

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION St. NO. 366 OF 2017**

Pankaj Limbachiya & Ors

..Petitioners

Vs.

The State of Maharashtra & Ors

..Respondents

Mr. A. M. Saraogi for the Petitioners

Mr. S. L. Babar AGP for the Respondent No.1

Mr. Shailesh Shah Senior Advocate a/w Mr. Ketan Chothani i/b Mr. C. A. Patel for the Respondent No.4

CORAM : R. M. SAVANT, J.

DATE : 11th JANUARY, 2017

P.C.

1 The Writ Jurisdiction of this Court is invoked against the order dated 28-12-2016 passed by the Additional Collector (Encroachment / Removal) Western Suburbs, by which order the Appeal filed by the Petitioners came to be dismissed and resultantly the order dated 22-8-2016 passed by the Competent Authority i.e. the Deputy Collector (Encroachment / Removal) came to be confirmed.

2 The Petitioners have their structures on the land bearing CTS No.111, 111/1 to 35 of Village Malad (North) Taluka Borivali, Mumbai, which land is the subject matter of a slum rehabilitation scheme being implemented for one Saishraddha CHS, which is the society comprised of the slum dwellers

on the said plot of land. It seems that out of the 13 Petitioners, 2 Petitioners i.e. the Petitioner No.1 Pankaj Limbachiya and the Petitioner No.10 Harishchandra Shirke are not eligible in terms of the Annexure – II which has been published by the Competent Authority i.e. the Deputy Collector (Encroachment / Removal). In so far as the said Petitioners are concerned, their Appeals in respect of the ineligibility are pending according to the Learned Counsel for the Petitioner. In view of the fact that the Petitioners structures were impeding the implementation of the said slum rehabilitation scheme that a show cause notice came to be issued under Section 33 of the Slum Act, calling upon the Petitioners to vacate the structures. The said show cause notice was replied to on behalf of the Petitioners. The proceedings pursuant to the said show cause notice culminated in the order dated 22-8-2016 passed by the Competent Authority i.e. the Deputy Collector (Encroachment / Removal). The Competent Authority i.e. the Deputy Collector (Encroachment / Removal) held that the Petitioners by continuing to occupy their structures though 10 of them have been declared to be eligible are thereby impeding the implementation of the slum rehabilitation scheme. The Competent Authority has recorded the undertaking of the developer i.e. the Respondent No.3 herein that the eligible slum dwellers would be paid transit rent for a period of 18 months in lump sum.

3 The Petitioners aggrieved by the said order dated 22-8-2016 filed

an Appeal under Section 35 of the Slum Act. The Additional Collector having regard to the aforesaid conspectus of facts as also having regard to the undertaking given by the Respondent No.3 as regards the payment of transit rent, did not deem it appropriate to interfere with the order passed by the Competent Authority dated 22-8-2016 and accordingly dismissed the Appeal.

4 The Learned Counsel appearing on behalf of the Petitioners would submit that the Petitioners are principally not against the redevelopment scheme but are interested in safeguarding their interest in the matter of Respondent No.3 executing the agreement with them and paying the transit rent. The Learned Counsel would also contend that in so far as the slum dwellers who are held to be eligible for commercial premises are concerned, they should be given premises fronting the road.

5 Upon this the Learned Senior counsel appearing for the Respondent No.3 Mr. Shah would submit that the Respondent No.3 is agreeable to execute the agreements with the eligible slum dwellers but there can be no question of any preferential allotment to be given in respect of the commercial premises and that the eligible Petitioners would be treated on par with the other eligible slum dwellers. In so far as the transit rent is concerned, the Learned Senior Counsel would state that the said transit rent was offered to the eligible Petitioners by cheques but the Petitioners declined to accept the

same, resulting in the said cheques being deposited with the Competent Authority i.e. the Deputy Collector (Encroachment / Removal).

6 In my view, in the light of the statement made by the Learned Senior Counsel appearing on behalf of the Respondent No.3, the Petitioners apprehensions if any stands assuaged. In so far as preferential treatment to the Petitioners is concerned, it is not possible to accept the said request of the Learned Counsel for the Petitioners. If the Petitioners are desirous of obtaining the cheques for transit rent, they may approach the Competent Authority i.e. the Deputy Collector (Encroachment / Removal) for the same. If any such approach is made, the Competent Authority i.e. the Deputy Collector (Encroachment / Removal) would hand over the cheques on the same day, as the Petitioners would approach him.

It is required to be noted that the Petitioner No.1 has handed over possession of his premises and accepted cheque for Rs.2,16,000/- as also given a declaration that the Respondent No.3 has completed formalities under the scheme. Having regard to the facts as aforestated, the Writ Petition is dismissed.

7 However, at the request of the Learned Counsel for the Petitioners, time to vacate the structures is granted up to 25-1-2017. If the structures are

not vacated by the said date, then the authorities would be free to get the structures vacated by following the due process of law.

[R.M.SAVANT, J]