

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 723 OF 2016**

Sukhakarta SRA Co-op. Housing Society Ltd. ..Petitioners

Vs.

The State of Maharashtra & ors. ..Respondents

Mr. M.S. Surana, for the Petitioners.

Mr. U.S. Upadhyay, AGP for the Respondent Nos. 1 to 4.

Mr. A.U. Patil, for the Respondent Nos. 5, 6, 7.

Mr. P.M. Shah, for the Respondent No. 9.

Mr. M.J. Bhatt a/w. Ms. Namrata S. Bobade, for the Respondent No. 8.

**CORAM : R. M. SAVANT, J &
SMT.SADHANA S. JADHAV,J
DATE : 20th JUNE, 2017**

P.C.

1 Pursuant to our order dated 6th June, 2017 (Coram : R.M. Savant & A.S. Gadkari, JJ), the Deputy Collector (Encroachment/Removal) Eastern Suburb has filed his affidavit dated 19/6/2017. The sum and substance of the affidavit is that demolition of the 70 structures which are the subject matter of the orders passed by the Division Bench of this Court (Coram: S.C. Dharmadhikari and B.P. ColabawalLa, JJ) dated 19/1/2017 and the orders passed by the Apex Court, was carried out on 9th and 10th February, 2017 and thereafter, on 20th and 21st March, 2017. It is further stated in the affidavit that after the demolition, the possession of the site in question was handed

over to the Respondent No. 9 and reliance is sought to be placed on the possession receipt dated 21st March, 2017. The said case as is set out in the affidavit is belied by the documents on record.

2 It is required to be noted that the persons who claim to be owners had filed Notice of Motion No. 357 of 2017 in this Court and had moved the said Motion on an urgent basis on the ground that if the relief sought in the Motion is not granted, then their structures would be demolished. The applicants in the said Motion were 13 in numbers and were seeking the relief that they should be allowed to intervene in the above Writ Petition and pending consideration of the Writ Petition, their structures should not be demolished.

3 The next document is the letter dated 31st March, 2017 addressed by the Additional Executive Engineer, Ishwarnagar, Sub-section I, Bhandup of MSEDCL to the Deputy Commissioner (Encroachment/ removal) & Competent Authorities. The said letter is in the context of the request of the Deputy Collector to disconnect the electricity supply to the structures. The Additional Executive Engineer has informed the Deputy Collector that till the structures are got vacated, it is not possible to disconnect the electricity. Hence, implicit in the said letter is the fact that the structures are in existence and are being occupied.

4 The next document is letter dated 22/4/2017 addressed by one Sandeep Salvi to the Additional Executive Engineer, MSEDCL. The said Sandeep Salvi claims to be in occupation of the structure. He has stated in the said letter that since he continues to occupy the structure, the electricity should not be disconnected. He has referred to the above Writ Petition No. 723 of 2016, which is pending. Thereafter there is a letter dated 24th April, 2017, addressed by the Deputy Collector(Encroachment/Removal) to the Additional Executive Engineer. The Deputy Collector (Encroachment/Removal) has by the said letter informed the Additional Executive Engineer, MSEDCL that he may obtain police assistance at his end and carry out disconnection.

5 As indicated above, the aforesaid material belies the case of the Deputy Collector(Encroachment/Removal) Shri Upendra Tamore, as set out in affidavit dated 19/6/2017. It is obvious that assuming that some demolition is carried out on the date mentioned in the earlier part of the order, the same was only a pretence and to somehow show the compliance of the order passed by the Division Bench of this Court as well as the Apex Court. As recorded in our order dated 6th June, 2017 in terms of the directions of the Apex Court, the Respondent No. 9 has made payment to all the 70 occupants. Hence, there could not be any impediment in the way of the authorities to carry out the mandate of the order passed by the Division Bench dated

19/1/2017 as also the orders passed by the Apex Court in the SLPs. However, for the reasons best known to the authorities, the said orders are not being complied with in letter and spirit. We therefore, deem it appropriate to appoint a Court Commissioner to visit the site and report to us as regards the structures existing on the site.

6 The Additional Prothonotary and Senior Master Shri Matkar is directed to appoint an appropriate officer from the Original Side to visit the site and report to this Court. The site visit would be carried out on 23/6/2017. The report to be placed before this Court on 27/6/2017. The Court Commissioner to visit the site on 23/6/2017 at 11.30 a.m. at which time, representative of the parties can remain present. The Sr. P.I., Bhandup Police Station is directed to grant police assistance to the Court Commissioner on his site visit. It is contingent upon the report that the future course of action would be adopted.

7 Adjourned to 27/6/2017.

[SMT.SADHANA S. JADHAV,J]

[R.M.SAVANT, J]