

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.947/2015

Kalawati Bansraj Pal

... Petitioner

V/s.

The State of Maharashtra
Through Dy. Collector (Rem/Encl)
and Competent Authority & Ors.

... Respondents

Mr. Shrinath K. Dubey for the Petitioner.
None for the Respondents.

CORAM: K.K. TATED, J.
DATED : NOVEMBER 23, 2015

PC. :

1. Heard the learned counsel for the parties. By this petition under Article 226 of the Constitution of India the Petitioner is challenging the order dated 04/08/2014 passed by the Additional Collector (Encroachment/Removal), Western Suburban, Mumbai Suburban District in appeal under section 35 of the Maharashtra Slum Areas (Improvement, Clearance & Redevelopment) Act, 1971, holding that the Petitioner is not entitled to any relief/alternate accommodation.

2. In the present proceedings, initially the Dy. District Collector issued notice to one Sangita Johar Chouhan calling upon her to produce the documentary evidence about her possession in respect of the hut situated at Lalji Pada, Kandivli (W), Mumbai – 400067. As the

original claimant i.e. Sangita Chauhan failed to produce any documentary evidence, the Authority passed order dated 19/04/2006 holding that the Sangita is not entitled to any alternate accommodation. Thereafter, in the year 2013 i.e. after more than 7 years the Petitioner preferred an appeal under section 35 of the said Act challenging the order passed against the Sangita Chauhan, which was dismissed by the Authority holding that the Petitioner failed to produce any cogent document to prove her case for alternate accommodation in respect of the hut situated at Lalji Pada, Kandivli (W). The Authority also held that the Petitioner claimed alternate accommodation on the basis of unregistered agreement for sale of the year 2002. Hence, the Writ Petition.

3. The learned counsel for the Petitioner submits that the learned Additional Collector (Enc/Rem) erred in coming to the conclusion that the Petitioner is not occupying the premises in question merely because she was not present at the premises, at the time of survey conducted by the Authority. He submits that the appellate authority erred in rejecting the Petitioner's appeal only on the ground that the Petitioner relied on unregistered agreement for sale of the year 2002. He submits that the Authority ought to have held that by the said unregistered agreement for sale of the year 2002, the Petitioner was occupying the suit premises for last several years. He submits that earlier the Petitioner allowed the Sangita to stay, being her relative. Hence, the order passed by the appellate authority be set aside and direct the Respondents to provide the Petitioner an alternate accommodation in lieu of the suit premises i.e. room admeasuring 160 sq.ft. Indira Nagar, Near Hilda Aunty

Primary School, 120' road, Lalji Pada, Kandivli (W), Mumbai – 400 068. He submits that if the impugned order is not set aside and the Writ Petition is not allowed, it will cause irreparable loss to the Petitioner.

4. It is to be noted that in the present proceedings, initially the notice was issued by the Authority to said Sangita Johar Chouhan calling upon her to produce original documents to show her occupancy in respect of the said hut. As she failed to produce cogent evidence, the Authority rejected her claim for alternate accommodation. After more than 7 years, the Petitioner challenged the said order under section 35 of the said Act. In the present proceedings, the order passed by the Authority was not challenged by Sangita Chauhan, but by the Petitioner, without joining Sangita as a party. Apart from that, the Petitioner is claiming her relationship with Sangita. She failed to produce on record any affidavit or any other document to show the relationship of the Petitioner with Sangita. As the original claim of the Petitioner itself was rejected by the Authority, the Petitioner has no right to challenge the said order. Apart from that, both the Authorities below concurrently held that the Petitioner failed to prove any document to show her possession over the hut at the relevant time. Considering these facts, I do not find any substance in the Writ Petition. Hence, same stands rejected.

(K.K. TATED, J.)