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

WRIT PETITION (L) NO. 2132 OF 2016

Mrs. Vanaja Poojari & Ors.

..Petitioners

Versus

State of Maharashtra & Ors.

..Respondents

AND

WRIT PETITION (L) NO. 2133 OF 2016

Shri Raghu K. Pujari (Suvarna)

..Petitioner

Versus

State of Maharashtra & Ors.

..Respondents

Mr. Cherag Balsara I/b. Ajay Patil for Petitioners in both petitions.

Mr. Anurag Gokhale, Asstt. Govt. Pleader for Respondent Nos. 1, 3 and 4 in Writ Petition (L) No. 2132/2016.

Mr. Jagdish Reddy with Arvind Aswani for Respondent No. 2.

Mr. P.K. Dhakephalkar, Senior Advocate with Mr. R.D. Soni I/b. Omkar Kulkarni for Respondent No. 5.

CORAM: S.C. GUPTE, J.

RESERVED ON : 26 AUGUST 2016

PRONOUNCED ON : 28 SEPTEMBER 2016

ORDER :

Heard learned Counsel for the parties. Rule. The Respondents waive service. By consent taken up forthwith for hearing.

2. By these petitions, under Article 226 of the Constitution of India, the Petitioners challenge the original orders of the Deputy Collector (Encroachment and Removal) and Competent Authority under Section 33 of the Maharashtra Slum Areas (I.C.&R.) of 1971 (the Act) and the

Appellate orders of the Additional Collector and Appellate Officer under Section 35 of the Act. The Petitioners claim to be carrying on business in the name of Ambika Auto Works and occupiers of structures in a property, bearing Final Plot No.571 of TPS-IV of Mahim Division at Dadar (West) in Mumbai. The property is being developed under the Amended Development Control Regulations 33(10) through a Slum Rehabilitation Scheme. The Slum Rehabilitation Authority has issued an LOI in favour of Respondent No.5 Developer for development in terms of the Slum Rehabilitation Scheme. Annexure II issued in respect of the property showed the structure of Ambika Auto works as eligible at Serial No.24 for getting permanent alternate accommodation under the scheme, whilst the Petitioners are shown at Serial Nos.25, 26, 27 and 28 as non-eligible occupants on the ground that no documents were submitted by them showing possession prior to 1 January 1995. The Petitioners have filed their substantive appeals for deciding their eligibility before the Additional Collector and Appellate Officer, Mumbai City in accordance with law. Pending these appeals, the Competent Authority has issued notices under Section 33 of the Act and passed the impugned final orders directing the Petitioners to vacate their respective structures. The Petitioners' appeals were rejected by the Appellate Authority. The Petitioners, in the premises, pray for a writ of certiorari for quashing and setting aside the impugned original and appellate orders and require a mandamus for directing the Additional Collector and Appellate Officer, Mumbai City to decide their appeals in respect of their eligibility under the proposed Slum Rehabilitation Scheme.

3. Section 33 of the Act provides for the power of eviction to be

exercised by the Competent Authority. Upon being satisfied that the occupants of any building or structure have not vacated it in pursuance of any order or direction given by the authority, the authority is required to direct eviction of the occupants. It is not in dispute that in the present case, the Competent Authority has by a notice and direction required the Petitioners to vacate the premises. The Petitioners really have no defence to the impugned orders of eviction. As submitted across the bar in the present petitions, the Petitioners are not in any way opposing either the Slum Rehabilitation Scheme *per se* or the right of the Competent Authority to require them to vacate the premises. What they really press is their right to be accommodated in the rehabilitation scheme. That is a matter which is already pending in the appeals filed by the Petitioners before the Competent Authority and Appellate Officer. The rehabilitation scheme, in the premises, cannot be held up due to the pendency of the Petitioners' appeals. Instead, interest of justice will be served, if these petitions are disposed of in the following terms. Respondent No.5 developer has no objection to the following terms. It is ordered accordingly as follows :

(I) The Petitioners shall vacate and handover vacant and peaceful possession of the premises occupied by them to Respondent No.5 for the purpose of demolition and redevelopment within a period of fourteen days from the date hereof. Such handing over of possession shall be without prejudice to the rights of the Petitioners claimed in their respective Appeals / Applications filed before the Deputy Collector and the Competent Authority (Respondent No.4 herein). After the premises are so handed over,

Respondent No.5 shall be at liberty to demolish the premises for the purpose of redevelopment;

(II) The Appeals filed by the Petitioners on 16 May 2016 shall be decided by the Deputy Collector and Competent Authority (Respondent No.4 herein) within a period of four weeks from today;

(III) In the event the Petitioners are held to be eligible for permanent alternate accommodation by the Competent Authority, Respondent No.5 shall provide such permanent alternate accommodation in the same project and of such area as may be decided by the Competent Authority;

(IV) Respondent No.5 shall pay transit rent of Rs.20,000/- per month to each of the Petitioners in Writ Petition (Lodging) No.2132 of 2016 till their eligibility is decided by the Competent Authority and to the Petitioner in Writ Petitioner (Lodging) No.2133 of 2016 till the Petitioner is rehabilitated;

(V) It will be open for the Petitioners to make an application to the Chief Executive Officer of Slum Rehabilitation Authority under Clause 5.3 of the Appendix IV of amended D.C.R. 33(10) of Development Control Regulation for Greater Mumbai, 1991 read with Circular No.70 dated 30-12-2004 issued by C.E.O./S.R.A. If any such application is made, the same shall be decided by the Authority in

accordance with law. Respondent No.5 shall act in the matter in accordance with the decision of C.E.O./S.R.A., if any.

(S.C. GUPTE, J.)