

FARAD CONTINUATION SHEET
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.6951 OF 2014

Smt.Savitribai Dattaram Patil .. Petitioner

vs.

Asst. Municipal Commissioner & Ors. .. Respondents

Ms.Pratibha Shelke i/b Mr.P.J.Thorat for the petitioner

Mr.Vinod Mahadik for the BMC/respondent no.1

Ms.Kirti Kulkarni, A.G.P. For the respondent no.4

CORAM : K. K. TATED, J.
DATE : SEPTEMBER 27, 2016

PC.:

1 Heard the learned counsel for the parties.

2 By this petition under Article 227 of the Constitution of India, the Petitioner is challenging the order dated 4.7.2014 passed by learned Additional Collector (Encroachment) under section 35 of the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971 (hereinafter referred to as "said Act") in Slum Appeal No.68 of 2014 and order dated 24.6.2014 passed by Competent Authority and Assistant Municipal Commissioner under section 33 of the said Act for eviction of the petitioner from Flat No.401 situate in Building No.1, Sai Janta Co-operative Housing Society, Ghatkopar (East), Mumbai.

3 The learned counsel for the petitioner submits that in the present proceeding, the respondents issued notice under section 33 of the said Act dated 21.10.2013 on the ground that the petitioner created third party right, title and interest in respect of the suit flat in favour of Rajendra Mane. She submits that whereas the authority passed order on the ground that the suit flat was wrongly allotted in favour of the petitioner on the basis of incorrect documents. She submits that in order dated 24.6.2014 as well as order dated 4.7.2013 both the authorities held that the petitioner and her husband Dattaram Narayan Patil was occupying only one hutment. In spite of that petitioner as well as her husband applied separately for eligibility. Therefore, authority allotted flat no.401 in the name of petitioner and 501 in the name of her husband Dattaram Narayan Patil. She submits that the authority passed impugned order for eviction of the petitioner from flat no.401 on the ground which was not disclosed in show cause notice dated 21.10.2013. Hence, impugned order is required to be set aside.

4 The learned counsel for the petitioner further submits that the authority has not given any opportunity to the petitioner to put up her case. She submits that without giving any fair opportunity, respondent authority passed impugned orders. Hence, same are required to be set aside.

5 The learned counsel for the petitioner submits that petitioner is challenging both the orders on following grounds as narrated in the petition :

“a) That the action initiated by the Respondent No.1 allegedly under Section-33 of the Slum Act is illegal, arbitrary

and bad in law.

b) That the impugned Orders are against the established principles of law and the documentary evidence produced on record.

c) That the impugned Orders proceed on the basis that the Petitioner is ineligible to receive the permanent alternate accommodation as her husband has been allotted a separate residential premises whereas the show cause Notice issued under Section-33 of the Slum Act, 1971 called upon the Petitioner to show cause why the action of eviction should not be taken against the Petitioner as the said Ravindra Hanumant Mane was found in occupation of the said flat instead of the Petitioner.

d) That the Orders passed by both the Lower Authorities holding that the Petitioner ineligible to receive permanent alternate accommodation amounts to review of the Annexure-II prepared by the Competent Authority on 11th January, 2001 and in absence of any power of review the impugned Orders cannot be sustained.

e) That the Respondent No.1 does not have the power to review the decision/Annexure-II published in the year 2001 holding the Petitioner eligible for permanent alternate accommodation especially after lapse of 13 years.

f) That the Respondent No.4 has erred in holding that the Petitioner has not filed the Appeal merely because the same is filed through her Constituted Attorney without considering the important fact that the Petitioner is of advanced age and the Constituted Attorney is her Cartake.

g) That the Respondent No.4 erred in holding that the said premises are illegally occupied by Ravindra Hanumant Mane merely because the said Caretaker has filed the Appeal as the Constituted Attorney of the Petitioner.

h) That the Respondent No.4 erred in holding that the Appeal filed by the petitioner through her Constituted Attorney is not maintainable and is illegal and cannot be admitted without there being any reason for the same.

