

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

WRIT PETITION (L) NO. 1856 OF 2016

Sandhya Sridhar Rapol	...Petitioner
vs.	
Additional Collector (Enc/Rem), and Appellate Authority – Eastern Suburbs, Mumbai & Ors.	...Respondents

Mr.Tushar Kochale for Petitioner.
Mr.Saurabh Butala I/b. Swati Sawant for Respondent No.4.
Mr.R.J. Mane, AGP for Respondent No.12 / State.

CORAM : S.C. GUPTE, J.

12 JULY 2016

P.C. :

This petition filed under Articles 226 and 227 of the Constitution of India challenges an order passed by the Additional Collector (ENC/REM), Eastern Suburb, Mumbai under Section 35 of the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971.

2 The Petitioner is a slum dweller in possession of a hutment, which is designated as structure No.T-195 in the Electoral Roll for 1/1/95. The Electoral Roll shows the name of one Laxman Yadrigi as the occupant of this structure. The Petitioner claims to have purchased the structure from Laxman Yadgiri. She relies on various documents showing her possession. It is the Petitioner's case that the Petitioner's application to the Deputy Collector for declaring the Petitioner as an eligible slum dweller to be notified in Index-II in respect of a Slum Rehabilitation Scheme at Rahul Nagar Zopadpatti No.II at Sion-Chunabhatti in Mumbai is pending. It is submitted that a surveyor appointed by the Deputy Collector has made a panchnama, which shows the separate existence of the Petitioner's premises and yet, there is no decision on the Petitioner's eligibility as a slum dweller to be included in Index-II. It is the

Petitioner's case that an earlier order dated 13 May 2016 passed by the Deputy Collector in respect of an adjacent structure held by the Petitioner's father, Sattayanarayan Narsayya Chilveri, is being used by the authorities and the developer for evicting the Petitioner from the protected structure. The Petitioner's appeal challenging such eviction under Section 35 of the Slum Act has been rejected by the Additional Collector (ENC/REM), Eastern Suburb, Mumbai. Though it is obvious that the Petitioner as an individual slum-dweller claiming eligibility cannot hold up the development project (out of 691 occupants / slum dwellers, as many as 688 having already vacated their respective structures, which have since been demolished for implementation of the rehabilitation scheme), it is equally clear that the Petitioner's eligibility as a slum dweller will have to be determined.

3 Learned Counsel for the Respondent-State and the Competent Authority states that the Petitioner's eligibility as a slum dweller will be considered by the Competent Authority within a period of four weeks from today. Respondent No.4, who is the developer in charge of the SRA project, has offered to deposit Rs.30,000/- towards three months' rent for alternative transit accommodation payable to the occupant in this court, without prejudice to the rights and contentions of Respondent No.4 on merits of the Petitioner's claim for eligibility. The Petitioner has no objection to handing over possession of the structure for demolition provided the authorities carry out an appropriate survey and make a panchnama beforehand and consider her application for eligibility expeditiously.

4 In the premises, the petition is disposed of in terms of the following order :

(i) The impugned order dated 29 June 2016 passed by Respondent No.1 in Slum Appeal No.24 of 2016 is quashed and set aside;

(ii) Respondent Nos.2 to 4 shall not evict the Petitioner or demolish her structure without first making a panchnama under the joint signatures of the

surveyor appointed by the Competent Authority and the Petitioner. The authorities shall carry out such survey, make a panchnama and prepare a survey report in respect of the structure, indicating the dimensions as also possession of the structure;

(iii) After such survey is carried out and panchnama is made, the Petitioner shall vacate the premises and allow Respondent No.4 to demolish the structure. Such survey to be carried out latest by 16 July 2016;

(iv) Respondent No.4 shall deposit a sum of Rs.30,000/- in this court latest by 16 July 2016. Such deposit shall be without prejudice to the rights and contentions of Respondent No.4 as regards the Petitioner's claim for eligibility as a slum dweller;

(v) The Competent Authority shall determine the Petitioner's eligibility within a period of four weeks from today. In case the Petitioner is held eligible, the requisite steps under the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act shall be taken for declaration of eligibility as well as alternative accommodation to be offered to the Petitioner under the Slum Rehabilitation project as also rent payable to the Petitioner in lieu of temporary alternative accommodation during implementation of the project; and

(vi) In the event, the Petitioner is held to be eligible, she shall be entitled to withdraw the amount deposited by Respondent No.4 in this court in terms of this order.

(S.C. Gupte, J.)