

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION St. NO.9003 OF 2016**

Dinesh Ranmal Gada

..Petitioner

Vs.

**State of Maharashtra through
Govt. Pleader & ors.**

..Respondents

**Mr. R. S. Apte, Senior Advocate i/b Mr. Bhupendra Singh for the Petitioner
Mrs. Vaishali Nimbalkar AGP for the Respondent Nos.1 and 3
Mr. Vinod Mahadik a/w Mr. S. K. Sonawane for the Respondent No.2
Mr. Abhijeet Devkhile i/b Mr. A. A. Desai for the Respondent No.4
Mr. S. U. Kamdar Senior Advocate a/w Mr. Nitesh Ranavat and Mr. Abit P
i/b Wadia Ghandy & Co. for the Intervenor**

CORAM : R. M. SAVANT, J.

DATE : 1st APRIL, 2016

P.C.

1 At the outset M/s. Pilot Construction Pvt Ltd is allowed to intervene in the above Writ Petition.

2 The order dated 14-3-2016 passed by the Additional Collector and Appellate Authority, Mumbai city dismissing the Appeal filed by the Petitioner under Section 35 of the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971 (for short the Slum Act), is taken exception to by way of the above Petition.

3 The said order has been preceded by the order dated 22-1-2016 passed by the Competent Authority i.e. the Assistant Commissioner “S” North Ward of the Municipal Corporation of Greater Mumbai (for short the MCGM). The said order is an order of eviction passed against the Petitioner under Sections 33 / 38 of the Slum Act. The cause for initiating the proceedings under the said provisions was the fact that the Petitioner was not vacating the structure in question which is impeding the implementation of the slum redevelopment scheme on the land in question. It is an undisputed position that the Petitioner's name does not appear in Annexure-II which is a list of the eligible slum dwellers. In Annexure -II the name of the original occupant Prema L. Keni appears and is shown against the structure in question. The Petitioner claims to be the second purchaser after the said Prema Keni sold of the said structure to one Pannalal. The Petitioner is a purchaser from the said Pannalal. The eviction order has been passed against the Petitioner on the ground that the Petitioner's name does not appear in Annexure-II and that though the Petitioner claims to be in possession prior to 1-1-2000, the Petitioner would have to get himself declared eligible from the Competent Authority.

4 The Learned Senior Counsel appearing for the Intervenor Mr. S. U. Kamdar states that the developer one M/s Pilot Construction Pvt Ltd. who is

implementing the said scheme would abide by the decision that would be rendered by the Competent Authority in respect of the eligibility and accordingly pay the transit rent to the person concerned and permanent alternate accommodation would also be given to the person in whose favour the final orders are passed in respect of eligibility.

5 In my view, no fault can be found with the orders passed by the Competent Authority as well as the Appellate Authority. As indicated above the Petitioner claims the benefit of the Government Resolution dated 1-1-2000. If that be so, it is for the Petitioner to prove his eligibility before the Competent Authority of the MCGM. In my view therefore, though the impugned orders do not warrant any interference at the hands of this Court in its Writ Jurisdiction considering the fact that the issue of the Petitioner's eligibility would have to be decided, it would be just and proper to issue the following directions:

(i) The concerned Competent Authority of the Mumbai Corporation of Greater Mumbai to decide the Petitioner's eligibility after the Petitioner approaches the Competent Authority within two weeks from date with the relevant documents.

(ii) The Competent Authority to decide the Petitioner's eligibility by

affording hearing to all concerned parties and thereafter decide whether the Petitioner's name is to be included in the list Annexure-II in the place of the said Prema Keni.

(iii) The Competent Authority to carry out the said exercise within a period of 6 weeks from the Petitioner approaching the Competent Authority.

(iv) The Learned Senior Counsel Mr. S. U. Kamdar appearing for the Intervenor i.e. the developer M/s Pilot Construction Pvt Ltd. who is implementing the said scheme makes a statement that the said developer would abide by the decision that would be rendered by the Competent Authority in respect of the eligibility and accordingly pay the transit rent to the person concerned and permanent alternate accommodation would also be given to the person in whose favour the final orders are passed as regards eligibility. Statement accepted. The statement of the Learned Senior Counsel that pending such consideration by the Competent Authority, the rent would neither be paid to the Petitioner nor his predecessors, is also accepted.

(v) In the event, the Petitioner succeeds before the Competent Authority and his name is included in Annexure-II, the Petitioner would then be entitled to transit rent from the Pilot Construction Pvt Ltd, subject to further challenges.

(vi) The MCGM is directed to carry out the measurement of the structure in question latest by tomorrow i.e. 2-4-2016.

4 With the aforesaid directions the Writ Petition is disposed of.

[R.M.SAVANT, J]