

psv

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

WRIT PETITION (L.) NO.196 OF 2019

Neeta Krishna Chavan @ Smt.Jayashree	
Jitendra Talegaonkar	..Petitioner
Vs.	
The State of Maharashtra & Ors.	..Respondents

Mr.Vaibhav Ugle for Petitioner.
 Mr.Kedar Dighe, AGP for Respondent Nos.1 to 3.
 Ms.Pooja Yadav for MCGM-Respondent No.5.
 Ms.Rohini Ghegadmal, Colony Officer, G/South ward.
 Mr.Karl Tamboly with Ms.Ketaki Mishra, and Mr.Siddharthan Nair i/b.
 Diamondwala & Co. for Respondent No.8.

CORAM : G.S. KULKARNI, J.

DATE : 24th JANUARY, 2019

P.C.:

Heard learned Counsel for the petitioner, learned AGP for respondent Nos.1 to 3, learned Counsel for respondent No.5-MCGM and learned Counsel for the respondent No.8. Respondent No.9, brother of the petitioner is stated to be served however, none appears for respondent No.9.

2. The petitioner is before the Court assailing the order dated 27 December 2018 passed by the Grievance Redressal Committee whereby an appeal filed by the petitioner against the order dated 21 September 2018 passed by the Additional Collector directing eviction of the petitioner from tenement in question stands rejected.

3. Learned Counsel for the petitioner would contend that there were also proceedings initiated by the petitioner under Section 35 of the Maharashtra Slum Act, 1971 for determination of eligibility of the petitioner for inclusion of her name in the Annexure II asserting that she is independently eligible for a alternate accommodation. Attention of the Court is drawn to the order dated 14 December 2018 passed by the Additional Collector on the petitioner's appeal under Section 35 of the Maharashtra Slum Act whereby the Additional Collector has directed the competent authority namely the Assistant Municipal Commissioner, G/South Municipal Corporation for Greater Mumbai-respondent No.5 to examine and inquire in regard to the petitioner's claim for inclusion of petitioner's name in Annexure-II.

4. Learned Counsel for the petitioner would submit that as now in view of the order dated 14 December 2018 passed by the Additional Collector, the competent authority would be examining the petitioner's claim, it would be appropriate that the eviction proceedings against the petitioner, which would be adopted consequent to the impugned order dated 27 December 2018 passed by the Grievance Redressal Committee, be not proceeded.

5. A perusal of the record indicates that there is a dispute between

the petitioner and her brother Mr.Naresh Chavan (respondent No.9) as to who would be eligible for the permanent alternate accommodation in the project in question. Mr.Tamboly, learned Counsel for respondent No.8 has drawn my attention to the findings as recorded by the grievance redressal committee in which the grievance redressal committee has observed that the petitioner is already declared eligible jointly with respondent No.5. Moreover, it is the submission as urged by Mr.Tamboly that in any event the question is of only one tenement either it is required to be allotted to the petitioner independently or her brother depending on the determination by the competent authority as per the orders dated 14 December 2018 passed by the Additional Collector.

6. Mr.Tamboly, learned Counsel for the respondent No.8 would submit that in any event whatever may be the consequence of the decision which may be taken by the competent authority, in any event the petitioner will have to vacate the premises so that the re-development proceeds.

7. Having heard learned Counsel for the parties and having perused the impugned order passed by the Grievance Redressal Committee and also the order dated 14 December 2018 passed by the Additional

Collector whereby direction was given to the competent authority to examine the claim of the petitioner in regard to her eligibility, in my opinion, it would be appropriate that the competent authority-respondent No.5 (Assistant Municipal Commissioner, MCGM) examines the claim of the petitioner in regard to her eligibility and decide the same within a period of two weeks from today. Learned Counsel for respondent No.5-Corporation on instructions of Ms.Rohini Ghegadmal, Colony Officer, G/South Ward, Municipal Corporation who is present, states that the application of the petitioner in regard to her eligibility would be decided within a period of two weeks from today.

8. As regards the contention of Mr.Tamboly on behalf of respondent No.8 that the petitioner in any event needs to vacate the premises, is surely the ultimate consequence, which the petitioner or the respondent No.9 would have to face. Even if the petitioner succeeds before the competent authority in establishing that the petitioner is alone eligible for the permanent alternate accommodation and not jointly with her brother-respondent no.1, she would be required to vacate.

9. In the above facts and circumstances of the case as noted above, reserving all rights and contentions of the petitioner and respondent No.9 to be agitated in the proceedings before the competent authority,

the petition is accordingly required to be disposed of by the following order:-

ORDER

- i. The competent authority shall decide the claim of the petitioner's eligibility as directed in the order dated 14 December 2018 passed by the Additional Collector within a period of two weeks from today.
- ii. The competent authority shall hear the petitioner and the respondent No.9 and by a speaking order, dispose of the application of the petitioner.
- iii. All contentions of the petitioner and the respondent No.9 on merits in that regard are expressly kept open.
- iv. Irrespective of the outcome of the said proceedings before the competent authority, within a period of two weeks from the competent authority deciding the eligibility application of the petitioner and communicating its order, without prejudice to the rights and contentions of the petitioner, the tenement in question be handed over to the MCGM so that the re-development is not delayed.
- v. Needless to observe that in the event the orders passed by the competent authority are adverse to the petitioner, the petitioner will have all the rights to assail the said order in appropriate proceedings and the handing over the premises shall not be considered as any factor adverse to the petitioner and it shall be subject to the outcome of such

proceedings.

vi. Keeping all contentions of the parties open, the petition is disposed of. No costs.

[G.S. KULKARNI, J.]