

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

WRIT PETITION NO.9820 OF 2016

Mrs. Annie Phillips Mhatre : Petitioner.
versus
Additional Collector (Enc./Rem.) &
Competent Authority, Bandra
Mumbai and ors. : Respondents.

Mr. S R Nargolkar a/w Mr. Lendl Coutinho i/by Mr. V T Dube for the
Petitioner.
Ms. Aparna Vhatkar AGP for the Respondent Nos.1 and 2.
Mr. Vimlesh Singh for the Respondent Nos.3 and 4.

CORAM : R. M. SAVANT, J.
DATE : 07th March 2017

P.C.

1 The order dated 16/04/2016 passed by the Additional Collector (Encroachment/Removal) Eastern Suburbs, Mumbai rejecting the Appeal filed by the Petitioner is taken exception to by way of the above Writ Petition. By rejecting the said Appeal filed by the Petitioner, the Additional Collector (Enc./Rem.) has thereby confirmed the order dated 27/01/2014 passed by the Deputy Collector (Enc./Rem.) and Competent Authority, Kurla.

2 The Petitioner herein was in occupation of the premises being C-104 in the rehab component of the Slum Rehabilitation Scheme being implemented for the Indira Nagar Co-operative Housing Society which is a Society of slum dwellers. The Petitioner lays a claim to the said premises on

the basis of certain documents executed by one Tersu Jaiswar who was the father of the Respondent Nos.3 and 4 herein. The said permanent alternate accommodation in the rehab building was allotted to the said Tersu Jaiswar in the year 2001 and it is the case of the Petitioner that the said Tersu Jaiswar executed the documents in question in his favour in the year 2004. The documents in question are in the nature of a power of attorney, deed of assignment and affidavit. It seems that the Petitioner was put in possession in the year 2004. The said Tersu Jaiswar complained to the Slum Rehabilitation Authorities against the Petitioner on the ground that the Petitioner is in unauthorized occupation of the premises in question. The Slum Rehabilitation Authorities in turn addressed a letter dated 09/10/2012 to the Additional Collector (Enc./Rem.) Eastern Suburbs, Mumbai requesting the Additional Collector to take action under Section 33 of the Slum Act and hand over possession of the premises in question to the Engineer of the Division in question of the Slum Rehabilitation Authority. On receipt of the said letter dated 09/10/2012, the Additional Collector by letter dated 18/10/2012 addressed to the Deputy Collector (Enc./Rem.), Kurla directing the Deputy Collector to take action under Section 33 of the Slum Act and submit a compliance report to his office. The Deputy Collector (Enc./Rem.) on receipt of the said letter dated 18/10/2012 issued a show cause notice to the Petitioner calling upon the Petitioner as to why he should not be evicted from the premises in question. The Deputy Collector (Enc./Rem.) after hearing the

parties i.e. the Petitioner and the said Tersu Jaiswar, passed the order dated 27/01/2014 making the show cause notice absolute and directing eviction of the Petitioner from the premises in question.

3 The Petitioner aggrieved by the said order dated 27/01/2014 challenged the same by way of an Appeal under Section 35 of the Slum Act. The said Appeal was heard by the Additional Collector (Enc./Rem.) Eastern Suburbs, Mumbai who by the impugned order dated 16/04/2016 has dismissed the Appeal. The Additional Collector has principally dismissed the Appeal on the ground that there could have been no transfer of the premises in favour of the Petitioner during the lock in period of 10 years from the year 2001 and therefore the occupation of the Petitioner was unauthorized. As indicated above it is the said order dated 16/04/2016 which is taken exception to by way of the above Writ Petition.

4 On behalf of the Respondent No.2 an affidavit has been filed by one Devidas Choudhari wherein the letters addressed by the Slum Rehabilitation Authorities to the Additional Collector, the letter addressed by the Additional Collector to the Deputy Collector are annexed.

5 On behalf of the Respondent Nos.3 and 4 an affidavit has been filed by one Kamlakant Sobhnath Jaiswar who is the Constituted Attorney of

the Respondent Nos.3 and 4. It has been stated in the said affidavit that the documents which have been allegedly executed in favour of the Petitioner are forged and fabricated.

6 Heard the learned counsel for the parties. The principal contention of the learned counsel appearing on behalf of the Petitioner Mr.Nargolkar is that the Additional Collector who heard the Appeal in question was the same officer who had issued the letter to the Deputy Collector (Enc./Rem.) to take action under Section 33 of the Slum Act and submit a compliance report. It was therefore the submission of Shri Nargolkar that the Appellate Authority having initiated the action against the Petitioner could not have heard the Appeal and therefore the order passed by the Appellate Authority is vitiated on the said ground. The learned counsel appearing for the Petitioner also sought to raise a contention as to whether the premises in question would have been directed to be returned to the Respondent Nos.3 and 4 who are now the heirs of the said Tersu Jaiswar in the proceedings filed under Section 33 of the Slum Act.

7 Per contra, the learned AGP would fairly submit that the Appeal was heard by the same officer who had issued the directions to the Deputy Collector (Enc./Rem.) to take action against the Petitioner under Section 33 of the Slum Act.

8 The learned counsel appearing on behalf of the Respondent Nos.3 and 4 sought to support the impugned order but faced with the situation where the Appeal was heard by the same officer/person who had issued the directions to the Deputy Collector (Enc./Rem.) did not do so with any deal of conviction.

9 Having heard the learned counsel for the parties, I have considered the rival contentions. As indicated above, the impugned order has been challenged principally on the ground of violation of the principles of natural justice inasmuch as the officer/person who had issued the direction to the Deputy Collector (Enc./Rem.) to take action against the Petitioner under Section 33 of the Slum Act has sat in Appeal over the order passed by the Deputy Collector (Enc./Rem.). There is no dispute about the said fact. Hence the manner in which the Appeal was heard vitiates the order passed by the Appellate Authority, as the same can therefore be said to have been passed in violation of the principles of natural justice. In my view, therefore on this short ground the impugned order is required to be quashed and set aside and is accordingly quashed and set aside and the following directions are required to be issued :-

A] Since the Appeal was heard by the Additional Collector (Enc./Rem.) Eastern Suburbs, Mumbai who had himself issued the

directions to the Deputy Collector (Enc./Rem.), Kurla, the Appeal would now be heard by the Additional Collector (Enc./Rem.) Western Suburbs, Mumbai.

- B] Since the Respondent Nos.3 and 4 were put in possession, the said position would continue subject to the result of the Appeal.
- C] The contentions of the parties are kept open for being urged before the Appellate Authority.
- D] The Appellate Authority may decide the Appeal on its own merits and in accordance with law latest by 15/05/2017.
- E] The parties to appear before the Appellate Authority i.e. the Additional Collector (Enc./Rem.) Western Suburbs, Mumbai on 20/03/2017.
- F] With the aforesaid directions, the above Writ Petition is disposed of.

[R.M.SAVANT, J]