

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.12578 OF 2015**

Mr.Sheffield Cabral ... Petitioner
V/s.
Dy.Collector (Encroachment) & Ors. ... Respondents

Mr.Vijay S. Thakur for the Petitioner.
Mr.S.D.Rayrikar, AGP for Respondent No.1.
Mr.Tushar Dahibawkar for Respondent No.2.
Mr.Umesh Mankapure for Respondent No.4.

CORAM : M.S. SONAK, J.

DATE : 09th FEBRUARY, 2016.

P.C.

. The challenge in this Petition is to the orders dated 19.03.2015 and 28.09.2015 made by the Competent Authority and the Appellate Authority ordering the eviction of the Petitioner from flat No.608 (Suit Flat), SRA Co-operative Housing Society, Vakola, Santacruz (East), Mumbai.

2. Mr.Vijay Thakur, learned Counsel for the Petitioner has submitted that the authorities under the

Maharashtra Slum Area (Improvement, Clearance and Redevelopment) Act, 1971 (Slum Act) have no authority or jurisdiction in relation to the suit flat, because the suit flat was allotted by Respondent No.2 (Developer) to the Petitioner, in pursuance of agreement dated 24th November, 2008, which is a private agreement between the Petitioner and Respondent No.2. Mr.Thakur has submitted that the building, in which, the suit flat is located, comprises flats which constitute rehabilitation component as well as the free sale component. Mr.Thakur has submitted that the suit flat constitutes the free sale component and this is according to him, this is evident from the circumstances that the suit flat ad-measures 344 sq.ft. when infact the flats comprising the rehabilitation component ad-measure not more than 269 sq.ft.. Mr.Thakur has submitted that even the impugned orders took cognizance of the agreement between the Petitioner and the Respondent No.2, but state that it is for the Petitioner to approach the Civil Court for the purposes of redressal of his rights under the said agreement. Mr.Thakur submitted that this is not proper, particularly as the suit flat, as well as the agreement between the Petitioner and Respondent No.2, does not even

come within the purview of the authorities under the Slum Act.

3. Mr.Thakur in the context of reply filed by and on behalf of Respondent No.2 has submitted that the service agreement dated 30th September, 2010 upon which the Respondent No.2 has placed reliance, was never complied with by the Respondent No.2. Instead in lieu of the obligations under the service agreement dated 30th September, 2010 the Petitioner was allotted the suit flat. He submitted that inasmuch as the impugned orders have not considered all these aspects, the same warrant interference.

4. The learned Counsel appearing for Respondent Nos.1, 2 and 4, defended the impugned orders. They have pointed out that the suit flat is in the building, which comprises the flat of the rehabilitation component only. That apart Respondent No.4, has consistently been held to be eligible to obtain permanent rehabilitation in the suit flat itself. He submitted that infact Respondent No.4 was in occupation of the suit flat, before his dispossession

otherwise than by Authority of law by the Petitioner. It is pointed out that there is no discrepancy in the area and if at all it is the Petitioner, who has, encroached upon a larger area, so as to increase the area of the suit flat 344 sq.ft.. It was pointed out that the agreement dated 24th November, 2008 is a fraudulent document and there was no question of Respondent No.2 for entering into the said agreement. The Respondent No.2 has already complied with the terms under the service agreement dated 30th September, 2010. It was pointed out that the agreement dated 24th November, 2008 could never have been in lieu of compliance with obligations under the service agreement dated 30th September, 2010, because, the agreement dated 24th November, 2008, though fraudulent is of a prior date. For all these reasons, it is submitted that, there is no merit in this Writ Petition and the same should be dismissed with costs.

5. Having heard the learned Counsel for the parties and perused the material on record, in my view no case whatsoever is made to interfere with the impugned order, at least, insofar as Respondent Nos.4 is concerned. There is no dispute that his name appeared in the relevant

Annexure-II and he was entitled to permanent accommodation. The material on record also prima-facie establishes that Respondent No.4 was infact in possession of the suit flat. The material on record also establishes that the plea, in which the suit flat is located comprises mainly rehabilitation component flat. The Petitioner, has not produced on record any allotment letter or any entitlement from the authorities under the Slum Act. In these circumstances the authorities were justified in ordering the eviction of the Petitioner and directing the allotment of suit flat in favour of Respondent No.4.

6. Insofar as the Petitioner's claim, on the basis of agreement dated 24th November, 2008 is concerned, the impugned order had made it clear that the Petitioner can always enforce his alleged rights by instituting a Civil Suit. However, at least, prima-facie, it cannot be accepted that the Respondent No.2 had allotted the suit flat to the Petitioner, in lieu of obligations undertaken under the service agreement dated 30th September, 2010. The service agreement is of the year 2010. Whereas the agreement, upon which, the Petitioner the placed reliance is

of the year 2008, this is sufficient to reject contention of the learned Counsel for the Petitioner, at least at this prima-facie stage. The reason, these observations are prima-facie is because the Petitioner, by the impugned order has been granted a liberty to approach the Civil Court for adjudicating his claim as against the Respondent No.2. The purpose of this order is not to prejudice the Petitioner, in case, the Petitioner chooses to raise such claim before the Civil Court. However, on the basis of alleged agreement between the Petitioner and Respondent No.2, the Petitioner, cannot insist upon continuing in the suit flat of which he is in illegal and unauthorized occupation. The authorities under the Slum Act have correctly appreciated this position and have ordered the eviction of the Petitioner. There is neither any jurisdictional error, nor any perversity in the findings recorded by the authorities. The authorities have been conscious of the limits of their own jurisdiction, and therefore, the authorities have not prejudiced the Petitioner insofar as his alleged claim as against the Respondent No.2 is concerned. Accordingly, such issues as between the Petitioner and Respondent No.2 are kept open for adjudication before the Civil Court, in case, the Petitioner

chooses to institute any Civil Proceedings. At the cost of repetition, however, it is made clear that there is no justification for the Petitioner to insist upon continuing in the suit flat of which the Petitioner is in illegal and unauthorized occupation. The authorities, to ensure that the suit flat is restored to its original area of 269 sq.ft. and the same is allotted to the Respondent No.4. This is because there is no dispute with regard to the entitlement of Respondent No.4 to the suit flat.

7. With these observations as aforesaid, this Petition is dismissed. There shall however, no order as to costs.

(M.S. SONAK, J.)