

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION**

**WRIT PETITION NO.2811 OF 2016**

**Falguni Bharat Patel and others**

**.. Petitioners**

**Versus**

**The State of Maharashtra and others**

**.. Respondents**

**Mrs. Sunita M. Poddar, for the Petitioners.**

**Ms. Aparna Vhatkar, AGP for the Respondent Nos.1 & 2.**

**Mr. Madhur Surana, for the Respondent Nos.3 & 4.**

**Mr. Vinod Mahadik, for the Respondent No.6-BMC.**

**CORAM : R.M. SAVANT, J.**

**DATE : 8<sup>th</sup> MARCH 2016**

**PC.**

1. The writ jurisdiction of this Court is invoked against the order dated 26.02.2016 passed by the Additional Collector (Encroachment and Removal), by which order, the Appeal filed by the Petitioner under Section 38 of the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971 (hereinafter referred as "Slum Act") came to be dismissed and resultantly, the order dated 19.11.2015 passed by the Deputy Collector and Competent Authority (Encroachment and Removal) came to be confirmed.

2. The Petitioners have their structures on CTS No.255 of village Bandivali at Caves Road, Jogeshwari (E) K/East Ward, Mumbai-400 060. The Petitioners are carrying out business in the said structures inter-alia in the name of M/s. Pragati Cans and M/s. Premier Enterprises and in the name of Petitioner No.2 Bharat Patel. The said lands CTS No.255 and the adjoining CTS No.255/1 to 3, 259(part), 259/1 to 25 are of the ownership of the Respondent No.3 herein and a Slum Redevelopment Scheme is being implemented on the said land under the aegis of the Slum Rehabilitation Authority. The Petitioners came to be issued a notice by the Deputy Collector and Competent Authority (Encroachment and Removal) asking the Petitioners to quit and vacate from the land in question to facilitate the implementation of the said Slum Redevelopment Scheme. Pursuant to the said notice, the Petitioners showed cause and the Deputy Collector and Competent Authority (Encroachment and Removal) passed the order dated 19.11.2015 thereby confirming the notice that was issued to the Petitioners.

3. The Petitioners aggrieved by the same carried the matter in Appeal under Section 38 of the Slum Act and one of the grounds urged in the Appeal was that the said land has not been declared as a slum and therefore the Petitioners cannot be asked to vacate the land in question. The said Appeal came to be heard by the Additional Collector

(Encroachment and Removal) and by the impugned order dated 26.02.2016 the Appeal came to be dismissed on the ground that since the Slum Redevelopment Scheme is being implemented for the larger benefit of the slum dwellers, the Petitioners who are one of the ineligible slum dwellers cannot be allowed to continue on the land in question. As indicated above, it is the said order dated 26.02.2016 which is sought to be challenged in the above Petition.

4. The Learned Counsel for the Petitioners Mrs. Poddar would seek to re-urge the contentions which were urged before the authorities below namely that the said land being CTS No.255 not been declared as a slum and in support thereof seeks to place reliance on the order passed by the Slum Tribunal, whereby the declaration of slum issued in the year 1979 was set aside by the Tribunal. It was the submission of Learned Counsel for the Petitioners Mrs. Poddar that the Petitioners are ready to co-operate with the Respondent Nos.3 and 4 provided the Respondents are in a position to demonstrate that the said land i.e. CTS No.255 is declared as a slum.

5. Upon this, the Learned Counsel appearing on behalf of the Respondent Nos.3 and 4 Mr. Surana would submit that the land CTS No.255 is part of a larger area which is owned by the Respondent No.3 on

which a Slum Redevelopment Scheme is being implemented and that there is no necessity therefore for any declaration of slum being issued. It was the submission of the Learned Counsel that there were 118 structures on the four pieces of land including CTS No.255 for whose benefit the said Slum Redevelopment Scheme is being implemented and the Petitioners who have only three structures in CTS NO.255 cannot be permitted to stall the implementation of the said scheme.

6. In my view, it is not possible to accept the contentions of the Learned Counsel Mrs. Poddar appearing on behalf of the Petitioners. As indicated hereinabove, the said CTS No.255 on which the Petitioners have their structures is part of the larger land on which the Slum Redevelopment Scheme is being implemented. The said Slum Redevelopment Scheme is under the aegis of Slum Rehabilitation Authority under which scheme the eligible slum dwellers are entitled to permanent alternate accommodation, and till they are granted permanent alternate accommodation arrangements are made for their temporary accommodation. In so far as the implementation of the Slum Redevelopment Scheme is concerned, the same as indicated above is implemented under the guidelines which have been framed for the said purposes by the Slum Rehabilitation Authority and the State Government. One of the guidelines is that 75% of the slum dwellers have to be

agreeable to the implementation of the said Slum Redevelopment Scheme through the agency of the private developer. The objective seems to be to ameliorate the living conditions of the slum dwellers in the city of Mumbai. Hence, there is no necessity for notification being issued under the Slum Act and for the land to be declared under the Slum Act.

7. In my view, therefore, the said contention of the Learned Counsel Mrs. Poddar cannot be accepted. Since the Slum Redevelopment Scheme is being implemented for the benefit of a large number of slum dwellers i.e. 110 slum dwellers obviously the Petitioners cannot be permitted to thwart the said scheme. It is precisely for the said reasons that powers are vested in the authorities for eviction of the ineligible slum dwellers. It would be open for the Petitioners to adopt appropriate proceedings in respect of their ineligibility. In my view, therefore, no exception could be taken to the impugned order passed by the Additional Collector (Encroachment and Removal) confirming the order passed by the Deputy Collector and Competent Authority (Encroachment and Removal). The Writ Petition is accordingly dismissed.

8. However, the Petitioners are granted time upto 15.04.2016 to vacate the structures. No further extension would be granted.

**[R.M. SAVANT, J]**