

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION (L) NO.1821 OF 2016**

Kailash Rambadan Mourya

..Petitioner

Vs.

The State of Maharashtra & Ors

..Respondents

Mr. Y. D. Patil for the Petitioner

Mr. M.A. Sayed AGP for the Respondent Nos.1 and 2

Mr. Girish Utangale i/b Utangale & Co. for the Respondent No.3

Mr. Jaydeep Deo for the Respondent No.4

CORAM : R. M. SAVANT, J.

DATE : 26th AUGUST, 2016

P.C.

1 The Writ Jurisdiction of this court is invoked against the order dated 2-7-2016 passed by the Additional Collector (Encroachment / Removal) Eastern Suburbs, Mumbai, by which order the Appeal filed by the Petitioner has been dismissed.

2 Having regard to the aforesaid challenge, a few background facts are necessary to be cited:

The Petitioner's father one Rambadan Mourya had his structure on the land wherein a slum rehabilitation scheme is being implemented through the aegis of the Respondent No.4 developer on behalf of the society of the slum dwellers i.e. the Respondent No.5. Pursuant to the survey that was carried out to determine the eligible slum dwellers, the Petitioner's father was

held to be eligible and his name was appearing in the Annexure – II prepared by the Respondent No.3 wherein the structure of the Petitioner's father was shown as for residential / commercial user. Since the father of the Petitioner i.e. the original occupant was not vacating the structure so as to facilitate the implementation of the said slum rehabilitation scheme, proceedings under Sections 33 and 35 of the Slum Act were required to be initiated against the father of the Petitioner. The same culminated in an order dated 14-9-2009 passed by the Chief Officer of the Mumbai Repairs and Reconstruction Board (MBRRB). The structure was thereafter removed and the Petitioner's father was allotted Gala No.10 in Wing-1 in the rehab building as permanent alternate accommodation.

3 The Petitioner's father has expired and it is an undisputed position that the Petitioner along with his other family members continue to occupy the said permanent alternate accommodation. It appears that after the original structure of the father of the Petitioner was removed, the Petitioner once again encroached upon the land on which the slum rehabilitation scheme is being implemented by putting up a structure of tin sheets wherein he is now carrying out the business of sale of flowers. It appears that on account of the inconvenience that the structure was causing to the implementation of the said slum rehabilitation scheme, the Respondent No.5 has entered into an agreement with the Petitioner in respect of a shop admeasuring 36 sq.ft. The

Petitioner has filed a Suit for specific performance in the City Civil Court, Mumbai in respect of the said agreement. The said Suit is pending.

4 In view of the fact that all the structures except the structure put up by the Petitioner have been removed and since the Petitioner had shown his opposition to the removal of the said structure for the execution and completion of the slum rehabilitation scheme, that a notice under Section 3Z(1) of the Slum Act, came to be issued to the Petitioner asking him to show cause as to why the said structure should not be demolished. The said notice is dated 16-3-2016. The Petitioner showed cause to the said notice before the Competent Authority i.e. the Chief Officer of the Mumbai Reconstruction and Repair Board (MBRRB). This resulted in the proceedings being initiated against the Petitioner under the said provisions wherein the Respondent No.5 and the Respondent No.4 were also appearing. The hearing before the Chief Officer of the MBRRB was as per the regime which was then prevailing, in so far as the provisions of the Slum Act are concerned. The Competent Authority at the relevant time was the officer concerned of the authority to which the land belong either to the MBRRB, MHADA or Municipal Corporation of Greater Mumbai. The hearing in the said proceedings took place on 25-5-2016 before the Chief Officer of the MBRRB on which day it seems that on behalf of the Petitioner a reply dated 17-5-2016 was tendered before the Chief Officer of the MBRRB. The roznama of the said date i.e. 25-5-2016 discloses that the

submissions were advanced on behalf of the Petitioner and that written submissions were tendered on behalf of the society and the developer. The roznama further discloses that in view of the written submissions being tendered, the Chief Officer had closed the matter for orders and ultimately passed the order on 10-6-2016. The Chief Officer having regard to the antecedent facts as stated hereinabove, did not find any merit in the contentions of the Petitioner and accordingly made the notice absolute and thereby ordered the demolition of the Petitioner's structure.

5 The Petitioner aggrieved by the order dated 10-6-2016 passed by the Chief Officer of the MBRRB filed an Appeal before the Additional Collector (Encroachment and Removal) Eastern Suburbs in terms of the Government Resolution dated 27-5-2016 as the Additional Collector was the Appellate Authority in terms of the said Government Resolution. The Appellate Authority i.e. the Additional Collector (Encroachment / Removal) Eastern Suburbs reiterated the findings of the Chief Officer and dismissed the Appeal. In so far as the issue whether the Chief Officer of the MBRRB could have decided the proceedings, the Appellate Authority held that since at the relevant time the Chief Officer was the authority to decide the proceedings under Section 3Z(1), it could not be said that the order has been passed without jurisdiction. As indicated above, it is the said order dated 2-7-2016 passed by the Appellate Authority which is taken exception to by way of the above Petition.

