

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**

**ORDINARY ORIGINAL CIVIL JURISDICTION**

**WRIT PETITION NO.2266 OF 2015**

Mr. Mahendra Singh

....Petitioner

vs

The State of Maharashtra & Ors.

...Respondents

.....

Mr. Pravin G. Sawant, for the Petitioner.

Mr. Hemant Haryan, AGP, for Respondent Nos. 1 to 3.

Mr. Mandar Bangale, i/b. The Law Point, for Respondent No.4.

.....

**CORAM : S.C. GUPTA, J.**

**DATED: 12 APRIL 2019**

**P.C.:**

1. Heard learned Counsel for the Petitioner and learned AGP for State. This petition challenges an order passed by Deputy Collector (Encroachment/Removal) Andheri, Mumbai, rejecting the Petitioner's claim for eligibility for alternative accommodation in lieu of a structure occupied by him, which was demolished by Respondent No.4 – MMRDA for Versova-Andheri-Ghatkopar Metro Project Car Shed Depot.

2. It is the Petitioner's case that he was in use, occupation and possession of the structure admeasuring about 42.25 sq. mtrs. along with open space admeasuring about 400 sq. mtrs. situated at Survey No.111-D, Village Amboli, Taluka Andheri, Mumbai. This structure and open area were used by the Petitioner as a garage. It is the Petitioner's case that in the year 2009, officers of the Respondents and, in particular

Respondent No.4, came to the Petitioner's structure and demolished the same without giving him any notice or hearing. The Petitioner submits that being in possession of this structure as of 1 January 2000, as also of the date of demolition, the Petitioner is entitled to allotment of a permanent alternative accommodation and/or compensation in lieu of the premises occupied by him.

3. The Petitioner claims to have produced several documents, in all thirteen in number, in support of his case of occupation of the structure as of the relevant date. The Deputy Collector, in his impugned order, *inter alia* considered the documents and held that none of them made out a case of existence of the Petitioner's structure and his occupation of the same as of 1 January 2000 and as of the relevant date, namely, the date of its survey before demolition. The Deputy Collector held that according to the applicable Government Resolution and provisions of Development Control Regulations, for establishing eligibility of a hutment dweller or occupant for permanent alternative accommodation, the existence of the structure and the claimant's occupation and possession thereof as of 1 January 2000 and also as of the date of survey had to be made out. The Deputy Collector held that there was no material to prove that the existence of the subject structure and its occupation by the Petitioner as of the date of the survey and, accordingly, the Petitioner was not eligible for any alternative permanent accommodation in lieu of the old structure.

4. The record of the case, and in particular the documents tendered by the Petitioner in support of his case of existence of the

structure and his occupation thereof as of 1 January 2000 or of the date of the survey, do not establish the existence or the Petitioner's occupation of the structure as of the relevant date. These documents, at the most, show that as of a date prior to January 2000, the structure existed at site and the Petitioner was in occupation thereof.

5. The relevant provisions of the applicable Government Resolution as well as Development Control Regulations require that an occupant of a structure, which existed both as of 1 January 2000 and as of the date of the survey, was in actual occupation of it as of the date of the relevant survey conducted for clearance of the site. The eligibility is of actual occupants of hutments or structures and not their putative owners. In the present case, there is in fact material on record to show that the Petitioner had already transferred his structure and possession thereof prior to the date of the survey and demolition of the structure. In fact, the transferee had also procured transfer of NA assessment order to his name. The Petitioner's own affidavit in this behalf and corrigendum issued to the order of NA assessment are on record. The Petitioner's explanation, after these documents were produced by the State in its reply, that physical possession of the structure was not handed over by him to the transferee does not inspire any confidence. The Petitioner has annexed to his affidavit a letter purportedly addressed by the transferee on 30 June 2009 to Tahsildar NA, Andheri West, Mumbai communicating to the latter that due to his sickness, he could not look after the property and, accordingly, the parties mutually decided to cancel the earlier transfer and a joint affidavit-cum-declaration executed by the parties to that end as of the same date.

These documents are clearly an after-thought. They have been executed around the time or after the site was cleared by demolishing all existing structures standing thereon.

6. There is, accordingly, no infirmity in the impugned order of the Deputy Collector. The Deputy Collector has clearly acted within his jurisdiction, and has not committed any error of law whilst exercising such jurisdiction. The order passed by him is supported by material on record and contains a possible view of the material. It does not merit any interference in the writ jurisdiction of this Court. The writ petition is, accordingly, dismissed.

( S.C. GUPTE, J. )