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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION (L) NO. 128 OF 2018**

Shivalik Ventures Pvt Ltd	...Petitioner
<i>Versus</i>	
The State of Maharashtra	...Respondent

Mr Mayur Khandeparkar, *with Yadunath Chaudhari & Susmit Phatale, Chinmaya Acharya, for the Petitioner.*

Mr Hemant Haryan, *AGP, for Respondent No. 1 - State.*

Mr Abhijeet A Desai, *with Vrushali L Maindad, for Respondent No. 2-SRA.*

Mr Chirag Shah, *i/b Jitendra DS, for Respondents Nos. 4 and 5.*

CORAM: G.S. PATEL, J
DATED: 25th January 2018

PC:-

1. Heard. **Rule.** Hearing expedited.
2. Respondents Nos. 1, 2, 4 and 5 waive service.
3. The Petitioners in this Writ Petition under Article 226 of the Constitution of India seek a direction to Respondent No. 3, the Deputy Chief Officer (Marketing) of the Mumbai Housing & Area Development Board, a unit of MHADA to execute an order dated 23rd May 2016 under Sections 33 and 38 of the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act 1971 ("**the Slum Act**"). That prayer also seeks a demolition of the two

structures, one commercial and one residential, one above the other of Respondents Nos. 4 and 5.

4. In the Annexure-II that was prepared, these structures are shown against the name of Respondent No. 4 at Serial Nos. 66 and 67 (page 28). Respondents Nos. 4 and 5 have been held to be ineligible because there was no proof produced. All of this is done against the name of Respondent No. 4, the husband of Respondent No. 5 who does not even feature on this list.

5. On behalf of Respondents Nos. 4 and 5 it is stated that this Annexure-II was finalized without any notice or hearing. None of their documents were considered. They have been driven to filing several civil litigations in which they have obtained an order restraining their ejection without following due process of law. In itself that may not be very helpful because an order under Sections 33 and 38 of the Slum Act is in itself the due process of law.

6. What is actually being missed in all of this is that Respondents Nos. 4 and 5 should have been afforded an opportunity by MHADA to produce their documents and establish their entitlement/eligibility. This is actually central not only to this Writ Petition because the Petitioner will necessarily be required to accommodate Respondents Nos. 4 and 5, if found eligible, and can have no quarrel with that, but the determination of eligibility is also something that might conceivably determine the civil litigations. Although Respondents Nos. 4 and 5 have not filed a return, I am told across the bar that they have several documents including voters identity card/electoral roll entries, shops and establishment licenses, other documents, agreements showing

purchase/acquisition of the premises etc. All these are also before the relevant date of 1st January 1995.

7. In this view of the matter, MHADA is directed to consider the documents and proof produced by Respondents Nos. 4 and 5 as to their eligibility for rehabilitation in the sanctioned SRA project.

8. Respondents Nos. 4 and 5 with their legal advisors will appear before the 3rd Respondent at his office on 2nd February 2018 at 4.00 p.m. with all documents. The 3rd Respondent will grant Respondents Nos. 4 and 5 and their Advocates a hearing either on that date or on some date before 9th February 2018. There will be no adjournment.

9. The 3rd Respondent will pass a reasoned speaking order considering the documents and material produced by Respondents Nos. 4 and 5 and deciding their eligibility no later than 13th February 2018.

10. If that finding is against Respondents Nos. 4 and 5 no action will be taken against them for a period of 10 days' from the date of receipt of a copy of the order.

11. If the 3rd Respondent finds that Respondents Nos. 4 and 5 are eligible, they will be entitled to all benefits including transit compensation/rent etc, in parity with other occupants and they will also then vacate their structures no later than within 10 days from the date of receipt of the order.

12. That statement, made in those terms, is accepted as an undertaking to this Court.

13. The necessary agreements for both permanent and temporary accommodation for Respondents Nos. 4 and 5, contingent upon them found eligible, executed and registered. It is clarified that the permanent alternative accommodation agreement will necessarily in accordance with the procedure, protocol and legal requirements including the allocation or allotment by lottery.

14. I am making it clear that if the order is adverse to Respondents Nos. 4 and 5 they must obtain necessary protection within one week thereafter. The reason is that it is only this structure that is today holding up the redevelopment on site and there are several other slum dwellers who are directly adversely affected. It simply cannot be that two persons hold up the interest of a vast number of others. Consequently, if Respondents Nos. 4 and 5 are unable to obtain such protection, then the Rule will stand made absolute in terms of prayer clause (a).

15. The Petition is disposed of in these terms. No costs.

16. All contentions are specifically kept open in relation to eligibility.

(G. S. PATEL, J)