6 The principal contention urged on behalf of the Petitioner by the Learned Counsel Mr. Patil is that by the Government Resolution dated 27-5-2016 the Competent Authority as also the Appellate Authority have changed and are now those mentioned in the said Government Resolution. In so far as the Competent Authority is concerned, it is the Deputy Collector (Encroachment / Removal) and in so far as the Appellate Authority is concerned, it is the Additional Collector (Encroachment / Removal). Since in the instant case the land is situated in Mulund, the Competent Authority would be the Deputy Collector (Encroachment/ Removal) Eastern Suburbs. It was the submission of the Learned Counsel that in view of the said Government Resolution dated 27-5-2016, the Chief Officer of the MBRRB had ceased to be the Competent Authority from 27-5-2016 and therefore could not have passed the order dated 10-6-2016. It was also the submission of the Learned Counsel that since the Petitioner has filed the Suit for specific performance, he would not be evicted from the structure in question pending the Suit. It was also the submission of the Learned Counsel for the Petitioner that the officer who has passed the said order dated 2-7-2016 as the Appellate Authority was the charge of the Additional Collector at the relevant time and therefore could not have dealt with the Appeal having regard to Section 35 of the Slum Act.

7 Per contra the Learned Counsel Mr. Utangle appearing for the Respondent No.3 and the Learned Counsel Mr. Deo appearing for the Respondent No.4 would support the orders passed by the authorities below. The Learned Counsel for the Respondent No.3 would draw this courts attention to the roznama of the case and submit that since the Chief Officer of the MBRRB had reserved his order after the hearing was completed on 25-5-2016 which is prior to the Government Resolution being issued, it cannot be said that the Chief Officer of the MBRRB could not have passed the order. The Learned Counsel would submit that a reasonable construction have to be given to the said Government Resolution in respect of matters where hearing was completed but orders remained to be passed. The Learned Counsel would submit that the instant case is a case where the Petitioner having been already rehabilitated by the allotment of permanent alternate accommodation has once again re-encroached on the property in question wherein a slum rehabilitation scheme is being implemented and therefore no indulgence can be shown to the Petitioner.

8 Having heard the Learned Counsel for the parties, I Have considered the rival contentions. As indicated above, on account of the reluctance of the Petitioner's father to vacate the structure so as to facilitate the implementation of the slum rehabilitation scheme that the proceedings under Sections 33 and 35 of the Slum Act were required to be initiated which

culminated in the order of eviction dated 14-9-2009 passed by the Chief Officer of the MBRRB. There is no dispute about the fact that the Petitioner's father has been allotted a permanent alternate accommodation being Gala No.10 in Wing-1 in the rehab building for residential / commercial purposes. The Petitioner and his family members continue to occupy the said permanent alternate accommodation. It appears that after the original structure was removed, the Petitioner has again re-encroached on the land by putting up a structure of tin sheet where he claims he is carrying on business of selling flowers. It is on account of the said act that the proceedings were required to be initiated under Section 3Z(1) of the said Act, which have culminated in the impugned order dated 2-7-2016 passed by the Additional Collector.

9 In so far as the contention of the Learned Counsel for the Petitioner as regards whether the Chief Officer of the MBRRB could have passed the order dated 10-6-2016, as indicated hereinabove pursuant to the notice issued under Section 3Z(1) the hearing was completed on 25-5-2016 and what remained was passing of the order which was reserved for orders in view of the fact that the written submissions were filed by the Respondents. Hence in so far as the proceedings are concerned, the hearing was completed and what remained was passing of the order which was passed on 10-6-2016 i.e. after the resolution dated 25-5-2016 which effected a change in the Competent Authority as well as the Appellate Authority. Though the resolution

does not make any provision for pending matters, the same would have to be construed in a manner so as to nullify the hearing which has taken place in matters where only the orders remained to be passed. In my view, therefore, it cannot be said that the Chief Officer of the MBRRB could not have passed the order on 10-6-2016 after the Government Resolution had come into force. The Appellate Authority has therefore rightly held that since the Chief Officer of the MBRRB at the relevant time was the Competent Authority, he was well within his powers to pass the orders pursuant to the notice issued under Section 3Z(1). In my view, there is no merit in the contentions urged on behalf of the Petitioner as regards the jurisdiction of the Chief Officer of the MBRRB.

10 In so far as the Appellate Authority is concerned the Learned AGP has placed before the Court the order dated 2-5-2016 passed by the State Government whereby the officer who has signed the order Smt Sonali Mule, Resident Deputy Collector (Encroachment / Removal) appointed as the incharge Additional Collector. In view thereof the contention of the Learned Counsel for the Petitioner cannot be accepted.

11 However what stares us in the face in the instant matter is that the Petitioner's father for the structure which was originally existing on site has already been rehabilitated by allotment of permanent alternate accommodation in the form of Gala No.10 in Wing-1 which is for residential /

commercial user. The Petitioner by once again encroaching upon on the same land is now seeking to profiteer by claiming another allotment in respect of the structure which he has put up by way of re-encroachment. The scheme propounded by the State Government by fixing the cut of date i.e. 1-1-1995, is for rehabilitation and not for profiteering or self aggrandizement. It is also required to be noted that the Petitioner's structure is coming in the way of the completion of the slum rehabilitation scheme as the work relating to roads and drainage is being affected. It seems that a large number of slum dwellers have already been rehabilitated in the rehab buildings and therefore the amenities to the said occupants is being effected. The Respondent No.4 is also not in a position to obtain the completion certificate on account of the existence of the structure of the Petitioner, hence no indulgence can be shown to the Petitioner. In so far as the agreement allegedly executed by the Respondent No.4 in favour of the Petitioner is concerned, since the Petitioner has already filed a Suit for specific performance it is in the said Suit that the Petitioner may agitate his grievance in respect of his entitlement to a shop admeasuring 36 sq.ft. in terms of the agreement. However, he cannot continue on the land on the pretext that his Suit is pending.

12 In that view of the matter, no case for interference in the Writ Jurisdiction of this Court is made out, the Writ Petition is accordingly dismissed.

[R.M.SAVANT, J]