

Shailaja

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION
WRIT PETITION NO. 13750 OF 2018

Dharmabai Sitaram Jadhav	]	Petitioner
Vs.		
The Chief Executive Officer,	]	
Slum Rehabilitation Authority	]	
and others.	]	Respondents

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Mr. Mr. Vinod P. Sangvikar, for Petitioner.
Mr. Mohansingh Rajput a/w Suma Kudapali i/b Kshitija Wadatkar & Associates,
for Respondents No.1 and 2 (V.P. Not filed).
Mr. Sagar Shetty i/b Subir Kumar for Respondents No.3 and 4 (V.P. Not filed).
Mr. S.H. Kankal, A.G.P, for Respondent No.5.
Mr. G.W. Mattos, for Respondent No.6.

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CORAM : R.G. KETKAR, J.

DATE : 14th DECEMBER, 2018.

P.C.

Heard Mr. Sangvikar, learned Counsel for the petitioner, Mr. Rajput, learned Counsel for respondents No.1 and 2, Mr. Shetty, learned Counsel for respondents No.3 and 4, Mr. Kankal, learned A.G.P, for respondent No.5-State and Mr. Mattos, learned Counsel for respondent No.6.

2. By this Petition under Article 227 of the Constitution of India, the petitioner has challenged the order dated 27/28th November, 2018 passed by respondent No.-2, The Deputy Collector, Western Suburbs, Slum Rehabilitation Authority in proceedings under section 33/38 of the Slum Areas (Improvement, Clearance and Re-development) Act, 1971 (for short 'Act;'). Respondent No.2 noted that;

- [1] Respondent No.3-developer has deposited rent as per Circular No.153 and 166 in Axis Bank, Worli Branch for paying it over to the eligible hutment dwellers. The petitioner should submit necessary documents for obtaining “Know Your Customer” (for short 'K.Y.C') and the petitioner who was found ineligible should complete the formalities for obtaining K.Y.C and accept the cheques from respondent No.3,developer.
- [2] The petitioner should vacate the structure in her possession and hand over possession of the land beneath the structure within 10 days to the developer for carrying out development.
- [3] The petitioner being found ineligible is at liberty to file appeal under section 35 of the Act for determining her eligibility before the Appellate Authority.
- [4] If the petitioner does not hand over possession of the land beneath the structure after demolition, necessary action under section 33/38 of the Act for demolishing the structure will be initiated and expenses incurred towards it will be recovered as arrears of land revenue.

3. In support of this Petition, Mr. Sangivkar strenuously contended that respondent No.3 is implementing slum rehabilitation scheme in respect of CTS No.632-Part, Mauje Bamanwada, Taluka, Andheri. Structure of the petitioner is located in C.T.S No.633, Mauje Bamanwada, Tal. Andheri. In other words, he submitted that the petitioner's structure does not fall in the scheme being implemented by respondent No.3 in respect of C.T.S No.632. He has invited my attention to;

- [1] communication dated 17th October, 1989 issued by Additional Desk Officer, Revenue and Forest Department to Sitaram Lodhe Yadav, husband of the petitioner in respect of CTS No.633, Chakala, Andheri.
- [2] communication dated 8th June, 2006 issued by Additional Collector (Encroachment/Removal), Western Suburbs Mumbai to the Collector, Mumbai Suburban District referring to encroachment made by Sitaram Lodhe Yadav, husband of the petitioner over CTS No.633, Chakala, Andheri.
- [3] contention No.4 recorded by respondent No.2 in the impugned order dated 28th November, 2018 to the effect that petitioner's structure is in CTS No.633 and not in CTS No.632.

In short, he submitted that respondent No.3 is implementing slum rehabilitation scheme over C.T.S No.632 and the petitioner's structure is located at CTS No.633. Therefore, respondent No.2 was not justified in passing the impugned order. Hence, Petition requires consideration.

