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

WRIT PETITION NO. 890 OF 2014

Peshkar Khalil Khan } Petitioner
versus
The State of Maharashtra and Ors. } Respondents

WITH
WRIT PETITION NO. 1456 OF 2014

Sadashiv Kanhaiyalal Tiwari } Petitioner
versus
The State of Maharashtra and Ors. } Respondents

Mr. Anand Pande with Mr. Rahul Pande for the Petitioner in WP/890 of 2014 and for Respondent No. 2 in WP/1456 of 2014.

Mr. Surel Shah with Mr. Ashish Mishra and Mr. Sanjeet Shukla for the Petitioner in WP/1456 of 2014 and for Respondent No. 5 in WP/890 of 2014.

Mr. Amit Shastri-AGP for Respondent Nos. 1 and 4 in WP/890/2014.

Mr. J. S. Saluja-AGP for Respondent Nos. 1 and 5 in WP/1456/2014.

Mr. D. A. Nalawade-Government Pleader for Respondent Nos. 3 and 4 in WP/1456/2014.

Mr. Jagdish G. Reddy (Aradwad) for Respondent Nos. 2 and 3 in WP/890/2014.

Mr. Ram Ugrah Singh for Respondent No. 6 in WP/1456/2014.

CORAM :- S. C. DHARMADHIKARI &
G. S. KULKARNI, JJ.

DATED :- JULY 31, 2015

P.C. :-

These Writ Petitions under Article 226 of the Constitution of India challenge the decision of the High Power Committee, which is set up by the State Government for deciding claims and disputes, particularly arising out of a slum rehabilitation scheme under the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971 and the Development Control Regulations for Greater Bombay, 1991. The two Petitioners are assailing more or less the same conclusions by this Committee.

2) In Writ Petition No. 890 of 2014, the Petitioner states that there is a slum colony called as Juhu Azad Nagar. That is on a plot of land bearing CTS Nos. 489, 511 and 512 of village Vile Parle, C. D. Barfiwala Marg, Andheri (West) Mumbai 400 058. The Petitioner in this Petition claims that he was occupying a shop/commercial unit which was then numbered as Shop No. 12. Later on all the shops were given new numbers and in that, the shop number of the Petitioner is also changed to shop No. 5 from shop No. 12. The Respondent No. 1 is State of Maharashtra, whereas, the second Respondents represents this High Power Committee. The third and the fourth Respondents are in

charge of framing and implementing the Slum Rehabilitation Schemes and to assist such schemes being framed and implemented, the Additional Collector of Mumbai (Encroachment and Removal), Western Suburbs, Mumbai Suburban District having its office at the address mentioned in the cause title, plays a important role.

3) The fifth Respondent in the first Petition (WP/890/2014) is the Petitioner in the second Petition (WP/1456/2014), whereas, Respondent No. 6 is a Co-operative Housing Society of the slum dwellers/occupants of the structures on the land and Respondent No. 7 is a Builder and Developer.

4) The Petitioner in the first Petition states that this shop, which is existing at site, according to him, was used and occupied by him. It was given in lieu of the Petitioner's occupation of old shop in Azad Nagar Rahiwasi Seva Sangh. It is his claim that there were lot of huts and shops in the hutment colony and that is why the occupiers of the colony formed a housing society and registered it. They got together to appoint a developer and for redeveloping the property. It is the case of the Petitioner in the first Petition that this shop was earlier occupied in the same slum by Respondent No. 5. The area of the shop is stated to be 20'X9'. Respondent No. 5 approached the Petitioner and offered the shop, as it is stated that he was in financial need. That is

how the shop structure came to be purchased by the Petitioner by paying sum of Rs.5,00,000/- in cash. A document styled as sale deed has been executed and a copy thereof is annexed as Annexure 'A' and 'A-1' to the Petition. After the sale deed was executed, the 5th Respondent put the Petitioner in exclusive possession of the said shop on 10th February, 1994 i.e. on the same date of execution of the sale deed. He also gave an affidavit cum declaration and Power of Attorney in favour of the Petitioner. The Petitioner claims that this sale deed was drafted by an Advocate of Respondent No. 5 and that Advocate purchased the stamp paper on which the recitals have been typed and thereafter, the said document was signed in presence of witnesses before a Notary Public.

