

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 1475 OF 2016

Amrut P. Shinde .. Petitioner
vs.
The State of Maharashtra and ors. .. Respondents

Mr. K.P. Mishra a/w. P.K. Mishra for the Petitioner.
Ms M.S. Bane, B-Panel counsel for Respondent Nos.1 to 3.
Mr. M.S. Surana for Respondent No.5.

CORAM : M. S. SONAK, J.
DATE : 16 FEBRUARY 2016.

P.C. :-

1] The challenge in this petition is to the orders dated 27 October 2015 and 6 November 2015 made by the Deputy Collector (Encroachment/Removal) and Additional Collector in exercise of powers conferred by Sections 33 and 38 of the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971 (Slum Act).

2] Mr. P.K. Mishra, learned counsel for the Petitioner, submitted that before the order dated 27 October 2015 made by the Deputy Collector, the Petitioner was deprived an opportunity of oral hearing and therefore, the impugned order dated 27 October 2015 is made in violation of principles of natural justice and fair play.

3] Further, Mr. Mishra submitted that the issue of eligibility of the Petitioner to obtain benefits of the rehabilitation scheme is still pending consideration before the Deputy Collector, in terms of the Deputy Collector's order dated 26 August 2015. He submits that the Deputy Collector instead of deciding this issue, has, incorrectly proceeded to make orders under Section 33 and 38 of the Slum Act directing the eviction of the Petitioner from the suit premises. Mr. Mishra has submitted that unless the issue of eligibility is decided, the Petitioner cannot be made to vacate from the suit premises.

4] Mr. M.S. Surana, learned counsel for Respondent No.5-Developer, has submitted that the Petitioner, his wife and his three children are independently claiming eligibility in respect of one and the same premises, which they claimed to have divided into four parts. He submits that this is clearly impermissible and the Authorities under the Slum Act have rightly declined the multiple benefits in respect of a single structure. That apart, Mr. Surana had submitted that the issue of eligibility cannot be linked with the issue of eviction from the suit premises, as otherwise, the entire development is being stalled. Mr. Surana submitted in terms of the impugned orders themselves, even though, the Petitioner is

ineligible, Respondent No.5 is made liable to pay compensation in lieu of alternate accommodation and Respondent No.5 has every intention to comply with this direction. Mr. Surana has also pointed out that the Petitioner had filed a detailed written submission before the Deputy Collector and the order of the Deputy Collector clearly states that the same have been taken into consideration alongwith the oral arguments made by the parties. For all these reasons, Mr. Surana submitted that this is not a fit case to exercise extra ordinary jurisdiction and to interfere with the impugned orders.

5] Upon hearing the learned counsel for the parties and perusing the record, in my judgment, there is no case made out to interfere with the impugned orders.

6] The order made by the Deputy Collector records that the oral hearing was granted to the Petitioner. In case, the Petitioner wants to dispute this position, the Petitioner should have applied to the Deputy Collector for correction of record. That apart, the record clearly bears out that the Petitioner had filed the written submissions and the same have been taken into consideration. The principles of natural justice are never rigid and in any case, the party complaining

of failure of nature justice has to demonstrate some prejudice. In the present case, whatever contentions the Petitioner desired to raise, were set out in the written submissions. Even before this Court, the main submission raised was that the order of eviction could not have been made until the issue of eligibility has determined. All these contentions have been duly considered by the Deputy Collector. As such, it cannot be said that there is any failure to comply with the principles of natural justice and fair play.

7] In terms of the order dated 26 August 2015, made by the Deputy Collector, the Petitioner as well as the three others have been held to be ineligible. The three others include the Petitioner's children. Even though, the Petitioner has held to be ineligible, the Deputy Collector by reference to modified policy dated 16 May 2015 has granted the Petitioner liberty to make a representation in the matter of his eligibility. No doubt, the issue of eligibility is pending consideration. However, the pending consideration of such issue, the Petitioner cannot insist to occupy the suit premises and thereby, the stall development. If, the Petitioner, is held to be ineligible, the Petitioner will not obtain the benefits of the redevelopment scheme. If the Petitioner is held to be eligible, the Petitioner will obtain the

benefit of the redevelopment scheme, once the redevelopment is complete. Therefore, the redevelopment need not be stalled, merely because the issue of eligibility of the Petitioner is pending consideration. In the facts and circumstances of the present case the two issues, have no real nexus with one another.

8] For the aforesaid reasons, this petition is dismissed. However, the Respondent No.5, consistent with the directions in the impugned orders themselves, is liable to make payments towards compensation in lieu of alternate accommodation. Further, in case, the Petitioner is ultimately adjudged as eligible, the Respondent No.5 will be duty bound to grant the Petitioner benefits under redevelopment scheme.

9] This petition is therefore, dismissed. There shall however, be no order as to costs.

(M. S. SONAK, J.)

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