

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

WRIT PETITION (L) NO. 3728 OF 2017

Narayan Khandu Thakur	}	Petitioner
versus		
The State of Maharashtra	}	
and Ors.	}	Respondents

Mr. Ashish Gaikwad with Ms. Bhavana Khichi for the petitioner.

Mr. U. S. Upadhyay-AGP for respondent nos. 1, 2 and 4.

Mr. P. G. Lad with Ms. Aparna Murlidharan for respondent no. 3.

Mr. Jaideep Shringare with Mr. Rupesh S. Ghadi for respondent no. 5.

**CORAM :- S. C. DHARMADHIKARI &
SMT. BHARATI H. DANGRE, JJ.**

DATE :- JANUARY 4, 2018

P.C. :-

1. There is an order passed by the competent authority in-charge of implementation of a scheme of rehabilitation. At page 41 of the paper book, there is a communication dated 12th December, 2017 addressed to the petitioner. That communication was addressed on the complaint of one Gawni Pada Irshchaya Co-operative Housing Society Limited dated 7th December, 2017. That society complained that the petitioner has encroached upon a vacant area in relation to which a

rehabilitation scheme has been allowed to be implemented by the Mumbai Housing and Area Development Board, a unit of the Maharashtra Housing and Area Development Authority (MHADA).

2. The petitioner is stated to be obstructing the Slum Rehabilitation Scheme, its enforcement and execution. It is such a contravening structure, which the notice/letter says would be demolished.

3. The petitioner approaches this court in its writ jurisdiction and raises an issue that his grievance is independent of his entitlement under the scheme. May be that, the petitioner was declared eligible, in the sense his Hut No. 204 was going to be demolished and is indeed demolished so as to allow and facilitate the implementation and execution so also enforcement of the Slum Rehabilitation Scheme. The petitioner claims in the petition that he has been residing in Room No. 1, Thakur Chawl, Nahur Village Road, Gawanipada, Mulund (W), Mumbai - 400 080. He is residing since 1982. He says that he and his three daughters were residing therein and thereafter they got married. There are two sons staying with him. The petitioner says that he has got a structure in the plot bearing CTS No. 658/1. The structure on the plot bearing CTS No. 658/6 was originally belonging to one

Kantilal Maganlal and Sarvodaya Hospital Trust and they are using the premises. The petitioner says that he has been paying the land revenue consistently from 1994 till 2015.

4. The affidavit in reply, which is filed by the respondents says that the petitioner has been found to be eligible for the benefits of the scheme and that is why as against the demolished Hut No. 204, he will derive benefit of the Slum Rehabilitation Scheme. The complaint that this society refers to is of five rooms unauthorisedly constructed on the vacant portion and which structures are also coming in the way of the implementation of the scheme. It is in these circumstances, by resorting to section 3Z-1 of the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971 that the notice was issued. The petitioner has relied upon certain documents, which the authorities do not find to be adequate or sufficient enough to establish the existence of the structures and prior to the cut off date. There is an explanation provided in that regard in para 6 of this affidavit of the Land Manager working with MHADA. It is, therefore, apparent that these are disputed questions and whether the structure is authorised or unauthorised cannot be determined by this court. The petitioner is ready and willing to appear before the competent authority and satisfy him about the

existence of his structure prior to the cut off date and its occupation by the petitioner and his family. If indeed the petitioner has such documents as would establish the petitioners occupation, then, the law will take its course, but if the petitioner is unable to produce any such documents, then, we do not think that such parties should be allowed to obstruct the implementation of the scheme, particularly after he is beneficiary thereof. Unless the structures are removed and the building comes up at site, there is no question of any rehabilitation package being extended to the petitioner. They must facilitate the implementation of the scheme by voluntarily handing over their structures for demolition and if they do not have any proof of the existence of additional structures, then, they must suffer the consequences. Therefore, if the petitioner is unable to give any documentary proof of the above nature, the authority is free to act in furtherance of its notice and demolish his structure.

5. It is only to enable the petitioner to appear before the competent authority and produce these materials that we direct that for a period of 15 days from today, the subject structure shall not be demolished. If the petitioner fails to appear or fails to prove the existence of the structure as above, the authority is free to pass such orders as are permissible in law.

6. With the aforesaid directions, the writ petition is disposed of.

(SMT. BHARATI H. DANGRE, J.)

(S.C.DHARMADHIKARI, J.)