5) The Petitioner was put in possession of the shop and he handed over possession thereof to the Society so as to enable Respondent No. 7/Developer to demolish it and thereafter put up a new structure/building. This happened in the year 2001. The maintenance charges, however, have been paid and some receipts evidencing the same are relied upon and their copies are annexed. Similar is the position with regard to electricity and telephone bills.

6) Though the Petitioner took over this shop, when the survey was undertaken by the office of the Collector, Mumbai Suburban

District, the Petitioner's name was not included in the list of occupants and eligible for rehabilitation through this Slum Rehabilitation Scheme. The name of the earlier occupant was shown, namely Respondent No. 5. Therefore, the Petitioner sent a letter dated 28th December, 2004 to the authorities and informed that this position ought to be corrected. The list is not correct and it has not reflected the true and correct position at site. Correspondence also was made by the Society, but according to the Petitioner, there was no change effected in its record by the authority. Pertinently, this Petitioner throughout this period beyond carrying on the correspondence, has not been pursuing the matter legally. However, he learnt that an Appeal was filed by Respondent No.5 taking advantage of the mistake committed while drawing up the list of slum dwellers/occupants and designating them as either eligible or ineligible. Such an Appeal being Appeal No. 21 of 2007 was filed without impleading the Petitioner as party opponent. The Appeal was placed before the Committee, namely, Respondent No. 2, at which time, the Petitioner rushed and applied for intervention. The intervention was allowed. Thereafter, the Committee has passed an order holding that Respondent No. 5 Sadashiv Kanhayalal Tiwari as also the Petitioner in this Petition are ineligible and therefore the rehab tenements be not allotted to them.

7) The Petitioner submits that an earlier Writ Petition was filed being Writ Petition No. 2116 of 2008 and this Court set aside the Committee's earlier direction issued on 21st June, 2008 by an order passed in Writ Petition No. 2116 of 2008 dated 14th January, 2009. The matter was sent back to the Committee. Thereafter, the Committee heard both sides and has reached the same conclusion.

8) The Petitioner has averred in the Writ Petition that though the impugned order has been passed on 4th April, 2009, the Petition could not be filed earlier but only on 24th February, 2014. That is because a copy of this order was not immediately made available to the Petitioner. The order was never communicated though the Petitioner was impleaded as the Intervener and appeared before the Committee. In these circumstances and when the Petitioner learnt that Respondent No. 5 has filed a Writ Petition in this Court challenging the same order that he has approached it by this Petition.

9) On the earlier occasion and today after, extensively hearing Mr. Pande, we passed an order and specifically recording that the Annexures to the Writ Petition do not inspire confidence. We had brought to the notice of Mr. Pande the fact that these documents do not evidence possession of the premises on or before cut off date, namely, 1st January, 1995. Mr. Pande sought time to place an affidavit and to

support his contention that all the documents are genuine and not suspicious, leave alone bogus. There is no forgery. An affidavit affirmed on 30th July, 2015 of the Petitioner has been filed and annexing therewith some electricity bills. Mr. Pande would submit that these electricity bills pertain to the very shop and which was in possession of the Petitioner throughout. In such circumstances, the Committee's order cannot be sustained and must be set aside. Mr. Pande tried to persuade us to hold that all the documents which are relied upon cannot be termed as anti-dated or prepared in order to secure some benefit of the policy to rehabilitate slum dwellers. There is no collusion as well. In the circumstances, the Committee's order could be seen as creating a situation enabling Respondent No. 5 to get back into the shop or if there is no structure, the Respondent No. 5 would get benefit of the scheme by insisting on inserting his name in the Annexure-II. For these reasons, it is submitted that a genuine and bonafide claim of the Petitioner should not be defeated or permitted to be defeated on technical grounds.

10) Mr. Shah appearing for the Petitioner in Writ Petition No.1456 of 2014, which is filed by Sadashiv Tiwari/Respondent No. 5 in the first Writ Petition asserts that everything averred by the Petitioner in the first Writ Petition is utter falsehood. It is the Petitioner in this Petition who throughout was in occupation of the structure. Father of

