

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION (STAMP) NO. 8116 OF 2016

Mr. Changuram Gangadin Rao (Retiwala) .. Petitioner
vs.
The State of Maharashtra & Ors. .. Respondents

Mr. Yuvraj Patil for Petitioner.
Ms Aparna D. Vhatkar – AGP for State – Respondent Nos. 1 and 2.
Mr. Bhushan Deshmukh for Respondent No. 5.

CORAM : M. S. SONAK, J.
DATE: 17 OCTOBER 2016

P.C :

1] Heard Mr. Patil, learned counsel for the petitioner, Ms Vhatkar – learned AGP for the State – respondent nos. 1 and 2 and Mr. Deshmukh for respondent no. 5.

2] The challenge in this petition is to the orders dated 7 January 2016 and 5 March 2016 made by the Deputy Collector (Encroachment and Removal) Dharavi, and the Appellate Authority under the provisions of the Maharashtra Slum Area (Improvement, Clearance and Redevelopment) Act, 1971 (Slum Act), which ordered the demolition of the structure / structures, in which, the petitioner claims to have been residing / carrying on business.

3] There is no dispute that as of now, the impugned orders have already been executed and the structure / structures in question

have already been demolished. For this reason, Mr. Deshmukh, learned counsel for the respondent no. 5 states that the present petition has become infructuous.

4] Mr. Patil, learned counsel for the petitioner, however submits that the petition cannot be said to have been become infructuous, because, if the petition succeeds and the impugned orders are set aside, the petitioner will be entitled to restitution by way of erecting the structure / structures at the same site. He further submits that the documents submitted by the petitioner have not at all been taken into consideration. The petitioner's case has been rejected upon incorrect grounds by holding that the structure in question had already been demolished and the petitioner has illegally reconstructed the same. He submits that there are documents emanating from authorities like MMRDA as well as the developer himself which will establish that the structure / structures of the petitioner are not only legitimate but further, the petitioner is entitled to claim the benefits of slum redevelopment by way of award of alternate premises, compensation in lieu of alternate premises etc. He submits that since all these matters have been ignored by the two authorities, the impugned orders deserve to be interfered with.

5] Upon consideration of the rival submissions, it is to be noted that even if all the documents produced or the contentions now

raised by the petitioner were to be considered, the petitioner, could not have escaped the consequences of eviction or demolition of his structure / structures. This is because there is no serious dispute that the structure / structures in question are upon the plot which is approved for slum redevelopment. Therefore, although, Mr. Patil is theoretically right that this petition has not become infructuous, there is really no case made out for interfering with the impugned orders and directing any restitution.

6] The question however remains as to whether the petitioner is liable to be declared as an eligible slum dweller so as to avail the benefits of the slum redevelopment scheme. In the order dated 7 January 2016 made by the Deputy Collector, liberty is expressly reserved to the petitioner to submit his documents before the competent authority which will examine the issue of eligibility. The appellate authority, whilst dismissing appeal, has not varied this part of the order made by the Deputy Collector. This means that the petitioner is entitled to approach the competent authority for determining the issue of eligibility. In any case, the petitioner is granted express liberty to apply to the Deputy Collector / Competent Authority, Dharavi Division, who, Ms Vhatkar, the learned AGP assures is the proper authority for determination of his eligibility in respect of the structure / structures in question.

7] The petitioner claims that he is an eligible slum dweller in respect of three structures and not one. The petitioner, along with such application can produce documents / material in support of his claim for eligibility. The Competent Authority is directed to dispose of such application / claim for eligibility within a period of two months from the date on which the petitioner files such application. Such application shall be disposed of by the Deputy Collector / Competent Authority in accordance with law by taking into consideration the necessary government resolutions as well as the material / documents produced by the petitioner. This court has not examined the merits of eligibility and therefore, all such questions are left open to be decided by the Deputy Collector / Competent Authority.

8] Subject to the aforesaid liberty, there is no necessity to interfere with the impugned orders. This petition is disposed of accordingly. There shall be no order as to costs.

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

(M. S. SONAK, J.)