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***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION***

WRIT PETITION NO. 5132 OF 2022

Smt. Daraksha Usmani

...Petitioner

Versus

Commissioner, MMRDA & Anr.

...Respondents

Mr. Aseem Naphade a/w Saurabh Utangale i/b Utangale & Co., for the
Petitioner.

Mr. Akshay P. Shinde for the Respondent No. 1 & 2.

**CORAM : REVATI MOHITE DERE &
MADHAV J. JAMDAR, JJ.**
DATED : 5th MAY 2022

P.C. :

1. The Petitioner by the present Writ Petition is challenging the action of Respondents-MMRDA of putting the lock on the Petitioner's residential tenement bearing Room No.512, SRA Building No.9-C, Type III, G. M. Link Road, Govandi, Mumbai 400043 (hereinafter referred to as ("**the said tenement**")). The Petitioner is also challenging the order dated 8th August 2019 passed by the Respondent No.2-Additional Collector, MMRDA. The Petitioner is also seeking relief directing Grievance Redressal Committee ("**GRC**") to hear the Appeal filed by her expeditiously and to decide the

same in time bound manner. The Petitioner has also relied on the order dated 4th March 2022 passed in Writ Petition (L) No. 19783 of 2021 and submitted that the said order is applicable to the facts of the present case.

2. Mr. Aseem Naphade, the learned counsel appearing for the Petitioner submitted that the Petitioner along with her family members was residing in hutment bearing ID No.54, MRDP Phase 1, Morarji Nagar, Paspoli, Powai since before 1995. The Petitioner's slum structure was duly surveyed by the Respondents and her name was included in the Annexure II as eligible at Sr. No.54.

3. In July-2005, the city of Mumbai was hit with heavy rains and storms, which led to heavy floods all over the city that lasted for many weeks. In the said floods the entire structure of the Petitioner along with all her belongings were washed away.

4. In the year 2006, the MMRDA decided to allot alternate tenements to the people like the Petitioner, affected by the Mithi River Development Project (MRDP). Accordingly, the said tenement was allotted to the

Petitioner by allotment letter dated 24th May 2009. The Petitioner is residing in the said tenement since 2009.

5. In the year 2011, the Respondent No.1-Commissioner, MMRDA had issued notice dated 30th August 2011 to the Petitioner questioning the eligibility of the Petitioner for PAP tenement. The Petitioner had attended the hearing and submitted the documents. However, thereafter nothing was heard for about 9 years.

6. On 28th January 2019, the Appeal was filed by the Respondent No.1-Commissioner, MMRDA before the Additional Collector under Section 35 of the Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971 (hereinafter referred to as **“the Slum Act”**) challenging the Annexure II issued in the year 2009 declaring Petitioner as eligible.

7. It is the contention of the Petitioner that nothing was heard thereafter and copy of the order passed, if any, is not supplied to her. Therefore, she applied under Right to Information Act seeking various papers. The Petitioner was handed over the order dated 8th August 2019 by which, the

Respondent No.2-Additional Collector, MMRDA allowed the Appeal filed by the MMRDA and the eligibility of the Petitioner was cancelled. The Petitioner was also given copy of the order dated 24th May 2021 directing that the Petitioner should vacate the said tenement. The Petitioner therefore, preferred the Appeal No.93 of 2022 inter alia challenging the order dated 8th August 2019 before the GRC of the Slum Rehabilitation Authority. It is the contention of the Petitioner that on 2nd March 2022 when the Petitioner had gone to native place, the officers of the Respondents put up their lock on the outer door of the said tenement. In these circumstances, the Petitioner has sought the above reliefs.

8. The factual position on record clearly shows that the said tenement was allotted to the Petitioner in 2009 as the Petitioner was found to be eligible. The Petitioner has been declared as eligible in 2006. The Respondent No.1-Commissioner, MMRDA filed Appeal in 2019 before the Respondent No.2-Additional Collector, MMRDA challenging said eligibility of the Petitioner declared in 2006. That Appeal was allowed by the order dated 8th August 2019 which has been impugned by the Petitioner by filing the Appeal No.93 of 2022 before the GRC.

9. It is admitted position that the Petitioner's belongings were in the said tenement when the Respondent No.1-Commissioner, MMRDA has put lock on the said tenement on 2nd March 2022. It is admitted position that the Petitioner's substantive Appeal is pending before the GRC. The Petitioner has filed affidavit-cum-undertaking dated 5th May 2022 in this petition by which the Petitioner has undertaken to this Court that she would abide by the outcome of the said Appeal No.93 of 2022, subject to her rights in law to challenge such order passed by the GRC and ultimately if she does not succeed, she will handover quite, vacant and peaceful possession of the said tenement to the officials of the MMRDA. The Petitioner has also filed undertaking to the effect that during the pendency of the said Appeal No. 93 of 2022, and subsequent proceedings, the Petitioner would not create any third party right, title and interest in respect of the said tenement.

10. In view of the aforesaid, we pass the following order:-

ORDER

- i. The Respondents are directed to reopen the lock put up on the said tenement bearing Room No.512, SRA Building No.9-C, Type III, G. M. Link Road, Govandi, Mumbai and put the Petitioner in possession

- of the same.
- ii. The GRC of the Slum Rehabilitation Authority to decide the Appeal No. 93 of 2022 preferred by the Petitioner challenging the order dated 8th August 2019 passed by the Additional Collector, MMRDA within a period of eight weeks from today.
 - iii. If the Appeal No.93 of 2022 is decided against the Petitioner, then Petitioner shall handover the quite, vacant and peaceful possession of the said tenement to the Respondent No.1-Commissioner, MMRDA, subject to her right to challenge the said order and if the Petitioner fail to obtain any stay order in the proceedings challenging such decision within four weeks of service of order passed by the GRC on the Petitioner.
 - iv. The undertaking dated 5th May 2022 submitted by the Petitioner is accepted.
11. The Writ Petition is allowed and disposed of in the above terms.
12. All concerned to act on an authenticated copy of this order.

MADHAV J. JAMDAR, J.

REVATI MOHITE DERE, J.