

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION St. NO. 7812 OF 2017**

Mohd Arif Shaikh Siraj **..Petitioner**
Vs.
The Deputy Collector (Ench & Rem) & Ors **..Respondents**

Ms Shabana F. Sothe i/b S. P Associates for the Petitioner
Mr. S. B. Kalel AGP for the Respondent No.1
Mr. Milind More for the Respondent No.4 SRA
Mr. D. D. Rananaware i/b Mr. Rahul Shelar for the Respondent No.5
Mr. Fakhruddin Khan a/w Mr. Ajaz Ahmed Ansari for the Respondent No.2
Mr. S. Y. Thakur Nayab Tahsildar Andheri, present

CORAM : R. M. SAVANT, J.
DATE : 24th MARCH, 2017

P.C.

1 The order dated 20-1-2017 passed by the Additional Collector (Encroachment / Removal) Western Suburbs, is taken exception to by way of the above Petition. By the said order, the Additional Collector has dismissed the Appeal filed by the Petitioner and resultantly has confirmed the order dated 4-3-2016 passed by the Deputy Collector, (Encroachment / Removal) and Competent Authority, Andheri.

2 The dispute in the above Petition is as regards the tenement No.306 in the rehab building constructed for the Aman SRA Co-operative Housing Society which is a society of the slum dwellers who were on the plot of land in question. The Respondent No.2 herein had her structure on the land

in question wherein the Slum Rehabilitation Scheme was implemented, her name also appears in the Annexure -II which was delivered by the Deputy Collector, (Encroachment / Removal) and Competent Authority, Andheri , after survey was carried out to determine the eligibility of the slum dwellers for being entitled to permanent alternate accommodation. The Respondent No.2 complained to the Deputy Collector, (Encroachment / Removal) and Competent Authority, Andheri that the tenement allotted to her i.e. tenement No.306 in the rehab building was being illegally occupied by the Petitioner. This resulted in a show cause notice under Section 3(E) of the Slum Act being issued to the Petitioner calling upon the Petitioner to show cause as to why he should not be evicted from the said tenement as he is not the same person whose name appears in the Annexure-II which was declared by the Deputy Collector, (Encroachment / Removal) and Competent Authority, Andheri . The Petitioner filed his reply to the said notice and justified his occupation of the said tenement on the basis of Agreement to Sale, Power of Attorney, Affidavit and the transfer documents allegedly executed firstly between Respondent Nos.2 and 3 thereafter between the Respondent No.3 and the Petitioner.

3 The Deputy Collector, (Encroachment / Removal) and Competent Authority, Andheri considered the application filed by the Respondent No.2 herein and after taking into consideration the stand of the Petitioner herein as also the documents on which the Petitioner relied on, made the notice absolute

by passing the order dated 4-3-2016 and issued the directions that the Petitioner to vacate the said tenement No.306 as otherwise steps would be taken to get the said tenement vacated.

4 The gist of the reasoning of the Deputy Collector, (Encroachment / Removal) and Competent Authority, Andheri was to the effect that the said tenement would be of no avail as there is no permission sought from the authorities for sale of the tenement in the rehab building. At this stage, it is required to be noted that there is a moratorium of 10 years before a sale can be effected in respect of rehab tenement.

5 The Petitioner aggrieved by the said order dated 4-3-2016 challenged the same by way of an Appeal before the Additional Collector under Section 35 of the said Act. The Additional Collector also heard the parties i.e. the Petitioner, developer and the Respondent No.2 herein. The Additional Collector by the impugned order dated 20-1-2017 has dismissed the Appeal. The Additional Collector has observed that the developer cannot be found fault with as no intimation was given to the developer as regards the alleged sale of the tenement by the Respondent No.2 to the Petitioner. The Additional Collector accepted the case of the Respondent No.2 that the transaction was illegal in view of the fact that the sale was effected without seeking permission of the authorities under the said Act. The Additional

Collector therefore did not find any reason to interfere with the order dated 4-3-2016 passed by the Deputy Collector, (Encroachment / Removal) and Competent Authority, Andheri and accordingly dismissed the Appeal.

6 The Learned Counsel for the Petitioner Ms Sothe would seek to re-urge the case of the Petitioner as urged before the authorities i.e. the Deputy Collector, (Encroachment / Removal) and Competent Authority, Andheri and would contend that the Petitioner has paid valuable consideration for the documents of sale being executed in his favour by the Respondent No.3. It was her submission that the authorities have without having regard to the said documents have passed the orders which are impugned in the above Petition.

7 Per contra the Learned Counsel appearing on behalf of the Respondent No.2 would dispute the alleged transaction entered into between the Respondent No.2 and the Respondent No.3 as also between the Respondent No.3 and the Petitioner. The Learned Counsel would contend that the Respondent No.2 has taken recourse to criminal proceeding as regards the execution of the said documents. The Learned Counsel appearing on behalf of the SRA Respondent No.4 draws this courts attention to the fact that a Suit has already been filed by the Petitioner for the relief claimed therein which fact is not disputed by the Learned Counsel for the Petitioner Ms Sothe.

8 Having heard the Learned Counsel for the parties, I have considered the rival contentions. The issue is as regards whether the provisions of Section 3(E) of the Slum Act could have been invoked to evict the Petitioner. There is no dispute about the fact that the Petitioner is not the original slum dweller who had his structure on the land in question. The original slum dweller is undoubtedly the Respondent No.2 herein whose name was appearing in Annexure-II declared by the Deputy Collector, (Encroachment / Removal) and Competent Authority, Andheri wherein she is shown as an eligible slum dweller, meaning thereby that she is entitled to allotment to permanent alternate accommodation. It is the occupation of the permanent alternate accommodation by the Petitioner which has resulted in the instant proceedings being filed. In so far as the permanent alternate accommodation allotted to an eligible slum dweller is concerned, as indicated above, there is a moratorium of 10 years during which the tenement cannot be sold. There is no dispute about the fact that the permission of the authorities under the said Act was also not obtained for the alleged transaction of sale. It is in the said context that the authorities below have recorded a finding that the said transaction is illegal on the ground that no permission was obtained. The said finding can be further fortified by the fact that the said transaction has also taken place even before the period of 10 years is over. Since the Petitioner has already filed a Suit inter alia claiming various reliefs based on the document allegedly executed by the Respondent No.3 in his favour. The

Petitioner would be at liberty to prosecute the said Suit for the reliefs claimed therein. However, having regard to the conspectus of facts as above, wherein the transaction is prima facie in breach of the condition governing the sale of the rehab tenement, the order passed by the authorities below cannot be faulted with. The Learned Counsel appearing for the SRA Mr. More states that the order passed by the Deputy Collector, (Encroachment / Removal) and Competent Authority, Andheri dated 4-3-2016 has already been executed after the Appeal was dismissed and the keys of the tenement have been handed over to the SRA by the Deputy Collector, (Encroachment / Removal) and Competent Authority, Andheri. Hence the fact that the order has already been implemented also assumes relevance.

9 In my view therefore, no case for interdiction in the Writ Jurisdiction of this Court is made out. The Writ Petition is accordingly dismissed.

10 If the Petitioner approaches the Tahsildar Andheri within one week to take the articles and things which are lying in the tenement in question, the Tahsildar in co-operation with Joint Registrar of the SRA, only for the said limited purpose may open the said tenement.

[R.M.SAVANT, J]