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

WRIT PETITION NO.183 OF 2015

Ramalautan Matabadal Pandey	... Petitioner
Versus	
State of Maharashtra and Ors.	... Respondents

Mr. Omprakash Pandey a/w Mrs. Anita Vasani for the Petitioner.
Mr. U.S. Upadhyay, AGP for the Respondent No.1- State.
Mrs. Geeta Joglekar for the Respondent Nos.2 to 4 – BMC.

**CORAM : A.S. OKA &
C.V. BHADANG, JJ.**

DATE : 2nd MARCH, 2016

PC.

1 Heard the learned counsel appearing for the Petitioner, the learned counsel appearing for the second and third Respondents and the learned AGP for the first Respondent. The averments made in paragraph 3 of the Petition read thus :-

“3. The petitioner states that the petitioner was having 2 commercial structure and in one of the commercial structure the petitioner was carrying on business of General Stores under the name and style of “Manoj Choice Corner” and said structure is bearing Census No.KWX-6-1/1 C K/West Ward situate at Gulmohar Road, Juhu, Vile Parle (West), Mumbai- 400 049 and another structure of the Petitioner is bearing Census

No.KWX-G 1/1 C, K/West Ward, and situated at Gulmohar Road, Juhu, Vile Parle (West), Mumbai-400 049 wherein the petitioner was carrying on business under the name and style of “Janata Circulating Library”. The Petitioner states that both the structures being commercial premises were in use, occupation and possession of the petitioner before the datum line of 1.1.1995 as eligible slum dweller.”

2 The submission of the learned counsel appearing for the Petitioner is that though in respect of the second structure referred in paragraph 3, alternate accommodation has been granted to the Petitioner, in respect of the first structure, alternate accommodation has not been granted. His submission is that prayer in this Petition is confined to grant of alternate accommodation in respect of the first structure bearing Census No.KWX-6-1/1 C. The Petitioner is relying upon the notice dated 16th October, 2009 issued by the Mumbai Municipal Corporation under Section 314 of the Mumbai Municipal Corporation Act, 1888. In paragraph 10, it is alleged that the said structure was illegally pulled down.

3 It will be necessary to make a reference to the statements made in paragraphs 17L and 17M. In paragraphs 17L and 17M, the allegation is that the Petitioner filed a Suit bearing L.C. Suit No.1997 of 2008. A copy of the order passed in Notice of Motion No.2291 of 2012

is annexed to the Petition as Exhibit-'S'. From the said Notice of Motion, it appears that the Plaintiff in L.C. Suit No.1997 of 2008 is not the Petitioner, but one Manoj Kumar Pande who is the son of the Petitioner. Paragraph 2 of the order shows that the suit is filed in respect of the structure bearing Census No.KWX-6-1/1C. Paragraph 2 records the contention of the said Manoj Kumar Pande – Plaintiff in the said suit that in the year 1993 the suit premises was given to the present Petitioner. From the said order, it appears that the contention of the Petitioner's Son is that he was in possession of the said premises and he was dispossessed. Apart from the fact that the statements made in paragraphs 17L and 17M are false and misleading to the knowledge of the Petitioner, his son Manoj Kumar Pande who is the Plaintiff in the aforesaid suit was claiming to be in possession of the same structure in respect of which by taking out the Notice of Motion in the said suit, he sought relief of reconstruction. Though the Petitioner was having knowledge of the pendency of the suit, admittedly he did not intervene in the suit by pointing out to the Civil Court that the Plaintiff in the suit has no right, title and interest. The Notice of Motion in the said suit was dismissed by order dated 5th February, 2013. The learned Judge of the City City Court held that prima facie case is not established by the Plaintiff – Manoj Kumar Pande.

4 Thus, by filing this Petition, the Petitioner is seeking alternate accommodation in lieu of the structure which is the subject matter of the L.C. Suit No.1997 of 2008 filed by his son in which the son has claimed relief of restoration of the structure.

5 Hence, considering the conduct of the Petitioner, he is disentitled to invoke the discretionary and extra-ordinary jurisdiction of this Court under Article 226 of the Constitution of India. The Writ Petition is rejected.

(C.V. BHADANG, J)

(A.S. OKA, J)