

Shailaja

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION [L] NO. 2082 OF 2017

Jayantibhai Hirjibhai Shah	]	Petitioner
Vs.		
Dy. Collector [Encroachment & Removal]	]	
Competent Authority & Ors.	]	Respondents

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Mr. Makarand M. Kale i/b M.P. Vashi & Associates, for petitioner.

Mr. Kunal Bhanage, for respondents No. 2 and 3.

Ms. Jyoti Jadhav, A.G.P, for respondents No. 1 and 4.

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CORAM : R.G. KETKAR, J.

DATE : 4th AUGUST, 2017.

P.C.

Heard Mr. Kale, learned Counsel for petitioner, Mr. Bhanage, learned Counsel for respondents No.2 and 3 and Ms. Jadhav, learned A.G.P, for respondents No.1 and 4 at length.

2. By this Petition under Article 226 of the Constitution of India, the petitioner has challenged the Notice dated 1st August, 2017 calling upon the petitioner to surrender structure within 48 hours to respondent No.3-M/s. Castel Infrastructure Engineering Co., failing which, by exercising powers u/s 33 of Maharashtra Slum [Improvement, Clearance and Re-development] Act, 1971 [for short 'Act'], possession of the structure of the petitioner will be

taken forcibly and the same will be demolished by exercising powers u/s 38 of the Act and the amount will be recovered from the petitioner.

3. Mr. Kale submitted that petitioner has instituted Writ Petition No. 1538 of 2017 on the original side of this Court challenging appointment of respondent No.3 as a developer amongst other reliefs. He further submitted that petitioner has instituted Appeal No. 1281 of 2017 u/s 35 of the Act challenging the order dated 18th May, 2017 passed by respondent No.1/Deputy Collector [Encroachment and Removal] /Competent Authority. In view of Section 35 (3) on the admission of appeal, all proceedings to enforce the notice, order or direction and all prosecutions for any contravention thereof shall be held in abeyance pending the decision of the appeal. In other words, in view of Section 35 (3), order dated 18th May, 2017 is stayed. As order dated 18th May, 2017 is stayed, respondent No.1 was not justified in issuing notice dated 1st August, 2017.

4. The matter was heard on 3rd August, 2017. Mr. Bhanage states that respondents No.2 and 3 are ready and willing to hand over permanent accommodation to the petitioner. He submitted that respondent No.1 had passed order against the petitioner and Sugandha Kelot Krushnan and Akbar Narayan Singh directing them to hand over possession of their structure to respondent No.3. Sugandha Kelot Krushnan and Akbar Narayan Singh, similarly situated occupiers have shifted to permanent

alternate accommodation allotted to them. He also assured that he will give inspection of sanctioned plan to Mr. Kale and respondents No.2 and 3 will give inspection of Shop proposed to be allotted to the petitioner between 3 and 5 p.m today (i.e 03/08/2017.)

5. The matter was accordingly adjourned till today i.e 04/08/2017 so as to enable Mr. Kale to take inspection of the sanctioned plan during the course of day and for petitioner to take inspection of Shop proposed to be allotted to him by respondents No.2 and 3 between 3 and 5 p.m. In the meantime, it was directed that no coercive action shall be taken in pursuance of notice dated 1st August, 2017.

6. Mr. Kale confirms petitioner taking inspection of Shop and his taking inspection of the sanctioned plan on 03/08/2017. He states that respondents No.2 and 3 have not obtained occupation certificate. Mr. Bhanage states that Sheikh Mannat Zabbar, one of partners of respondent No.3 is present in the Court. He has tendered photo copy of his Aadhar Card which is taken on record and marked 'A' for identification. Upon taking instructions from him, he states that respondent No.3 will apply for part occupation certificate in respect of ground floor after demolishing the structure occupied by the petitioner. He further states that till occupation certificate in respect of ground floor is obtained, they will offer Rs. 20,000/- per month to the petitioner from the date of demolition of structure of the petitioner. He submitted that this

concession will be only in the present case and it may be clarified that the same shall not be cited as a precedent. Statements made by Mr. Bhanage on instructions are recorded.

7. Mr. Kale states that petitioner is present in the Court. He has tendered photo copy of his Aadhar Card which is taken on record and marked 'X' for identification. He submitted that the petitioner is not agreeable to the suggestions made by respondents No.2 and 3.

8. Upon taking instructions from the petitioner, Mr. Kale seeks permission to withdraw the Petition. On the motion made by Mr. Kale, Petition is allowed to be withdrawn and is dismissed as withdrawn. Order accordingly.

[R.G. KETKAR, J.]