IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION St. NO. 28426 OF 2016

Baliram Waman Desai & Anr ..Petitioners
Vs.
The Deputy Collector (Evi/Enc) & Ors ..Respondents

Mr. S. K. Mali i/b Mr. R. M. Yadav for the Petitioners

Mr. V. A. Thorat Senior Advocate a/w Mr. Prayag Joshi a/w Mr. P. B. Gujar a/w Mr. B. J. Joshi for the Respondent No.3

Mr. S. D. Rayrikar AGP for the Respondent Nos.1 and 4

CORAM : R. M. SAVANT, J.
DATE : 29th NOVEMBER, 2016

P.C.

1 The above Writ Petition take exception to the order dated 29-9-2016 passed by the Additional Collector (Encroachment / Removal) Western Suburbs, by which order the Appeal filed by the Petitioners against the order dated 9-6-2016 passed by the Competent Authority i.e. Deputy Collector (Encroachment/ Removal) came to be confirmed.

2 The Petitioners herein have their structures in CTS No.247 (pt.) Village Borivali. It seems that land on which the Petitioners' structures are situated has been declared as a slum as long back as on 18-5-1978. The slum dwellers on the said plot of land have constituted themselves into a Co-

operative Housing Society. The Respondent No.3 herein who claims to be the owner of the said land is in the process of implementing a joint project i.e. Slum Rehabilitation Scheme as well as construction of tenaments for the Project Affected Persons for the MMRDA. This is in view of the fact that the land in question has been reserved for the purposes of the Project Affected Persons (PAP's). In respect of the slum dwellers, Annexure – II was prepared out of the 116 slum dwellers on the land in question, 61 have been declared eligible, 44 have been declared ineligible and in respect of 11 their cases are pending adjudication. The Petitioners in the companion Writ Petition No.12291 of 2016 and in the above Petition are amongst the Petitioners who have been declared eligible save and except the Petitioner No.8 in the said Writ Petition No.12291 of 2016. In view of the fact that the Petitioners herein were showing their reluctance to vacate their structures in question so as to facilitate the implementation of the said project i.e. Slum Rehabilitation Scheme, a show cause notice under Section 33 of the Slum Act came to be issued to the Petitioners as to why they should not be evicted from the land in question. The Petitioners participated in the proceedings which were commenced after the issuance of the said show cause notice before the Competent Authority i.e. Deputy Collector (Encroachment / Removal). Suffice it would be to state that by order dated 9-6-2016, the Competent Authority i.e. Deputy Collector (Encroachment / Removal) made the notice absolute and turned down the objections of the Petitioners. Before the

Competent Authority, a statement was made on behalf of the Respondent No.3 developer that the Respondent No.3 would provide the transit rent to the occupants and that it would enter into an agreements with the eligible slum dwellers. In the light of the said statement, the Competent Authority did not deem it appropriate to interfere with the implementation of the said Slum Rehabilitation Scheme and accordingly made the notice absolute by its order dated 9-6-2016.

3 The Petitioners aggrieved by the said order dated 9-6-2016 filed an Appeal under Section 35 of the said Act before the Additional Collector (Encroachment / Removal). The Additional Collector reiterated the findings of the Competent Authority i.e. Deputy Collector (Encroachment / Removal) and dismissed the Appeal by the impugned order dated 29-9-2016. The Companion Writ Petition No.12291 of 2016 had come up for admission before a Learned Single Judge of this Court on 24-10-2016 when the Learned Senior Counsel appearing on behalf of the Respondent No.3 i.e. the developer informed the court that the Petitioners in the said Petition are eligible for the benefit of the Slum Rehabilitation Scheme in the present project, a statement was further made that the Respondent No.3 is ready to execute the registered documents and provide the Petitioners rent in lieu of the transit accommodation. The statement was accordingly accepted. The Petitioners in the instant Petition are similarly situated as the Petitioners in the companion

Writ Petition St. No.12291 of 2016.

4 During the course of the hearing of the above Petition, the Learned Counsel for the Petitioners would contend that the Petitioners desire that they be provided temporary transit accommodation on the site itself. Upon this the Learned Senior Counsel appearing on behalf of the Respondent No.3 would contend that the same is not possible considering the nature of the project and therefore the Respondent No.3 is providing transit rent to the eligible slum dwellers so that they can make their own arrangements.

5 In my view, since two options are open to the developers and since the Respondent No.3 has chosen to pay the transit rent having regard to the nature of the project, the Petitioners would only be entitled to transit rent. In furtherance of the statement made before this Court, in the companion Writ Petition the Learned Senior Counsel made a further statement that the Respondent No.3 would pay an amount of Rs.12,500/- per month to the Petitioners on they vacating the structures in question. Statement accepted. The Petitioners would execute the agreements within one week from date. The Petitioners would be entitled to occupy the structures in question up to 30-1-2017, this is only by way of enabling them to make alternate arrangements. No further extension would be sought for neither the same would be granted. If the Petitioners do not enter into agreements and if they

do not vacate the structures by 30-1-2017, then the authorities would be free to proceed against the Petitioners to evict them in accordance with law.

6 With the aforesaid directions, the Writ Petition is disposed of.

[R.M.SAVANT, J]