4. On the other hand, learned Counsel for the respondents supported the impugned order. Mr. Mattos submitted that in respect of clause (3) of the operative part of the order giving liberty to the petitioner to file appeal under section 35 of the Act for determining eligibility, the petitioner has to file appeal under section 35 before Additional Collector (Encroachment/Removal) Western Suburbs. In respect of other part of the operative order, the petitioner has an equally efficacious alternate remedy by way of filing appeal before respondent No.6, Committee. He also invited my attention to a final Annexure-II issued by Deputy Collector (Encroachment/Removal) and Competent

Authority, Bandra. Name of the petitioner appears at Sr. No.226 in respect of commercial premises and she was found ineligible on the ground that the petitioner did not furnish documents prior to 1st January, 1995 showing commercial user. The petitioner has also not permitted survey of her structure and, therefore, site inspection of her structure could not be carried out. The petitioner has also opposed the scheme. In other words, he submitted that final Annexure-II was issued sometime in the year 2012-2013 in respect of CTS No.632-Part where name of the petitioner appears at Sr. No.226. The petitioner did not make any protest or lodged objection post preparation of final Annexure-II before the appropriate Authority, *inter alia*, contending that her structure does not fall in CTS No.632. He also invited my attention to the contentions raised on behalf of the petitioner to the effect that;

- [1] rent @ Rs. 12,000/- per month offered by respondent No.3, developer is not adequate;
- [2] respondent No.3, developer has not maintained account with Axis Bank as per Circular No.153 and 166.
- [3] respondent No.3-developer has not executed agreement with her.

Relying on these contentions, Mr. Mattos submitted that the petitioner is ready and willing for implementing scheme subject to addressing her grievances referred in the impugned order. He, therefore, submitted that no case is made out for interfering with the impugned order.

5. Mr. Shetty has invited my attention to demarcation plan made in pursuance of measurements carried out on 25th May, 2018, 2nd June, 2018 and 4th June, 2018. showing location of the structure of the petitioner in CTS No.632. He has also produced plan annexed to Annexure-II indicating structure of the petitioner located in CTS No.632-Part. In other words, he submitted that the structure of the petitioner is situate in CTS No.632 Part and not in 633 Part

as claimed by the petitioner. As against this, Mr. Sangvikar has shown City Survey plan indicating structure of the petitioner in CTS No.633 and not on CTS No.632.

6. I have considered rival submissions advanced by learned Counsel for the parties. I have also perused the material on record. As mentioned earlier, the petitioner has challenged the order dated 27/28th November, 2018 passed by respondent No.2. In so far as issue of eligibility is concerned, the petitioner was found ineligible. The petitioner has an equally efficacious alternate statutory remedy of filing the appeal under section 35 of the Act before the Additional Collector (Encroachment/Removal). In so far as rest of the part of the operative part of the impugned order is concerned, the petitioner has an equally efficacious alternate remedy of filing of the appeal before respondent No.6-Committee.

7. Mr. Sangvikar submitted that within 2 weeks from today, he will file appeal before the Additional Collector for determining eligibility and also file appeal before respondent No.6, Committee within 2 weeks from today. He submitted that till such time, appeals are filed by the petitioner, no coercive steps shall be taken in pursuance of the impugned order.

8. With the assistance of the learned Counsel for the parties, I have perused the material on record. *Prima facie*, a perusal of final Annexure-II prepared by Deputy Collector (Encroachment/Removal), Competent Authority, Bandra shows that a survey was carried out on 12th June, 2018 in respect of CTS No.632 Part. The petitioner's name is at Sr. No.226. She was found ineligible on the ground that she did not submit documents showing commercial user prior to 1st January, 1995. That apart, she did not permit survey of her structure as also site inspection. She opposed implementation of

the scheme. No material is produced by the petitioner to *prima facie* substantiate her claim that her structure is situate in CTS No.633. CTS plan produced during the course of hearing, *prima facie*, does not indicate that the structure shown in CTS No.633 belongs to the petitioner.

9. In view thereof, it is not possible to accede to the request made by the petitioner, not to take coercive steps in pursuance of the impugned order. Subject to above, the Petition fails and the same is dismissed. It is made clear that the Appellate Authorities will decide the appeals uninfluenced by the observations made in this order which are *prima facie* and tentative. The Appellate Authority to decide appeals on the basis of the material on record and in accordance with law. Order accordingly.

[R.G. KETKAR, J.]