

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

WRIT PETITION NO. 3517 OF 2018

Rauf Alam Khurshid Ali

...Petitioner

vs

The Additional Collector,
Mumbai Metropolitan Region Development
Authority and Appellate Authority & Ors.

...Respondents

Mr.Atul Damle, Senior Advocate I/b. Vimlesh Singh for Petitioner.
Ms.Kavita N. Solunkhe for Respondent Nos.1 and 5 – MMRDA.
Ms.Sheetal Metakari for Respondent Nos.3 & 4 – MCGM.
Mr.Manish Upadhye for Respondent No.6 – State.

CORAM : S.C.GUPTE, J.

DATE : 30 APRIL 2019

P.C. :

Heard learned Counsel for the Petitioner, the Respondent State and Respondent Nos.3 and 4 representing the Municipal Corporation of Greater Mumbai.

2 Rule. Rule taken up for hearing forthwith by consent of Counsel.

3 This writ petition challenges an order passed by Deputy Collector, Mumbai Metropolitan Regional Development Authority and Appellate Authority and confirmed in appeal by Grievance Redressal Committee (Mumbai City). The controversy concerns the eligibility of the Petitioner for allotment of permanent alternative accommodation in lieu of the structure held by him and which was handed over by him to the

Municipal Corporation of Greater Mumbai for redevelopment of the property under Development Control Regulations 33(10). The impugned orders are passed on the basis that the Petitioner, though he holds residential premises, was carrying on commercial activities in the premises. The Petitioner agrees to his eligibility for residential purpose and not for commercial purpose.

4 It is not in dispute that the Petitioner was in occupation of a hut. The Petitioner's hut was affected by a new road connecting Bandra Kurla Complex (G-Block) to Eastern Express Highway. There are various documents, which prove both existence of the structure as well as previous occupation of the same by the Petitioner as of the relevant date. The documents include a photo identity card issued to the Petitioner in respect of the premises, the voter's list containing the Petitioner's name in respect of the structure, compensation/transfer fees receipt issued by the Municipal Corporation to the Petitioner, electricity bill, driving licence, aadhar card and survey bill. Having regard to these documents, the Petitioner's eligibility was considered favourably by the Municipal Corporation in the original annexure-2, where the Petitioner's name appears at Serial No.33 as an occupant of a residential structure shown to be an eligible slum dweller entitled to receive a permanent alternative accommodation in lieu of the structure held by him as of the date of the survey. The grievance of the Petitioner is that subsequently in the final annexure-2 issued in respect of the hutments affected by the project issued by the Respondent corporation, the Petitioner is shown as ineligible. The Petitioner's appeal from the corrected annexure-2 entry was rejected by the Deputy Collector by order dated 2 January 2018. His appeal from

the Deputy Collector's order was rejected by the Grievance Redressal Committee by its order dated 9 August 2018. It was submitted by the Petitioner before the authorities below that the dominant user of the structure was for residential purpose and only in a small portion of the structure the Petitioner was carrying on the business of tailoring. The eligibility of the Petitioner was denied to him only on the basis that though the Petitioner was found to be in possession of the premises and the structure existed as of 1 January 2000 as also of the date of the survey, he had not produced any evidence to show that the structure was used for non-residential purposes since prior to 1 January 2000. What is important to note is that the Petitioner's structure was originally meant to be a residential structure. It existed as of 1 January 2000 and also as of the date of the survey and as of both these dates, the Petitioner was in fact in possession of the structure. There are many documents, as noted above, to support the Petitioner's case of residence and use of the structure throughout the relevant period. In the premises, the eligibility of the Petitioner cannot be denied for permanent alternative residential accommodation in lieu of the accommodation held by him.

5 The authorities below have clearly erred in law whilst exercising their power and authority by denying the Petitioner's eligibility despite such extensive evidence.

6 Rule, accordingly, is made absolute and the petition is allowed by quashing and setting aside the impugned orders of the Deputy Collector of the Respondent Corporation and Grievance Redressal Committee and restoring the Petitioner's eligibility in accordance with the original

annexure-2 issued on 18 April 2015. The Respondent corporation is directed to treat the Petitioner as eligible occupant for residential user.

(S.C. GUPTE, J.)