

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

WRIT PETITION NO. 2232 OF 2015

Vandana Ganpat Shendge	..	Petitioner
vs.		
Deputy Collector (Encroachment / Removal) & The Competent Authority Bandra & Ors.	..	Respondents

Mr. S. B. Deshmukh for Petitioner.
Mr. Anuj Narula i/b. Jhangiani Narula & Associates for Respondent
No. 2.
Mr. Ajay L. Yadav for Respondent No. 3.

CORAM : M. S. SONAK, J.
DATE: 19 JANUARY 2016

P.C :

1] The challenge in this petition is to the orders dated 30 September 2014 and 17 July 2015 made by the Deputy Collector and the Additional Collector respectively in exercise of powers conferred upon them under Sections 33 and 38 of the Maharashtra Slum Area (Improvement, Clearance and Redevelopment) Act, 1971 (Slum Act).

2] Mr. Deshmukh, the learned counsel for the petitioner has contended that the petitioner was not given a fair hearing by the Deputy Collector before the impugned order dated 30 September 2014 was made. That apart, it is the case of the petitioner that she is in fact a member or in any case entitled to be enrolled as a

member of the respondent no. 3 co-operative society, which comprises owners of a portion of the property which is now being developed by the respondent no. 2. He submits that such claim of membership could not have been adjudicated upon by the Authorities under the Slum Act and to the said extent, the impugned orders are *ultra vires*. Mr. Deshmukh further submitted that though the petitioner was held as ineligible in Annexure II, in so far as the development of the slum portion of the suit property is concerned, the petitioner has instituted an appeal before the Chief Executive Officer (CEO), which is pending consideration. Therefore, Mr. Deshmukh submits that pending the issue of eligibility, the Authorities under the Slum Act ought not to have made orders under Sections 33 and 38 of the Slum Act ordering the eviction of the petitioner.

3] The learned counsel for the respondent nos. 2 and 3 have opposed the grant of any reliefs in this petition. They have pointed out that the respondent no. 3 co-operative society comprised in all 35 members, who have, almost ten years ago executed an agreement with the respondent no. 2. The petitioner, for all these ten years, has neither chosen to question this agreement nor raised any claim before the Authorities, with regard to her entitlement to be a member of the co-operative society, except perhaps by way of

defence to notices under Sections 33 and 38 of the Slum Act. The learned counsel submitted that such claim is frivolous, belated and deserves summary rejection. The learned counsel for the respondent no. 2 has submitted that the respondent no. 2 will have no objection if the issue of inclusion of the name of the petitioner in Annexure II is disposed by the CEO within a time bound period. Depending upon the decision, the respondent no. 2 will extend the benefits of development, including *inter alia* by way of allotment of permanent accommodation admeasuring approximately 269 sq. ft. to the petitioner, under the provisions of the Slum Act. The learned counsel for the respondent no. 2 submitted that the respondent no. 2, without prejudice and despite the circumstance that the petitioner is not entitled to, will pay to the petitioner, compensation in lieu of alternate accommodation at the rate of Rs.16,500/- per month, for a period of twelve months, in case the petitioner vacates the suit structure and hands over the possession thereof to the respondent no. 2 within a period of fifteen days from today. The learned counsel for the respondent no. 2 emphasized that this offer is clearly without prejudice and without accepting any alleged rights of the petitioner. Both the learned counsel however submit that there is no justification on the part of the petitioner to continue to hold on to the suit premises, wherein, the petitioner does not even presently reside. They submitted that on account of this, further development

in the project is seriously affected and therefore there is no warrant to interfere with the impugned orders.

4] Having heard the learned counsel for the parties, in my judgment, there is no reason to interfere with the impugned orders. As yet, the petitioner has not instituted any proceedings with regard to her claim of membership to the respondent no. 3 society. In any case, these issues can always be kept open and consequently the same issues are kept open. All contentions of all parties in this regard are kept open. This is hardly an occasion to express any opinion one way or the other upon such issue, which is yet to be properly raised by the petitioner.

5] In so far as the issue of inclusion of the name of the petitioner in Annexure II is concerned, the CEO is directed to dispose of the pending proceedings as expeditiously as possible and in any case within a period of six months from today. It is however made clear that whatever the decision of the CEO or the Appellate Authority, should an occasion arise for any appeal, the respondent no. 2, consistent with its offer, shall pay to the petitioner compensation in lieu of alternate accommodation at the rate of Rs.16,500/- per month, for a period of twelve months, commencing from the date the petitioner hands over the vacant possession of the suit structure

to the respondent no. 2. This is further subject to the petitioner handing over the possession of the suit structure to the respondent no. 2 within a period of fifteen days from today. In case, the petitioner fails to hand over the possession of the suit structure within fifteen days from today, then, the without prejudice offer made by the respondent no. 2 shall stand revoked, particularly if the respondent no. 2 has to take out further proceedings in order to secure the eviction of the petitioner.

6] Further, it is made clear that in case the petitioner is held eligible, then, the respondent no. 2 will be duty bound to allot to the petitioner permanent alternate accommodation admeasuring 269 sq. ft. in terms of the provisions contained in the Slum Act. The statement made on behalf of the respondent no. 2 to the effect that this shall be done, is accepted as a statement made to this Court. Further, in case the petitioner is held as eligible, then, the respondent no. 2 is obligated to continue to pay compensation in lieu of alternate accommodation at the rate of Rs.16,500/- even beyond one year, until permanent alternate accommodation is actually allotted to the petitioner.

7] There is no case made out to interfere with the impugned orders either on the grounds of breach of natural justice or on the

other grounds urged by Mr. Deshmukh on behalf of the petitioner. There is no jurisdictional error in the making of the impugned orders.

8] Subject to the aforesaid directions and observations, this petition is disposed of. There shall be no order as to costs.

9] All concerned to act on basis of authenticated copy of this order.

(M. S. SONAK, J.)

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