

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1987 OF 2016

Laxmikant Shivprasad Upadhyay .. Petitioner
vs.
The State of Maharashtra & Ors. .. Respondents

Mr. Ajay Pandey h/f. Mr. Rajesh Yadav for Petitioner.
Ms Aparna Vhatkar – AGP for Respondents – State.
Mr. Manoj G. Sawardekar with Mr. Y. Gogari for Respondent No. 4.

CORAM : M. S. SONAK, J.
DATE : 16 FEBRUARY 2016

P.C :

1] The challenge in this petition is to the orders dated 3 November 2015 and 6 February 2016 and the notice dated 11 December 2016 made in pursuance of the two orders. In terms of the impugned orders and the notice, the petitioner has been directed to vacate the suit premises within 48 hours, so that, the development under the slum rehabilitation scheme, can proceed.

2] Mr. Ajay Pandey, the learned counsel for the petitioner, at the outset has submitted that the facts and circumstances of the present case warranted some reasonable notice. That apart, he has submitted that the petitioner is liable to be adjudged as the only occupant eligible to avail the benefits of the rehabilitation scheme. He pointed out that in addition to the petitioner, the names of two petitioner's brothers have been wrongly included in Annexure II at

serial no. 79. In this regard, he pointed out that the petitioner has already instituted appeal no. 77 of 2015 and submitted that until the same is decided, there is no question of requiring the petitioner to either vacate the suit premises or in any case, share the compensation in lieu of alternate accommodation with his two brothers.

3] Mr. Gogari, the learned counsel appearing for the respondent no. 4 – the developer has submitted that more than ample opportunity as well as time came to be granted to the petitioner to vacate the suit premises. He submitted that in terms of the orders made, he is required to pay the compensation in lieu of alternate accommodation to the petitioner and his two brothers. He submitted that the respondent no. 4 is really unconcerned with the dispute between the petitioner and his two brothers but, the respondent no. 4 is required to comply with the orders made by the Authorities in this regard. He has however submitted that there is absolutely no reason for the petitioner to continue in the suit premises until the resolution of this dispute.

4] After this matter was heard for some time, on 15 February 2016 as well as today, the learned counsel for the petitioner has tendered an affidavit cum undertaking duly sworn by the petitioner,

to the effect that the petitioner will, within 14 (fourteen) days from today, vacate the suit premises on his own accord. The affidavit cum undertaking is taken on record and marked as 'X' for the purposes of identification. The undertaking is accepted as an undertaking to the Court. Based upon the same, it is directed that the petitioner shall not be evicted from the suit premises for a period of 14 (fourteen) days from today. However, if the petitioner breaches the undertaking, then, without prejudice to any other action which the petitioner may be called upon to face, the respondents Authorities shall be entitled to execute the impugned orders, if necessary, by taking the assistance of the police. This, to a certain extent, takes care of the petitioner's submission in the context of reasonable time to vacate.

5] There is no question of permitting the petitioner to continue in the suit premises until the resolution of dispute between the petitioner and his brothers presently pending in the form of appeal no. 77 of 2015 before the respondent no. 3. It is reported that the appeal is posted for final hearing today i.e. on 16 February 2016. The decision in this appeal will at the highest determine whether the petitioner is solely entitled to the benefits under the rehabilitation scheme or whether the petitioner is required to share such benefits along with his two brothers.

6] In the aforesaid circumstances, it would be appropriate if the respondent no. 4 is directed to deposit in this Court within a period of two weeks from today the compensation in lieu of alternate accommodation as also any other financial benefits which the petitioner and his two brothers may be entitled to. Depending upon the outcome in appeal no. 77 of 2015, the parties can always apply to this Court for withdrawal of the said amount. The respondent no. 4, will ultimately be required to abide by the outcome in appeal no. 77 of 2015.

7] Further, the respondent no. 3 is directed to dispose of the appeal bearing no. 77 of 2015 as expeditiously as possible and in any case within a period of six weeks from today.

8] In view of the aforesaid, the challenge to the impugned orders is dismissed. This petition is disposed of with directions as aforesaid.

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

(M. S. SONAK, J.)