

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO.4776/2018

(Natthuram s/o Bhivaji Chivande
Vs.

The Competent Authority & Project Director, Slum Department, Nagpur Municipal Corporation,
and another)

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders.

Shri P.S.Sahare, Advocate for petitioner.
Shri Karan Gaur, Advocate for respondent no.2.

CORAM : A.S.CHANDURKAR, J.
DATED : June 18, 2019

In view of notice for final disposal issued earlier, the learned counsel for the parties have been heard at length.

2. The petitioner is aggrieved by the order dated 11.04.2018 passed by the appellate Authority under the provisions of Section 35(1) of the Maharashtra Slum Area (Improvement, Clearance and Redevelopment) Act, 1971 (for short, 'the said Act') whereby the appeal preferred by the petitioner stands dismissed.

3. The petitioner has obtained a decree for possession of a house property bearing Corporation No.814 situated in Ward No.67, Sadar, Nagpur. That decree has attained finality. In the execution proceedings, the respondent has raised an objection that the suit property is situated in slum

area. This objection is based on the order dated 18.11.2010 passed by the Competent Authority making such a declaration. The order dated 18.11.2010 was challenged by the petitioner by filing an appeal under Section 35(1) of the said Act. By the impugned order, that appeal came to be dismissed.

4. A preliminary objection as raised on behalf of the respondent no.2 is that the remedy of further appeal under Section 35(1-A)(a) of the said Act is available to the petitioner for challenging the order dated 11.04.2018.

5. After hearing the learned counsel for the parties and after perusing the relevant provisions, it is seen that by virtue of Amendment Act No.38 of 2018, such appellate remedy has been provided. That statutory remedy can be permitted to be availed by the petitioner as adjudication of factual aspects are involved.

6. In that view of the matter, the following order is passed:

(1) The petitioner is at liberty to challenge the order dated 11.04.2018 by filing an appeal under Section 35(1-A)(a) of the said Act.

(2) If such appeal is filed within 15 days from today, the same shall be entertained and decided expeditiously on its own merits without going into the question of delay, in view of the fact that the order dated 11.04.2018 had been challenged in the present writ petition.

(3) All points raised in the writ petition on merits of the challenge are kept open for being raised in the appeal.

(4) The writ petition is accordingly disposed of. No costs.

JUDGE

Andurkar.