

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1143 OF 2015

Shri Abdul Latif Shaikh	..	Petitioner
VS.		
The Additional Collector, Ench./Rem. Eastern Suburb, MSD & Ors.	..	Respondents

Mr. S. M. Shah for Petitioner.
Ms Vaishali Nimbalkar - AGP for Respondent Nos. 1 and 3.
Ms Geetanjali Golatkar i/b. Mr. D. A. Nalawade for Respondent No. 2 (SRA).
Mr. Vishal Kanade with Tanmayee Salekar i/b. M/s. Shah & Sanghavi for Respondent No. 5.

CORAM : M. S. SONAK, J.
DATE: 05 MARCH 2015

P.C. :-

1] This petition takes exception to the order dated 8 December 2014 made by the Additional Collector (Encroachment and Removal) Eastern Suburb, Mumbai, dismissing the petitioner's appeal against the Competent Authority's order dated 27 December 2013 made under Sections 33 and 38 of the Maharashtra Slum (Improvement, Clearance and Redevelopment) Act, 1971 ("said Act").

2] Mr. Shah, the learned counsel for the petitioner has made three submissions in support of the present petition:

(a) That the order of the Competent Authority dated 27 December 2013 makes reference to a direction made by the Additional Collector for initiation of action against the petitioner under Sections 33 and 38 of the said Act. In this light of the matter, the Additional Collector was not at all competent to hear the petitioner's appeal and make the impugned order. In such a situation, the doctrine of bias would apply and the Additional Collector could not have acted as a judge in his own cause;

(b) That the impugned orders made under Sections 33 and 38 of the said Act are procedurally *ultra vires*. This is because there are circulars which provide that all petitions / applications seeking eviction of occupants must be directly addressed to the Competent Authority. In the present case, such application / petition was initially made to the Additional Collector, who has directed the Competent Authority to take action under Sections 33 and 38 of the said Act. The procedure having not been followed, the impugned action is procedurally *ultra vires*;

(c) The resolution passed by the society, of which the petitioner is a member is itself illegal and unauthorised, particularly in the light of the provisions contained in Section 33A of the said Act. The petitioner has already challenged

said resolutions before the Competent Authority and therefore on basis of the said resolutions, the petitioner cannot be forced to accept compensation in lieu of alternate accommodation.

3] In so far as the first contention is concerned, in my judgment, there is no question of doctrine of bias being made applicable to a situation of the present kind. The Additional Collector has merely directed the Competent Authority to take appropriate action in the matter. It cannot be said that the Additional Collector has either pre-judged the issue or recorded some conclusion that the petitioner be evicted by resort to the provisions contained Sections 33 and 38 of the said Act. The Additional Collector, perhaps upon realising that he is not the Competent Authority to take action under Sections 33 and 38 of the said Act, has directed the Competent Authority to take necessary action. The Competent Authority in the present case, has also treated the so-called directions by the Additional Collector in the same spirit. The Competent Authority issued the show cause notice to the petitioner and upon considering the cause shown by the petitioner has made the order dated 27 December 2013. Thereafter, since the Additional Collector is the Appellate Authority under Section 35 of the said Act, appeal came to be filed before the Additional Collector. This is not a case where any personal bias as

such has been alleged against the officer who entertained and decided the petitioner's appeal. In these circumstances, the first contention of the petitioner, cannot be accepted.

4] In so far as the second contention is concerned, again, there is no question of the action being procedurally *ultra vires*. In the first place, what is alleged is not some breach of statutory provision. Secondly, merely because the developers may have approached the Additional Collector in the first instance, that by itself cannot be regarded as some breach of procedure. Ultimately, the order dated 27 December 2013 came to be made by the Competent Authority in exercise of powers conferred by Sections 33 and 38 of the said Act. Accordingly, contention based on procedural *ultra vires*, also cannot be accepted.

5] The third contention relates to resolution of the society, of which the petitioner is a member. There is no question of the Authorities under the said Act entertaining contentions with regard to legality or otherwise of such resolution, particularly when such resolution can be challenged under the provisions of the Maharashtra Co-operative Societies Act, 1960. In the present case, the petitioner state that he has challenged said resolution. Accordingly, the Authorities under the said Act were right in not entertaining such a contention.

6] In the present case, two societies are involved in the Slum Rehabilitation Project, one being Sadbhavana Society and the other Trimurti Society. In so far as Trimurti Society is concerned, certain members, raising similar contentions had preferred writ petitions before this Court. The same were disposed of by judgment and order dated 5 December 2014 in writ petition no. 9170 of 2014. The reasoning in the said judgment and order will also substantially govern the facts and circumstances of the present case. Therefore, this is additional reason as to why the present petition is not being entertained.

7] In the present case, the developer has filed an affidavit to the effect that the Rehabilitation Scheme involves almost 452 slum dwellers, out of which 420 slum dwellers have vacated the site after accepting compensation in lieu of alternate accommodation.

8] In view of the aforesaid, present petition is dismissed. There shall be no order as to costs.

(M. S. SONAK, J.)