

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION (STAMP) NO.9553 OF 2016

Keshavlal Harilal Tank

.. Petitioner

Versus

Deputy Collector &

Competent Authority, Malad and another

.. Respondents

Mr. R. R. Tiwari, for the Petitioner.

Mr. R. M. Pandey, for the Respondent No.2.

CORAM : R.M. SAVANT, J.

DATE : 7th APRIL 2016

PC.

1. The writ jurisdiction of this Court is invoked against the order dated 09.03.2016 passed by the Additional Collector (Encroachment/Removal), Western Suburbs, by which order, the Appeal filed by the Petitioner came to be dismissed and resultantly, the order dated 17.10.2015 passed by the Competent Authority and Deputy Collector (Encroachment/Removal), Malad, came to be confirmed.

2. The Petitioner's structure was on the land on which a Slum Rehabilitation Scheme is being implemented. The Petitioner is a eligible slum dweller as his name appears in the Annexure-II and the area shown against his name is 6.75 sq.mtrs. and the purposes for which he was using

the structure was commercial. Since the Petitioner was a eligible slum dweller, the Petitioner was thereby entitled to the allotment of permanent alternate accommodation in the rehab building which was to be constructed by the Respondent No.2 developer. The Petitioner was provided temporary transit accommodation insitu. The Petitioner's permanent alternate accommodation by way of a shop bearing No.G-13 is ready for occupation. However, since the Petitioner is not moving to the said permanent alternate accommodation a notice under Section 33/38 came to be issued to the Petitioner by the Competing Authority asking him to show-cause as to why he should not be evicted from the temporary transit accommodation which was provided to him pending the construction of the permanent alternate accommodation. Since the Petitioner's reply to the said show-cause notice was not satisfactory, the proceedings under Section 33/38 came to be initiated against the Petitioner for his eviction. Before the Competent Authority, it was the case of the Petitioner that though the Petitioner is entitled to a higher area, the Petitioner has been allotted only 72.63 sq.ft. by way of a shop in the rehab building. Except the said contention, the Petitioner did not raise any other contention before the Competent Authority. The Competent Authority did not countenance the said contention and since the Petitioner was impeding the construction carried out in respect of the said scheme and

since the permanent alternate accommodation for the Petitioner was ready, the Competent Authority by its order dated 17.10.2015 directed the eviction of the Petitioner from the said temporary transit accommodation within 30 days of the receipt of its order, failing which the Petitioner was directed to be evicted and the cost to be recovered from him.

3. The Petitioner aggrieved by the said order dated 17.10.2015 passed by the Competent Authority carried the matter by way of Appeal under Section 35 of the Slum Act. The Appellate Authority having regard to the fact that in respect of the Slum Redevelopment Scheme, IOA and CC were in place and also having regard to the fact that the Petitioner though allotted permanent alternate accommodation by way of shop No.G-13 in building No.7 was not vacating the temporary transit accommodation, and was thereby impeding the slum rehabilitation scheme, did not deem it appropriate to interfere with the order passed by the Competent Authority and accordingly dismissed the Appeal.

4. The Learned Counsel appearing for the Petitioner Mr. R. R. Tiwari would seek to reiterate the case of the Petitioner that was urged before the Competent Authority as well as the Appellate Authority namely that the Petitioner's entitlement is more than the area of 72.63 sq.ft. which is allotted to him by way of a shop. In my view, it is not possible to accept

the said contention urged on behalf of the Petitioner. It is required to be noted that Annexure-II which is a list of the slum dwellers was published as long back as in the year 2006-2007, wherein against the name of the Petitioner area of 6.75 sq.mtrs. is shown. The said Annexure-II was not challenged by the Petitioner, though published in the year 2006-2007. Having regard to the area mentioned in the said Annexure-II, the Petitioner has been allotted shop G-13 admeasuring 72.63 sq.ft. equivalent to 6.75 sq.mtrs. in the rehab building as permanent alternate accommodation, but for no justifiable reason, the same is not being accepted by the Petitioner. Once the Petitioner has been allotted permanent alternate accommodation in the rehab building the Petitioner cannot continue to occupy the temporary transit accommodation which is required to be demolished to complete the scheme. In my view, therefore, no case for interference in the writ jurisdiction of this Court is made out. The Writ Petition is accordingly dismissed.

[R.M. SAVANT, J]