

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION (ST) NO.12879 OF 2016**

Mr. Giridhar Laxman Mungekar Petitioner
Vs
1. Before the Addl. Collector
(E&R) and Appellate Authority, .. Respondents
Mumbai and Ors.

Mr. Nilesh Pandey, Advocate for Petitioner.
Mr. Sameer Sawant, Advocate for Respondent no.3

CORAM : R.G.KETKAR,J.
DATE : 05/05/2016

PC:

1. Not on Board. At the request of Mr. Pandey, taken up for admission. Heard Mr. Nilesh Pandey, learned counsel for the petitioner and Mr. Sameer Sawant, learned counsel for the respondent no.3 at length.

2. By this Petition under Article 227 of the Constitution of India, the petitioner has challenged the Judgment and order dated 9.3.2016 passed by respondent no.2-Deputy Collector (Enc.&Rem.) and Competent Authority (for short, 'Competent Authority') as also the order dated 22.4.2016 passed by the first respondent-Addl. Collector, (E.&R.) & Appellate Authority, Mumbai Eastern Suburban (for short, Appellate Authority). By order dated 9.3.2016, the Competent authority, in exercise of powers under Section 33 of the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971 (for short, 'Act') directed the petitioner herein to vacate Hut No. 199,

in CTS No.27(pt), 21(pt), 22 (pt), 26, 26/1 to 2, situate at Navneet Sadan Co-operative Housing Society Ltd, Mouze-Kanjur, Taluka-Kurla, Mumbai (for short, 'suit premises') and hand over possession to respondent no.3 -Developer within 15 days, failing which the suit premises will be demolished under section 38 of the Act. Aggrieved by this decision, the petitioner preferred Appeal under section 35 of the Act before the Appellate Authority. By order dated 22.4.2016, the Appellate Authority dismissed the appeal. It is against these orders, the petitioner has instituted the present petition.

3. While passing the order dated 9.3.2016, the Competent Authority observed that the petitioner is carrying on business in Hut No.199. That is affected by road widening. Unless and until the suit premises is demolished, the work of road widening cannot be completed. Despite calling upon the petitioner to vacate the suit premises on the ground that the work of road widening is stalled, he did not hand over possession. In fact, for obtaining Occupation Certificate, the road widening was to be completed in the month of January 2016 and the road was to be handed over to the Corporation. As the suit premises is not vacated, it is causing obstruction in implementing the slum rehabilitation scheme. In the order dated 22.4.2016 the Appellate Authority observed that during the course of hearing, respondent no.3-Developer agreed to pay compensation of Rs. 15,000/- per

month till such time eligibility of the petitioner is determined. The Appellate Authority also recorded that out of 212 slum dwellers, 211 slum dwellers have already shifted. Unless and until the suit premises is demolished, occupation certificate cannot be issued to rehab building. It is also recorded that respondent no.3 is ready and willing to pay compensation of Rs.15,000/- per month to the petitioner till such time his eligibility is determined. Mr.Pandey submitted that the findings recorded by the authorities below are contrary to the records.

4. The Competent Authority has recorded a categoric finding that on several occasions the petitioner was called upon to hand over possession of the suit premises on the ground that the work of road widening is stalled. Despite, that the petitioner did not hand over possession. Out of 212 slum dwellers, 211 are already shifted. Respondent no.3-developer is also ready and willing to pay compensation at the rate of Rs.15,000/- per month to the petitioner till such time his eligibility is fulfilled. He was, however, not in a position to demonstrate that how these findings are incorrect or that the suit premises is not affected by the road widening. In view thereof, no case is made for invocation of powers under Article 227 of the Constitution of India. Hence, Petition fails and the same is dismissed.

(R.G.KETKAR, J.)