

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.2334 OF 2016

1. Mr. Omprakash Dharmnath Pathak,]
 2. Mr. Ashish Kumar Omprakash Pathak.] ... Petitioners

Versus

The State of Maharashtra and Ors.] ... Respondents

Mr. Angad Giri a/w Mr. Sagar Batavia for Petitioners.
 Ms. Aparna Vhatkar, AGP for Respondent Nos.1, 2 and 3.
 Mr. Hemant Mehta i/b Mehta & Co. for Respondent No.5.

CORAM :- M. S. SONAK, J.
DATE :- FEBRUARY 25, 2016

P. C. :-

1. The challenge in this petition is to the orders dated 26/03/2015 and 25/01/2016 made by the Deputy Collector (Enc. & Rem.) and Additional Collector (Enc. & Rem.), respondent Nos.3 and 2 respectively in this petition.

2. The petitioner no.1 is concerned with structure no.6, which the petitioner no.1 uses for commercial purposes. The petitioner no.1 has already been held as eligible in Annexure II in respect of this structure no.6 and further, there are directions to allot to the petitioner no.1 permanent rehabilitation structure in the new

building which is already constructed by the developer i.e. respondent no.5. However, Mr. Angad Giri, learned Counsel for petitioners, contends that in respect of the new building which is constructed by the respondent no.5, there is no Occupancy Certificate issued by the authority. In the absence of Occupancy Certificate, the petitioner no.1 can neither be made to shift to the alternate premises nor can he be evicted from structure no.6 which he has presently occupied.

3. Mr. Hemant Mehta, learned Counsel for respondent no.5, has pointed out that several premises in the permanent rehabilitation building have already been occupied on the basis of part Occupancy Certificate issued by the authority. Mr. Mehta has submitted that application for full Occupancy Certificate is pending but the same is not yet granted because certain persons, including the petitioners herein, have refused to vacate their old structures. In these circumstances, Mr. Mehta, as also Ms. Aparna Vhatkar, learned AGP for respondent nos.1, 2 and 3, submitted that there is no case made out to interfere with the impugned orders.

4. Upon considering the submissions of the learned Counsel and perusing the record, there is no case made out to interfere with the impugned orders. The petitioner no.1, cannot insist upon continuing in his old structure, now that the scheme is almost on the verge of completion. In pursuance of the slum rehabilitation scheme, the respondent no.5 has already constructed a new building which has both the permanent rehabilitation component as well as the free sale

component. In fact, Shop No.3 has already been reserved for petitioner no.1 and Mr. Mehta, learned Counsel for respondent no.5, makes a statement that within two days from the petitioners' vacating the suit structure, the petitioner no.1 will be placed in possession of this Shop No.3. This statement is accepted. There is no merit in the contention of Mr. Giri, learned Counsel for petitioner no.1, that the petitioner no.1 is entitled to continue in the suit structure any longer. There is no reason to interfere with the impugned order.

5. However, Mr. Giri, learned Counsel for petitioners, states that some additional time be granted to the petitioner no.1 to vacate the suit structure and that the petitioner no.1 will furnish an undertaking that he will vacate the suit structure within four weeks from today without any excuse. Considering that the petitioner no.1 undertakes commercial activities from the suit structure, the request is quite reasonable and is therefore accepted. Therefore, if the petitioner no.1 files an undertaking in this Court within a period of one week from today along with advance copy of such undertaking to the learned Counsel for respondent no.5 as well as the learned AGP, then the authorities may not take coercive proceedings to enforce the impugned orders for a period of four weeks from today. If, however, no such undertaking is filed, then the authorities are free to execute the impugned orders, if necessary by taking assistance of police. The undertaking should be quite clear that the entire structure no.6, which the petitioner no.1 is presently occupying, will be vacated and the possession thereof shall be handed over to the respondent no.5.

6. In case, the undertaking is breached by the petitioner no.1, apart from facing action under the Contempt of Courts Act, 1971, the petitioner no.1 may also be liable to forgo the benefit of permanent rehabilitation by way of Shop No.3 which is already kept reserved for the petitioner no.1. The respondent no.5, in such a situation, shall be at liberty to take out a miscellaneous application in this petition seeking such relief. Such application, if made, will be considered on its own merits at that stage. However, the learned Counsel for petitioner no.1 assures that no such occasion will arise and the vacant and peaceful possession of the said structure no.6, in its entirety, will be handed over to the respondent no.5 within a period of four weeks from today.

7. The petitioner no.2 is concerned with structure no.77. The case of petitioner no.2 is that he is eligible to receive the benefits of the slum rehabilitation scheme. However, the respondent no.6 has been held as eligible in respect of the structure no.77. The learned Counsel for petitioner no.2 submits that dispute with regard to eligibility is presently pending before the Additional Collector by way of Appeal No.58 of 2016. He submits that until such dispute is decided, the petitioner no.2 cannot be evicted from the said structure no.77.

8. There is absolutely no merit in the submission of the learned Counsel for petitioner no.2. There is no dispute that the said structure no.77 is obstructing the development of the property. On

account of existence of structure no.77, full occupancy has been denied to the permanent rehabilitation building already put up on the site by the respondent no.5 – the developer. Merely because there is some dispute with regard to eligibility pending, the petitioner no.2 cannot insist that he will not vacate structure no.77. In fact, at the insistence of petitioner no.2, the authorities, by communication dated 04/02/2016, have already issued direction that the alternate accommodation in respect of structure no.77 should not be allotted either to the respondent no.6 or to the petitioner no.2, until their dispute, *inter se*, is resolved. Such direction, in the facts and circumstances of the present case, is quite proper and the same protects the interest of petitioner no.2. Accordingly, there is no case made out to interfere with the impugned order.

9. The learned Counsel for petitioner no.2 submitted that no notices were issued to the petitioner no.2 and the action is on the basis of notices issued to respondent no.6. The learned Counsel states that no order has also been issued against him for eviction. This contention cannot be accepted. In the first place, since the respondent no.6 has been held as eligible, notice may have been issued to him. So also, the eviction order may be in the name of the respondent no.6. However, it is an admitted fact that the petitioner no.2 who claims to be in possession of the suit structure, had instituted an appeal against the eviction order. The appeal has been dismissed. There is sufficient compliance with principles of natural justice and fair play in this case. In fact, at the instance of petitioner no.2, even directions have been

issued in the matter of allotment of alternate accommodation. That apart, the learned Counsel for petitioner no.2, when queried as to his potential defence in resisting eviction order, has once again submitted that the petitioner no.2 cannot be evicted until the dispute of eligibility is decided, which is hardly a defence, which is permissible in the matter of this nature. Accordingly, there is no case made out to interfere with the impugned orders. Since the petitioner no.2 has neither applied for any time to vacate the structure nor has he offered to tender any undertaking in the matter, it is made clear that the authorities shall be at liberty to enforce the impugned orders, now that the present petition is being dismissed.

10. Except the limited and conditional protection granted to the petitioner no.1, no further reliefs can be granted in this petition. The petition is therefore dismissed. There shall be no order as to costs.

11. The learned Counsel for petitioner no.2 seeks interim relief of 10 days. In the facts and circumstances of this case, no ground is made out for such interim relief. The rights of petitioner no.2 have been sufficiently protected.

12. All concerned to act on basis of authenticated copy of this order.

(M. S. SONAK, J.)