

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 10911 OF 2015**

Mrs. Chandrakala Suresh Shivne ..Petitioner
Vs.
State of Maharashtra & Ors. ..Respondents

**WITH
WRIT PETITION NO. 10912 OF 2015**

Mr. Sadhuran Baijanth Gupta ..Petitioner
Vs.
State of Maharashtra & Ors. ..Respondents

**WITH
WRIT PETITION NO. 10913 OF 2015**

Suresh Laxman Shivne ..Petitioner
Vs.
State of Maharashtra & Ors. ..Respondents

**WITH
WRIT PETITION NO. 10914 OF 2015**

Shantidevi Sadhuran Gupta ..Petitioner
Vs.
State of Maharashtra & Ors. ..Respondents

**WITH
WRIT PETITION NO. 11041 OF 2015**

Sadhuran Baijanth Gupta ..Petitioner
Vs.
State of Maharashtra & Ors. ..Respondents

Mr. V. S. Pandey i/b Mr. S. U. Pandey for the Petitioners
Mr. S. D. Rayrikar AGP for the Respondent Nos.1 to 3
Mr. K. P. Tiwari a/w Mr. M.V. Shanbhag for the Respondent No.4
Mr. S. A. Waradkar for the Respondent No.5

CORAM : R. M. SAVANT, J.
DATE : 16th APRIL, 2016

P.C.

1 The above Petitions take exception to the orders passed by the Competent Authority and the Deputy Collector (Encroachment and Removal) Western Suburbs and the orders all dated 1-10-2015 passed by the Additional Collector (Encroachment and Removal) Western Suburbs, by which orders, the Appeals filed by the Petitioners came to be dismissed and resultantly the orders passed by the Deputy Collector and Competent Authority came to be confirmed.

2 In so far as the Deputy Collector and Competent Authority is concerned, the order under challenge in Writ Petition NO.10911 of 2015 and 10913 of 2015 is the order dated 30-6-2015 and in the remaining three Petitions, the order is dated 9-7-2015. However, the order passed by the Additional Collector, (Encroachment and Removal) Western Suburbs bears the same date in all the Petitions i.e. 1-7-2015.

3 The Petitioners claim to have their structures on the plot of land wherein a slum rehabilitation scheme is being implemented by the Respondent No.4 to the above Petitions. It seems that the Petitioners in Writ Petition No.10913 of 2015 and 11041 of 2015 have been declared eligible for allotment of permanent alternate accommodation as their names appear in

Annexure – II published by the Competent Authority. In so far as the remaining three Petitioners are concerned, they have been declared ineligible. The said Petitioners claim that they were carrying out commercial activity in the structures in question. The implementation of the slum rehabilitation scheme in question is on going and it seems that out of 540 occupants, it is claimed on behalf of the Respondent No.4 that about 530 occupants have vacated their structures to facilitate the implementation of the said scheme. The said figure is sought to be disputed by the Learned Counsel for the Petitioners only marginally and not with any deal of conviction.

4 The rehab building wherein the eligible slum dwellers are to be rehabilitated has progressed and 11 slabs are already casted out of 19 slabs. In view of the fact that the Petitioners showed their reluctance to vacate the structures so as to facilitate the implementation of the slum rehabilitation scheme that a show cause notice came to be issued to the Petitioners by the Competent Authority i.e. the Deputy Collector under Section 35/38 of the Maharashtra Slum Areas (Improvement, Clearance and Regulation) Act, 1971 (for short “the Slum Act”). In view of the fact that the Petitioners response was found to be unsatisfactory that the proceedings came to be initiated by the Competent Authority under Section 33/38 of the Slum Act. The said proceedings have culminated in the two orders passed by the Competent Authority i.e. the order dated 30-6-2015 and the order dated 9-7-2015 in

respect of the two sets of Petitioners. The Petitioners aggrieved by the said orders challenged the same by filing an Appeal under Section 35 of the Slum Act before the Additional Collector (Encroachment and Removal) Western Suburbs. The Additional Collector having regard to the fact that the Respondent No.4 herein i.e. the developer is agreeable to provide transit rent both to the eligible and ineligible (for a period of 6 months for the ineligible) and also having regard to the fact that the Petitioners have no justifiable reason to continue on the plot of land in question wherein the slum rehabilitation scheme is being implemented, dismissed the Appeals by the impugned order dated 1-10-2015. As indicated above it is the said orders which are taken exception to by way of the above Petitions.

5 The Learned Counsel for the Petitioners Mr. Pandey sought to urge contentions as regards the quantum of transit rent which is being offered to both eligible and ineligible occupants i.e. Rs.7000/- per month both for commercial and residential. It is also the submission of the Learned Counsel that some of the ineligible slum dwellers have been accommodated insitu.

6 Upon this the Learned Counsel appearing for the Respondent No.4 Mr. Tiwari would contend that insitu accommodation has been granted to the ineligible slum dwellers about two years back and the same therefore cannot be extended to the Petitioners, as the Petitioners' structures are coming in the

way of the implementation of the slum rehabilitation scheme. It is also the submission of Mr. Tiwari that the issue of the transit rent to the ineligible slum dwellers need not be considered at this stage as the entitlement of the ineligible slum dwellers is contingent upon the decision that would be rendered in the Appeal filed by them as regards their eligibility.

7 Having heard the Learned Counsel for the parties, in my view, there is no warrant to interdict in the Writ Jurisdiction of this Court. In so far as the orders passed by the Competent Authority and the Deputy Collector dated 30-6-2015 and 9-7-2015 as also the order dated 1-10-2015 passed by the Additional Collector dismissing the Appeals, no justifiable ground has been made out by the Petitioners to continue on the site in question thereby impeding the implementation of the slum rehabilitation scheme. In so far as the eligible occupants are concerned i.e. the Petitioners in Writ Petition No.10913 of 2015 and Writ Petition No.11041 of 2015, they would be entitled to the transit rent from the Respondent No.4 @ Rs.7000/- per month which is the quantum of transit rent paid to the other slum dwellers similarly situated as them. In so far as the ineligible slum dwellers are concerned who claim to be entitled to allotment of tenement for commercial purposes, they would also be entitled to transit rent @ Rs.7000/- per month till their eligibility is decided. In the event, they are held to be eligible then they would be entitled to the same transit rent as the other slum dwellers who have been offered

transit rent for commercial user.

8 Since the Appeals filed by the Petitioners in Writ Petition No.10912 of 2015 and 10914 of 2015 are pending before the Additional Collector (Encroachment and Removal) Western Suburbs the Additional Collector is directed to hear and decide the Appeals latest by 31-7-2016. In so far as Writ Petition No.10911 of 2015 is concerned, he may file his Appeal if he so chooses within four weeks from date and the said Appeal if filed will also be decided by 31-7-2016. The parties to appear before the Additional Collector on 16-5-2016. It is made clear that in so far as the quantum of rent is concerned both in respect of residential and commercial, the Petitioners are at liberty to agitate the same before the appropriate forum.

9 Subject to the above, the Writ Petitions are dismissed.

[R.M.SAVANT, J]