

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

WRIT PETITION NO. 2134 OF 2014

Shri Prabhakar Sahadev Sawant ... Petitioner

Vs

1. Joint Secretary, Cooperative
Societies & Ors. ... Respondents

Mr. Avinash M. Gokhale for the Petitioner.

Mr. D.A. Nalavade with Ms. Tulsi Dhami for the Respondent No.1.

Mr. A.I. Patel, AGP, for the Respondent Nos.1, 4 and 5.

Mr. Y.B. Chaturvedi for the Respondent No.2.

Mr. Naval B. Sharma i/b Naval Sharma & Associates for the
Respondent No.7.

**CORAM : S.C. DHARMADHIKARI &
B.P. COLABAWALLA, JJ.**

MONDAY, 14TH DECEMBER, 2015

P.C. :

1. A detailed order is not necessary for disposal of this Writ
Petition at the stage of admission.

2. The petitioner is aggrieved by an order passed on 20th
January, 2014, copy of which is at page 126 of the paper-book.

A slum rehabilitation scheme at Mauje / village Ghatkopar, Taluka Kurla, CTS No. 184(part) at the instance of Laxmi Nagar Sawali Cooperative Housing Society Limited is being implemented by the Slum Rehabilitation Authority.

3. It is common ground that the petitioner claims to be eligible slum dweller as the original occupant / respondent No.7, according to the petitioner, had defaulted in payment of certain dues. A certificate of recovery of those dues came to be issued by the Recovery Officer under section 101 of the Maharashtra Cooperative Societies Act, 1960. The applicant Pratap Cooperative Bank Limited sought this certificate as the respondent No.7 to this Writ Petition - Raghunath G. Pawar had defaulted in payment of its dues. A demand notice was also issued on 4th October, 2002, and according to the petitioner, in the light of the default, the immovable property came to be sold in execution of the recovery certificate. Prior thereto, the said immovable property, namely, Room 201, Sawali Sahakari Griha Nirman Sanstha Limited came to be attached. Since the petitioner was the auction purchaser, the petitioner claimed that when the old structure came to be pulled down he is the only person

entitled to the benefit of the SRA scheme. However, the Joint Registrar by the impugned order holds that since the competent authority has not cancelled the eligibility of the said respondent No.7 - Raghunath Pawar, he should be held to be entitled to the benefits.

4. The complaint of the petitioner is that the entire record pertaining to the recovery proceedings has been ignored and brushed aside by the Joint Registrar in passing the impugned order.

5. After the Writ Petition was heard for sometime, we indicated to the respondent No.7's advocate that the remedy that the respondent No.7 chose of approaching the Joint Registrar was not proper nor legally permissible. If at all the respondent No.7 asserts his right, title and interest in the property, namely, the old structure, then, he must approach a competent civil court and establish and prove it. So long as such declaration is not obtained, the Joint Registrar implementing the SRA scheme cannot direct the competent authority to declare the respondent No.7 eligible.

6. On instructions, the advocate for respondent No.7 informs us today that the respondent No.7 - Raghunath Pawar is ready and willing to approach a competent court but the request is that the ad-interim order passed by this Court be continued for a period of eight weeks without prejudice to the rights and contentions of both sides in order to enable the respondent No.7 to adopt the appropriate proceedings.

7. Mr. Gokhale appearing on behalf of the petitioner, however, would submit that the petitioner is waiting for several years for the fruits of the redevelopment and they are wrongfully and illegally denied to him.

8. We have heard counsel on this point and we are of the view that interest of justice would be served if we pass the following order :

(i) The impugned order dated 20th January, 2014, is quashed and set aside. The ad-interim order passed by this Court on 26th February, 2014, in this Writ Petition, shall continue for a period

of eight weeks from today, but without prejudice to the rights and contentions of both sides.

(ii) If, within this period, the respondent No.7 is not in a position to obtain orders from the competent court in appropriate proceedings, then, on the expiry of the said period, the Slum Rehabilitation Authority / competent authority shall put the petitioner in possession of the rehab structure / tenement.

9. We clarify that in the light of this consent given by respondent No.7, we have not examined the rival contentions in further details. They are kept open for being raised at an appropriate stage in the competent court.

10. The Writ Petition, accordingly, stands disposed of. There shall be no order as to costs.

B.P. COLABAWALLA, J.

S.C. DHARMADHIKARI, J.