

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

WRIT PETITION NO.11281 OF 2016

Shri. Vilas Sampat Rankhambe

..Petitioner

Versus

Additional Collector (Enc/Rem)

**Eastern Suburb, Slum Rehabilitation Authority
and others**

..Respondents

Mr. A. D. Parab for the Petitioner.

Mr. S. D. Rayrikar, AGP for the Respondent No.1.

Ms. Oorja Dhond for the Respondent Nos.2 & 3.

Mr. Dinesh Kadam for the Respondent No.5.

CORAM : R. M. SAVANT, J.

DATE : 12th JANUARY, 2017

PC.

1 The writ jurisdiction of this Court is invoked against the order dated 24.06.2015 passed by the Additional Collector (Enc/Rem), Eastern Suburbs, Mumbai. By the said order, the Appeal filed by the Petitioner herein came to be dismissed and resultantly, the order dated 05.05.2015 passed by the Competent Authority i.e. the Assistant Commissioner, M/E Ward, Municipal Corporation of Greater Mumbai (For short "MCGM") came to be confirmed.

2 The Petitioner's structure is situated on City Survey No.7 (part) at Borla, Govandi in Mumbai. On the said plot, a slum rehabilitation scheme is being implemented for one Govandi Budhanagar

Co-operative Housing Society, which is a society comprising of the slum dwellers who had their structures on the said plot. The said scheme is being implemented through the Respondent No.5 herein since the year 1997. The said scheme postulates the construction of rehab tenements and free sale component by the Respondent No.5. It is an undisputed position that the rehab component has been completed in the year 2007 and that about 393 slum dwellers are rehabilitated in the said rehab component by allotment of residential and commercial premises as per their entitlement.

3 In view of the fact that the Petitioner's structure was impeding the implementation of the slum rehabilitation scheme in so far as the free sale component is concerned, that a notice under Section 33 of the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971 (For short "the Slum Act") came to be issued to the Petitioner calling upon the Petitioner to vacate and hand over possession of the structure and move to the rehab tenement. The Petitioner replied to the said notice and it seems raised a contention that the Petitioner is entitled to be made eligible for a commercial premises than a residential. The Competent Authority i.e. Assistant Commissioner, M/E Ward, MCGM Mumbai considered the case of the Petitioner and did not find any reason to interfere with the implementation of the slum

rehabilitation scheme and accordingly made the notice absolute by his order dated 05.05.2015 and called upon the Petitioner to vacate, hand over possession of the structure in question.

4 The Petitioner aggrieved by the said order dated 05.05.2015 challenged the same by way of Slum Appeal No.44 of 2015 before the Additional Collector (Enc/Rem), Eastern Suburbs. Before the Additional Collector also the Petitioner raised a contention as regards his eligibility being for commercial premises rather than residential. The Additional Collector did not find any merit in the said contention, but however observed if the Petitioner so chooses he can file an Appeal before the Appellate Authority annexing the documents on which he places reliance in support of his case of being eligible for commercial premises. The Appellate Authority did not deem it appropriate to interfere with the order passed by the Competent Authority and accordingly dismissed the Appeal by the impugned order dated 24.06.2015.

5 On behalf of the Respondent No.5, the Learned Counsel Mr. Dinesh Kadam would state that the residential premises as per the Petitioner's entitlement are available for allotment and the said premises are at present reserved and earmarked for the Petitioner. The Petitioner if he so chooses can take possession of the said residential premises.

6 Upon this, the Learned Counsel for the Petitioner states that the Petitioner has made various representations to the Competent Authority i.e. Assistant Commissioner of the M/E Ward, of the MCGM Mumbai for being made eligible for commercial premises and that the said representations have not been considered.

7 In reply, the Learned Counsel appearing for the Respondent No.5 Mr. Dinesh Kadam would state that the said applications in fact have been considered and the case of the Petitioner has been rejected by the Competent Authority i.e. the Assistant Commissioner, M/E Ward, MCGM Mumbai.

8 In my view, having regard to the observations made by the Additional Collector, namely that the Petitioner if he is so aggrieved in respect of being made eligible for residential and not for commercial premises may approach the appropriate Authority. The Petitioner may avail of the said opportunity and make a further representation to the concerned Authority which this Court is informed is the Assistant Commissioner, M/E Ward, MCGM Mumbai for being made eligible for commercial premises than residential. However the Petitioner obviously cannot be allowed to continue on the site in question as the same is impeding the implementation of the slum rehabilitation scheme. The

Petitioner would therefore have to vacate the structure in question and move to the permanent alternate accommodation by way of residential premises i.e. reserved and earmarked for him. The same to be done by the Petitioner within two weeks from date. If the same is not done, then authorities exercising powers under the Slum Act are free to proceed against the Petitioner. If the Petitioner makes a further representation alongwith documents, the Assistant Commissioner, M/E Ward, MCGM Mumbai, may consider the same and dispose of the said representation within a period of four weeks of the receipt of the said representation by giving opportunity to the Petitioner. However, it is clarified that the aforesaid exercise would not in any manner prevent the Petitioner from vacating the structure in question and move to the permanent alternate accommodation. With the aforesaid directions, the Writ Petition is disposed of.

9 Parties to act on a copy of this order duly authenticated by the Court Shirestedar.

[R.M.SAVANT, J]