

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE CIVIL JURISDICTION

WRIT PETITION NO. 1623 OF 2013

Shri Dilip P. Rane .. Petitioner.
v/s.
Administrator and Divisional Commissioner,
Konkan Division, Mumbai & Others .. Respondents.

Mr. N. V. Bandiwadekar, for the Petitioner.
Mr. S. H. Kankal, AGP for Respondent Nos.1 to 3 and 5.
Mr. Kuldeep Patil, for Respondent No.4.

CORAM: M.S.SANKLECHA, J.
DATE : 20th NOVEMBER, 2017.

P.C:-

This Petition under Article 227 of the Constitution of India, challenges the order dated 23rd January, 2013 passed by the Additional District Collector, Mumbai City under Section 35 (1A) of the Maharashtra Slum Areas (Improvement, Clearance & Redevelopment) Act, 1971 (the Act). The impugned order dated 23rd January, 2013 holds that the Petitioner is not entitled/ eligible for permanent alternative commercial premises.

2 The impugned order dated 23rd January, 2013 has been passed consequent to the order dated 7th September, 2012 passed by this Court in an earlier Writ Petition being Writ Petition No.543 of 2011 filed by the Petitioner. By the above order dated 7th September, 2012, the issue of allotment of permanent alternative commercial premises in lieu of the

commercial premises taken over by MMRDA for the Mono Rail Project was restored to the Additional Collector, for fresh consideration.

3 On 21st February, 2013, a notice was issued on this Petition and after hearing the learned AGP, an ad-interim relief was granted in terms of prayer clause (c) to the Petitioner i.e. restraining the Respondent-State from taking over of the temporary alternative premises allotted to the Petitioner till the disposal of the Petition.

4 It is pertinent to note that at that time i.e. when notice was issued, no objection with regard to alternative remedy was taken by the State. Today, at the very outset, Mr. Kankal, learned AGP appearing for Respondent No.4 submits that there is an alternative remedy available from the impugned order dated 23rd January, 2013 of the Additional District Collector by way of an appeal to the Grievance Redressal Committee.

5 *Ex facie*, the issue involved herein is whether the commercial premises which were originally in Petitioner's possession and taken over by the State for its Mono Rail Project, was a hut or not and whether the permanent structure possessed by the Petitioner, was on private property or in slum area. Thus, the dispute is factual.

6 In the above circumstances, it would be appropriate that the Petitioner avail of the efficacious alternative remedy available to them under Section 35 of the Act.

7 In these circumstances, while accepting that an efficacious alternative remedy exists, the Petitioner is directed to avail of the same.

In case, Petitioner does file Appeal to the Grievance Redressal Committee within three weeks from today, the Grievance Redressal Committee will entertain the Petitioner's appeal on merits without raising any objection on account of limitation. This on account of the fact that the Petitioner has filed this Petition on 12th February, 2013, challenging the impugned order dated 23rd January, 2013 received only on 28th January, 2013. Consequently, the Grievance Redressal Committee is directed to hear the Petitioner's appeal on merits without considering the issue of limitation, if the appeal is filed within three weeks from today.

8 Ad-interim stay granted by this Court would continue till the Grievance Redressal Committee decides the Petitioner's appeal and for a period of three weeks from the date of communication of its order to the Petitioner. This in peculiar facts of this case, bearing in mind that no objection in respect of alternative remedy was taken by the State when the notice was issued on 21st February, 2013.

9 **Writ Petition disposed of** in the above terms. No order as to costs.

Parties to act on an ordinary copy of this order duly authenticated by the Associate of this Court.

(M.S.SANKLECHA,J.)