the Petitioner, namely, Kanhaiyalal Tiwari acquired the original structure from the former occupant Badlu Jaydev Malhar. A sale deed dated 24th July, 1982 is relied upon. According to Mr. Shah, it is a *Kirana* shop and named and styled as Tiwari Kirana Shop. Thereafter, Sadashiv took over the possession from his father under a family arrangement orally arrived at. All licences and electricity bills were in his name. There was an attempt made to develop the property through Developer and the Petitioner therefore realised that in order to protect his claim he would have to approach the Additional Collector's office and get his name entered in the list which has been prepared and ordinarily in Form II. The Petitioner also wrote several letters and tried to project the grievance before the statutory authority but was unsuccessful. Therefore, he approached this Court by way of a Writ Petition being Writ Petition No. 2975 of 2006 and on 13th December, 2007. It was dismissed with liberty to the Petitioner to appear before the competent authority who will decide his claim in accordance with law. That is how the Petitioner, by way of an Appeal being Appeal No. 21 of 2008 appeared before the Committee but there were conflicting claims in relation to this shop. The Writ Petition filed by the Petitioner in the first Petition being Writ Petition No. 2116 of 2008 is referred to and thereafter the matter going back to the Committee is an admitted position.

11) To our query on the earlier occasion to both the Petitioner's Counsel in this case, Mr. Shah states that this Petitioner also did not receive the order of the Committee and complaint made by him to the Committee through its Secretary resulted in he being provided only copy of the operative part of the order. Curiously, this statement is made in para 2(k) of the Petition and the date of receipt of operative order is mentioned as 21st August, 2009. Yet, the Petitioner waited and it is only when he realised that there are some more papers and it is a reasoned order that he approached the Committee and that is how after obtaining a copy of the order that this Writ Petition is filed. Mr. Shah equally tried to persuade us in submitting that it is this Petitioner who is in occupation of the shop throughout. Some very relevant and crucial documents pertaining to the shop were not produced by Peshkar Khan, the Petitioner in the first Petition simply because he was never in his possession. This Petitioner has more reliable documents in the form of assessment notice from the Municipal Corporation. He has assessment bills prior to the cut off date and from 1993. Mr. Shah submits that the Petitioner was unaware of any sale deed having been executed and in favour of Peshkar Khan. That is not a genuine but a got up document. In such circumstances, it is this Petitioner who was rightly entitled to the benefit of the scheme but in a single line order, without assigning proper reasons, the Committee has arrived at a conclusion that it is not

necessary to go into aspects raised by the Petitioner when he did not produce any document showing occupation of the shop as on 1st January, 1995. The Committee is of the opinion, therefore, that none can be held to be eligible for the permanent alternate accommodation and if the same has been handed over erroneously, the possession thereof must be resumed or handed over to the Slum Rehabilitation Authority.

12) Mr. Shah's contentions have also been noted and in great details and carefully by us. We have perused the Petition paper book and in both the Petitions with all Annexures.

13) What we find from Annexures of both Petitions is that the basic undisputed position is that both Petitioners rely on the user of the structure as commercial and a shop. Both rely on the fact that it is in the slum colony. Both do not dispute that such slum colonies have proliferated throughout in Mumbai. Both rely upon the fact that the shop was existing and they were occupying it on or before the cut off date, namely, 1st January, 1995.

14) Petitioner Peshkar Khan relies upon a sale deed and stated to have been executed in his favour by the Petitioner in the second Petition, namely, Sadashiv Tiwari. A careful perusal of the sale deed

would show that all the recitals therein are contrary to the assertions in the Writ Petition. Petitioner Peshkar Khan claims that he was in possession pursuant to this sale deed of shop No. 5, which was earlier numbered as shop No. 12. However, this sale deed, copy of which is at page 42 of the paper book of Writ Petition 890 of 2014, denotes no shop number. It only says that the Vendor is the owner/occupier of shop premises bearing ____ admeasuring 20'X9', situated at Azad Nagar Rahiwasi Sangh, C. D. Darfiwala Road, Andheri (W), Bombay 400058. The purchaser is in need of the shop premises for business purpose and has approached the Vendor and requested him to sell and transfer the said shop premises to his name. That is how on receipt of Rs.5 lacs in cash, the vendor has agreed to deliver possession and handed over and delivered possession and occupation of the premises to the purchaser. The document contains other usual recitals but pertinently, the recitals do not make any reference to the said Sadashiv's predecessor acquiring the shop premises and thereafter from the predecessor the shop came to the said Sadashiv. Therefore, Mr. Shah would submit that this is not a genuine but a bogus document. Mr. Pande submits that it is not so because it is duly signed.