- i) That the reasons adopted in both the impugned Orders are dehors the reasons stipulated in the Show Cause Notice issued under Section-33 of the Slum Act and hence cannot be sustained.
- j) That the Respondent No.1 has erroneously held that the petitioner whose name is appearing at Serial No.229 of the Annexure-II was held as ineligible which is contrary to the Annexure-II prepared in the year 2001 which clearly holds that the Petitioner is eligible for permanent alternate accommodation.
- k) That the Respondent No.1 after lapse of more than 13 years after the preparation of Annexure-II cannot hold the Petitioner ineligible to occupy the permanent alternate accommodation.
- l) That the Order passed by Respondent No.1 proceeds on the basis of the letter dated 2.9.2013 issued by Dy.Collector (SRA) directing the Respondent No.1 to get vacated the said flat which direction is issued without hearing the Petitioner and is in breach of the principles of natural justice.
- m) That the action initiated by the Respondent No.1 under section 33 of the Slum Act is on the basis of some complaints received by the SRA copies of which were never provided to the petitioner and hence the Petitioner was never informed about the nature of the complaints which is also in breach of the principles of natural justice.
- n) That the impugned Orders are erroneous, arbitrary and against the principles of Law.
- o) That upon completion of the Slum Rehabilitation Scheme the Respondent No.1 becomes functus officio and does not have any authority to evict the Petitioner from the said Flat No.401, Building No.1.
- p) That the Petitioner craves leave to add, amend, alter and/or delete any of the grounds at the time of hearing.”

6 The learned counsel for the petitioner submits that as on today petitioner is in possession of the suit premises. If both the orders are not set aside, irreparable loss will be caused to the petitioner. Hence, this Hon'ble Court be pleased to allow the present petition and set aside the impugned orders passed by the authorities below.

7 On the other hand, the learned A.G.P for the respondent vehemently opposed the present Writ Petition. She submits that in the present proceeding under the said Act, petitioner by manipulating the documents obtained two flats; one flat no.401 in her name and another flat no.501 in the name of Dattaram Narayan Patil i.e. husband of petitioner. She submits that after considering the record of allotment of both the flats, authority held that petitioner as well as her husband were staying in same hutment. Therefore, petitioner was not entitled any allotment separately. She is entitled to occupy flat no.401. She further submits that when the authority carried out survey, they found that one Mr.Ravindra Hanumant Mane was occupying flat no.401. Hence, the authority issued show cause notice and called upon the petitioner to surrender the said flat. She further submits that considering the reasons given by both the authorities below, there is not substance in the present Writ Petition and same is required to be dismissed.

8 I have heard both the sides at length. It is to be noted that in the present proceeding, the suit flat no.401 was allotted in the name of petitioner whereas flat no.501 was allotted in the name of Dattaram Narayan Patil, husband of petitioner. The authority brought on record documentary evidence to show that petitioner as well as her husband both of them were staying in one hutment. As per the scheme of the

said Act, petitioner as well as husband was entitled allotment of only one flat. In spite of that, two flats were allotted; one in the name of petitioner and another in the name of her husband Dattaram Narayan Patil.

9 Apart from that, when the authority inspected the suit premises they found Ravindra Hanumant Mane third party was in possession of the suit flat no.401. Apart from that, even the said Ravindra Hanumant Mane filed Appeal before the Additional Collector (Encroachment) as constituted attorney of the petitioner. This itself shows that the petitioner created third party right in favour of Ravindra Hanumant Mane which is contrary to the said Act. These facts were taken into consideration by both the authorities at the time of passing impugned orders. As the allotment was obtained by the petitioner by misguiding the authority below, I am of the opinion that petitioner is not entitled any equitable relief from this court on the grounds raised by the petitioner in Writ Petition. Hence, Writ Petition stands rejected.

10 At this stage, the learned counsel for the petitioner seeks stay of this order.

11 The learned counsel for the petitioner submits that this Hon'ble Court passed ad-interim relief on 25.7.2014. Same be continued for further period to take chance in higher court. Same is opposed by the learned counsel for the Corporation.

12 It is to be noted that in the present proceedings, as per the survey report, petitioner is not in possession of the suit flat no.401. Same is in possession of the third party. In the same building flat no.501 was

allotted in the name of petitioner's husband.

13 Considering these facts, I do not find any reason to continue the ad-interim relief granted by this court during the pendency of the present petition. Hence, request of petitioner is rejected.

JUDGE