

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

WRIT PETITION NO. 2277 OF 2015

Mr. Rakesh Suhash Nakte & Ors. ... Petitioners
V/s.
The Sate of Maharashtra & Ors. ... Respondents

Mr. Vaibhav Gaikwad i/b Omar K. Shaikh for the Petitioner.
Mr. Amit Shastri, Addl. G.P. for respondent no. 1 & 2.
Mr. Mukul Taly i/b S. Mahomedbhai & Co. for the respondent no.5.
Mr. Vishwajeet Kapse for respondent no.4.

**CORAM : K. K. TATED, J.
DATED : 10/12/2015.**

P.C.:

. Heard learned Counsel for the parties.

2 By this petition, the petitioners are challenging the Order dated 13.05.2015 passed by the Dy. District Collector (Encroachment/Removal) and Competent Authority, Bandra as well as Order dated 21.08.2015 passed by the Additional District Collector (Enc./Rem) Western Suburban under Sections 33 and 38 of the Maharashtra Slum Areas (Improvement, Clearance & Redevelopment) Act, 1971.

3 At the outset, it is to be noted that both the orders are in favour of the petitioners where Authorities held that the petitioners are entitled to the benefit of redevelopment scheme according to law. Inspite of that petitioners have challenged both the orders before this Court under Article 226 of Constitution of India. It is to be noted that

in the present proceeding, the Deputy District Collector & Competent Authority, Bandra by order dated 13.05.2015 held that the petitioner is entitled to monthly compensation of Rs.10,000/- per month as per the revised proposal of the Maharashtra Slum Rehabilitation Authority. The same order was upheld by Appellate Authority also.

4 The learned counsel for the petitioners submits that in the present proceeding, the petitioners have apprehension that once they hand over the vacant and peaceful possession of the hut, the developer will not provide them benefit of the redevelopment scheme. He submits that till today, the Respondent No.5 Developer has not executed any agreement with the petitioners for providing allotment and possession of the permanent alternate accommodation. He further submits that in the present proceeding, two societies the respondent Nos. 3 and 4 are formed in respect of redevelopment of one plot of land, that is contrary to the Rules and Regulations. He further submits that our High Court in the matter of *Vijay Sakharam Gaikar V/s. State of Maharashtra in Writ Petition No. 9141 of 2012* by order dated 25.09.2012 directed developer to enter into agreement for permanent accommodation immediately within stipulated time. He submits that unless and until, the registered agreement for alternate accommodation is executed, the respondents have no right to evict the petitioners from their hut. Though, these facts are brought on record before the authorities below, same were not considered by them. Hence, the present Writ Petition.

5 The learned counsel for the petitioners submits that in the interest of the justice, this Hon'ble Court be pleased to stay the

operation and implementation of the orders passed by the authorities below, till the agreement is executed by the Developer with the petitioners for providing permanent alternate accommodation.

6 On the other hand, the learned counsel for the respondents vehemently opposed the present Writ Petition.

7 The learned counsel Mr. Mukul Taly appearing on behalf of respondent no.5 developer tendered undertaking dated 10.12.2015 of one Mr. Satyanarayan N. Shrimali, Director of Respondent no.5, who is present in the Court. The said undertaking taken on record. In the said undertaking, the Respondent no.5 specifically stated that they are ready and willing to comply with the instructions of Slum Rehabilitation Authority contained in Circular No.99 dated May 30, 2009 for the purposes of allotment and possession of the permanent alternate accommodation.

8 The learned Counsel for the respondent no.5 submits that as on today, out of 433 hutment dwellers, 426 are already vacated and handed over the possession for execution of redevelopment scheme. He further submits that if at this stage, the stay is granted, irreparable loss and injury will be caused to the respondent no.5 developer as well as hutment dwellers, who already vacated and handed over the possession of their huts. He submits that in any case, the Respondent No.5 developer is bound by the provisions of Development Control Regulations for Greater Bombay, 1991 and particularly Appendix IV 1.6 & 1.7 for execution of an individual agreement and providing alternate permanent structures to the eligible hutment-dwellers.

9 The learned Counsel for the Respondent No.5 relied on judgment of this Court in the matter of *Sunil Pandurang Telge V/s. Deputy Collector (Enc. /Rem.) & Competent Authority & Anr. in Writ Petition (L) No. 1872 of 2014* decided on 08.05.2015 and also in the matter of *Andrade Motors V/s. Additional Collector (Enc./Rem) & Competent Authority & Ors. reported in 2009(3) Bom.C.R. 120*.

10 The learned Counsel for the respondent no.5 submits that in the matter of Sunil Pandurang Telge(supra) the issue was involved in respect of same redevelopment scheme. On the basis of these submissions and the authorities, the learned Counsel for the respondent no.5 submits that there is no substance in the present Writ Petition and same to be dismissed.

11 I heard both the sides at length. It is to be noted that in the present proceeding, though both the authorities held in favour of the petitioners, they filed the present Writ Petition under Article 226 of the Constitution of India. The apprehension made by the petitioners that if the possession is handed over to the Respondents, they may or may not enter into agreement with them for allotment of permanent alternate accommodation. It is to be noted that as per D.C. Rules as well as undertaking filed by the Respondent No.5 dated 10.12.2015, it is binding on the Developer to execute the registered agreement for the purpose of allotment of permanent alternate accommodation. The objection of the petitioner for formation of two co-operative societies for the same redevelopment scheme, not necessary to consider at this stage because out of 433 hutment dwellers, 426 are already handed over their possession.

12 Considering these facts and undertaking given by Respondent No.5 dated 10.12.2015, I do not find any substance in the Writ Petition.

13 Hence, Writ Petition stands rejected.

14 At this stage, the learned Counsel for the petitioner seeks stay of this order.

15 On the other hand, the respective Counsel appearing on behalf of respondents strongly opposed the same.

16 Considering the fact that out of 433 hutment dwellers, 426 have already vacated the premises, I do not find any reasons to stay this order. Hence, oral request is rejected.

(K.K.TATED, J.)