15) We find that though the receipt below the deed states that the amount of Rs.5 lacs by cash is received, pertinently, it is executed by

the Vendor but without any date. The agreement is also signed and on top of the signatures, it is stated that "in witnesses whereof of both the parties have set and subscribed their respective hands on the day month and the year hereinabove written". That is stated to be 10th February, 1994. However, if this was the position, we do not see any reason for an affidavit being executed and between the parties. The sale deed could have perfected the title in Peshkar Khan, however, this affidavit of Sadashiv Tiwari would indicate that he affirms the agreement in favour of Peshkar Khan and that is also clear from the signature which is witnessed by the Advocate. Then, there is a general Power of Attorney. However, what we find is that the Petitioner in the first Petition has annexed several documents, one is the receipt of the Society and the another is of Azad Nagar Rahivasi Sangh. That is stated to be issued by the Slum Dwellers' Association. That is stated to be formed sometime in 1995. This receipt, copy of which is at page 65 of Writ Petition No. 890 of 2014, says amount of Rs.1,000/- is received from the Petitioner Peshkar Khan in relation to room No. 20. The receipt at page 66 is stated to be executed on 20th August, 1995 but that is referring to room No. 18. Similar is the position with regard to receipts at page Nos. 67 and 68.

16) Then, it is stated that the shop No. 12 is not the number assigned to the shop earlier. All earlier receipts and which according to Mr. Peshkar Khan evidence the possession of the shop on the cut off date do not make any reference to the structure, whether it is a shop or a room. In the circumstances, it is difficult to believe that the Petitioner was carrying on any commercial activities from the said shop. If the running business of Sadashiv Tiwari is stated to have been handed over and taken over by Peshkar Khan, then, surely the receipts from the Society should mention the name of the grocery shop. The Committee therefore has rightly disbelieved the version of the Petitioners. It found that this could be a case of somebody totally ineligible trying to take the benefits. The finding of the Committee is that as far as Sadashiv Tiwari is concerned the record indicates that Annexure II was prepared on 15th January, 2002. The said Sadashiv Tiwari was held to be eligible for commercial premises at Sr. No. 20 on the basis of the Shop and Establishment Licence issued on 7th November, 1983. However, that licence was issued in the year 1983 but same was renewed only upto the year 1985. Sadavhiv Tiwari therefore could not produce any documentary proof to show that he was occupying the shop on the cut off date, namely 1st January, 1995. The eligibility criteria is then set out. As far as the said Peshkar Khan is concerned, it was the opinion of the Committee that the name of the Intervener is not shown in the

Annexure – II because he was not occupying the said premises on the date of implementation of the Slum Rehabilitation Scheme.

17) Since we have found that there are grave and serious discrepancies in the documents relied upon by Peshkar Khan and when Sadashiv Tiwari also maintains complete silence about the alleged sale deed in favour of Peshkar Khan till the matter was brought before the Committee, it is extremely doubtful as to whether said Sadashiv Tiwari also was in use and occupation of the premises. Sadashiv Tiwari realised that somebody is trying to usurp his right as a eligible slum dweller. That he realised, according to him, on or about January, 2005. It is surprising that when the document is being relied upon against Sadashiv Tiwari not once but twice by Peshkar Khan, no steps have been taken by Sadashiv Tiwari for questioning or challenging it in appropriate proceedings before the competent Court/authority. Thus, this is not a case where the eligible slum dwellers are staking their claims. It is a case where the Committee rightly found that suspicious and doubtful claims are raised and on the basis of some documents, the benefits of the Slum Rehabilitation Scheme are taken. Once the High Power Committee and which is presided over by officials from the concerned Department including those in-charge of implementation of such scheme, then, we have no reason to doubt their conclusions. This

Committee has also assigned reasons for not accepting either claim. Merely because the Petitioner Tiwari in the other Petition has been served with a one or two sentence order of the Committee does not mean that there is no application of mind. In the detailed order passed in the same case and copy of which is annexed in Writ Petition No. 890 of 2014, the Committee has assigned reasons for arriving at the above conclusion. It is therefore not a case of the Committee's order being vitiated by non application of mind or perversity. It is not a case of error of law apparent on the face of the record. The Committee was throughout competent and once it was directed by this Court, it has performed its duty and function. In such circumstances, we do not wish to entertain either Petitions. Both of them are dismissed but without any order as to costs.

(G.S.KULKARNI, J.) **(S.C.DHARMADHIKARI, J.)**