

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

WRIT PETITION (L) NO.2138 OF 2016

Shri Jaykishan Subhashsingh Chauhan

And Others

... Petitioners

Versus

State of Maharashtra And Others

... Respondents

.....

Mr. Swapnil Bangur a/w Mr. Seelang Shah i/b Lex Services for the
Petitioners.

Mr. Hemant Ghadigaonkar for Respondent No.8.

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CORAM : S.C.GUPTE, J.

DATE : 12 AUGUST 2016.

P.C. :

. Heard learned Counsel for the parties.

2 The Petition challenges an order passed by the High Power Committee constituted under the Government Notification dated 15 November 2007. This notification is issued in accordance with the order passed by this Court in the case of Tulsiwadi Navnirman Co-op Vs. State of Maharashtra in Writ Petition No.1326 of 2007. The subject matter of controversy concerns the eligibility of the Petitioners as protected slum dwellers in respect of a Slum Rehabilitation Scheme. The eligibility of the Petitioners declared by the Competent Authority was challenged in an appeal preferred by Respondent No.8 herein before the Additional Collector under Section 35 of Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971 ("Slum Act"). Being aggrieved by the appellate order passed by the Additional Collector, Respondent No.8

carried the matter before the High Power Committee in an application after initially challenging the appellate order before this Court in a writ petition. This Court, after hearing the parties, disposed of the writ petition of Respondent No.8 by allowing Respondent No.8 to withdraw the Petition with liberty to approach the High Power Committee. The High Power Committee, in its order in the application made in pursuance of this order, remanded the matter to the Additional Collector to be decided on its own merits and in accordance with law. The Additional Collector was directed to dispose of the matter within one month. This order of the High Power Committee is under challenge in the present Petition.

3 Learned Counsel for the Petitioners submits that appeals under Section 35 of the Slum Act can be presented only by the persons, who have been ordered to be evicted under Section 33 of the Slum Act or by the occupants aggrieved by an order of demolition passed under Section 38 of the Slum Act. Section 35 provides for an appeal against notice or direction issued by the Competent Authority and this remedy is given to all parties aggrieved by such notice or direction. In case Respondent No.8 was aggrieved by the eligibility of the Petitioners declared by the Competent Authority, it was certainly open to Respondent No.8 to carry the matter in appeal before the Additional Collector under Section 35 of the Slum Act. This appeal could not have been rejected simply on the ground of want of locus on the part of Respondent No.8. In the face of the order of the appellate forum rejecting the appeal simply for want of locus, the High Power Committee has remanded the matter back to the Additional Collector for a fresh determination in accordance with law. No fault can be found with the order. In any event, whatever objections the Petitioners

have either to the maintainability or to the merits of the appeal including objections on the ground of delay or laches, the petitioners will be at liberty to urge the same before the Additional Collector in the appeal remanded to him.

4 The Petition is accordingly dismissed. No order as to costs.

5 All rights and contentions of the parties on merits are kept open

(S.C.GUPTE, J.)