified as No.19 by the authorities. The genesis of the proceedings lies in the Slum Rehabilitation Scheme being implemented by the Respondent No.5 developer. The Slum Rehabilitation Scheme is being implemented on CTS Nos.153, 153/1 to 59 totally admeasuring 1501.9 sq.mtrs.. The structure No.19 which has been identified by the Authorities was belonging to the father of the Petitioner one Shri. Rajaram Ladoo Haldankar. It is required to be noted that almost 90% of the said structure identified as structure No.19 falls in CTS No.153. However, a part of the structure seems to be falling in CTS No.148. It is an undisputed position that the Petitioner does not claim any title to the land on which the structure is situated either CTS No.153 or CTS No.148. In terms of the procedure which is applicable, the Petitioner's father Shri. Rajaram Ladoo Haldankar was identified as the person entitled to being rehabilitated under the aegis of the said Slum Rehabilitation Scheme. The name of the Petitioner's father was accordingly appearing in Annexure-II as being

entitled to permanent alternate accommodation for residential user. The Petitioner's father being so declared eligible has accordingly removed the structure in question except the portion which is protruding in CTS No.148. It is the case of the Petitioner that the said portion which is protruding is an adjunct of the original structure identified as No.19 and that he has made the addition and using it as an office.

3. In view of the fact that the Petitioner was continuing to occupy the remnant of the original structure No.19 after it is handed over by the father of the Petitioner and demolished. A notice came to be issued to the Petitioner under Section 33 of the Slum Act for removal of the structure. The said notice was replied to on behalf of the Petitioner. The Deputy Collector and Competent Authority by his order dated 14.09.2012 rejected the case of the Petitioner that he is in occupation of an independent structure and that such occupation is prior to the cut of date i.e. 01.01.1995. The Petitioner carried the matter in Appeal before the Divisional Commissioner and Administrator, Konkan Division, Mumbai. The Divisional Commissioner by his order dated 31.01.2012 allowed the Appeal and remanded the matter back to the Additional Collector on the ground that it could not be ascertained as to why the remaining portion of the structure No.19 was kept in tact when most of it has been demolished. On remand, the Deputy Collector (Encroachment/ Removal) by his order

dated 07.12.2013 rejected the case of the Petitioner on the ground that from the material on record it is not proved that the structure was having independent existence or that the same was used independently for commercial purposes. The said order dated 07.12.2013 was taken exception to by the Petitioner by filing an Appeal before the Additional Collector (Encroachment/Removal), Mumbai Suburban District as per the new regime applicable for deciding the eligibility. The Additional Collector (Encroachment/Removal) did not find any reason to differ with the finding recorded by the Deputy Collector and Competent Authority and accordingly by his impugned order dated 11.12.2014 rejected the Appeal.

4. It is the contention of the Learned Counsel for the Petitioner that since the remaining part of the structure No.19 is in CTS No.148 where the authorities would have no right to remove the same. The Learned Counsel would contend that the structure which is remaining has been put up by the Petitioner and to buttress his case that he is in occupation of the same independently prior to 01.01.1995, the Petitioner has produced the material which according to the Learned Counsel has not been appreciated in its proper perspective by the Authorities. In my view, it is not possible to accept the said contentions of the Learned Counsel for the Petitioner. It is required to be noted that the Petitioner's father has been held eligible for being allotted permanent alternate

accommodation pursuant to which the substantial or almost 90% of the structure No.19 has been demolished to facilitate the implementation of the Slum Rehabilitation Scheme. The eligibility of a person to be allotted permanent alternate accommodation, the structure in question assumes relevance. In the instant case, as indicated above, structure No.19 was in the name of the father of the Petitioner i.e. Rajaram Ladoo Haldankar who has been as indicated above allotted permanent alternate accommodation. If that be so, a member of the family who has not been able to substantiate that he was independently in occupation of part of the structure and was carrying out commercial activity prior to 01.01.1995 cannot be held entitled to the allotment of another permanent alternative accommodation. The submission of the Learned Counsel for the Petitioner that since the remnant of the structure is in CTS No.148 and since the Slum Rehabilitation Scheme is not implemented in CTS No.148, the structure cannot be removed, cannot be countenanced. It is not open for a person who claims to be in occupation of unauthorized construction to contend that he would not remove the same as it falls in another CTS number. In the instant case, the father of the Petitioner has already been allotted permanent alternate accommodation for the structure in question. Accepting the contention urged on behalf of the Petitioner would result in a situation where allotments would have to be made to members of one

family for the same structure which is impermissible. One of the facets of the Slum Rehabilitation Scheme is the rehabilitation of slum dwellers and the same cannot be extended to mean that even if an allotment is made for the original structure a member of the family can claim another allotment for a part of the structure which does not have any independent existence. In that view of the matter, no case for interference in the Writ Jurisdiction of this Court is made out. The Writ Petition is dismissed. At this stage, the Learned Counsel for the Petitioner Shri. G. R. Rege on instructions of the Petitioner who is personally present in Court seeks some time to vacate the structure in question. The Learned Counsel appearing for the Respondent No.5 fairly states that the Petitioner may be granted some time to vacate. The Petitioner is accordingly granted time up to 31.05.2015 to vacate the structure in question on filing the usual undertaking in this Court which would include that the petitioner would not deal with the structure in question in whatsoever manner. The said undertaking to be filed within two weeks from date. If the undertaking is not filed, it would be open for the authorities to implement the order of eviction in accordance with law.

[R.M. SAVANT, J]