

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.1567 OF 2016**

Smt. Akshaya Ashish Kambali Petitioner
Vs
1. State of Maharashtra and Anr. .. Respondents

Mr. C.S.Joshi i/b Mr B.C.Joshi, Advocate for Petitioner.
Ms. Gauri Rao, A.G.P for Respondents.

CORAM : R.G.KETKAR,J.
DATE : 05/02/2016

PC:

1. Heard Mr. C.S.Joshi, learned counsel for the petitioner and Ms.Gauri Rao, learned A.G.P for respondents at length.

2. By this Petition under Article 227 of the Constitution of India, the petitioner has challenged order dated 28.12.2015 passed by the Addl. Collector and Competent Authority (Urban Land Ceiling) Greater Mumbai, (for short, 'Competent Authority') as also the judgment and order 16.1.2016 passed by the learned Principal Judge, Greater Mumbai in Misc. Appeal No.2 of 2016. By order dated 28.12.2015, the Competent Authority called upon the petitioner to surrender and hand over possession of Flat no.201, J-Wing, Viraj Apartments, Vishnupark, Dahisar, Mumbai (for short, 'suit property') to representative of the State Government. Aggrieved by that decision the petitioner preferred Appeal before the Principal Judge of City Civil Court, Mumbai under section 7 of the Bombay Government Premises (Eviction) Act, 1955. The learned Principal Judge dismissed the appeal on the ground that

communication dated 28.12.2015 is not an order but a notice and is, therefore, not appealable and Appeal is not maintainable.

3. Mr. Joshi seeks permission to withdraw this Petition with liberty to challenge the order dated 28.12.2015 passed by Competent Authority before the Division Bench of this Court as show cause notice was issued on 14.8.2015 in compliance of the order passed by the Division Bench of this Court. He submits that possession of the petitioner may be protected for a period of four weeks so as to enable her to obtain suitable interim order from Division Bench. He assures that within two weeks from today, the petitioner and all Adult family members residing with her will file usual undertaking in this Court after giving advance copy to other side incorporating therein (1) that they are in possession and nobody else is in possession; (2) that so far they have neither created third party interest nor parted with possession; (3) that they will hereafter neither create third party interest nor part with possession; (4) that in case they do not get suitable orders, they will hand over peaceful possession of the suit premises to the respondents.

4. Subject to the petitioner filing undertaking in the aforesaid terms within two weeks from today and subject to the petitioner neither creating third party interest nor parting with possession, the petitioner shall not be dispossessed from the suit premises for a period of four weeks from today and Notice dated

15.1.2016 shall not be acted upon.

5. In view thereof, Petition is allowed to be withdrawn with liberty as prayed for. It is expressly made clear that I have not examined merits of the case. All contentions of the parties are expressly kept open.

6. List the petition for compliance on 22.2.2016.

(R.G.KETKAR, J.)