

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CIVIL APPELLATE JURISDICTION
CIVIL WRIT PETITION NO.3930 OF 1998**

Shri. Krushnaji Keshav Adsul
(since deceased), through his
legal heirs

1 Narayan Krushnaji Adsul
Age : Adult, Occ. : Service

2 Smt. Kusum Suryakant Adsul
Age : Adult, Occ.: Housewife

Both are the legal heirs of the deceased
Petitioner, Residing at 457,
Ganesh Peth, Pune – 411 002 Petitioners

Vs.

1 The State of Maharashtra

2 Navjivan Sahakari Gruha Rachna
Sanstha, Sahakar Nagar,
Pune – 9 Respondents

Mr. Rajshekhar V. Govilkar, Advocate for the Petitioners.
Mr. S.D. Rayrikar, AGP, for Respondent no.1.
Mr. S.S. Hardikar, Advocate for Respondent no.2.

Coram : Smt. R.P. SondurBaldota, J.
Date : 29th November, 2016

JUDGMENT :

1 This petition is directed against the order dtd. 30th November, 1996 passed by the Additional Commissioner, Pune Division on Revision Application/Flood/SR/48 of 1983 and the order dtd. 22nd March, 1993 passed by the Collector, Pune on Case No.FLD/PPR/383/1983. Both the orders hold that the original petitioner was not eligible for allotment of a plot of land as the flood affected person. By prayer clause (d), the petitioners also seek a declaration that the original petitioner was eligible for membership with subsidy in Navjivan Co-Operative Housing Society (Flood Affected) at Pune (“The Society” for short).

2 The brief factual background of the case is that in the year 1961, the Panshet Dam near Pune burst leading of Pune city. In the floods the area of Ganesh Peth was affected. The original petitioner was the owner of House No.457, at Ganesh Peth, Pune. He had enrolled his name through The Society for allotment of the land as a flood affected houseless person. By the letter dtd. 6th April, 1967, bearing No. FLD/HSG/WS/677/1966, the Office of the Collector, Pune had granted membership to him in The Society with subsidy. He was accordingly given membership of The Society by the Deputy Registrar Co-operative Societies. However, as the original petitioner continued to reside in the old house owned

by him even after the floods, the Chairman and the Secretary of The Society submitted report bearing No. 507 dtd. 11th March, 1974 to the Collector, Pune complaining that the original petitioner was not a dis-housed flood affected person and as such he was not eligible for membership of the The Society as well as for grant of plot of land in The Society. The original petitioner had owned the house and continued to reside in the house even after the floods. He had even let out some portion of the house to the tenants. There were 30 more persons against whom similar complaint had been made by the Chairman and the Secretary of The Society.

3 The Collector sent the application of The Society to the Deputy Registrar, Co-operative Societies for his report. The Deputy Registrar reported on 6th May, 1982 that the original petitioner had admitted in his statement dtd. 25th October, 1979 that he had his own house where he was residing. With this information, he left it to the decision of the Collector as regards the legality of the eligibility certificate given to the original petitioner. Thereafter, show cause notice dtd. 8th February, 1983 was sent to the original petitioner. In his reply to the show cause notice, he claimed that he is holding an Identity-Card issued to flood affected persons but admitted that he is having a house. He had been allotted a plot after becoming a member of a society. He claimed that

House No.457, Ganesh Peth had collapsed in the year 1961. Thereafter he and his family members continued to reside therein by way of temporary occupation after repairing the house. He also contended that the reasons stated in the show cause notice issued cannot be given retrospective effect and that the notice was injurious to the right, that had accrued to him as a member of the Society.

4 The Collector, framed following seven issues for his consideration in the dispute.

Sr. No.	Issues	Findings
1	Whether he is a dishoused flood affected person?	No.
2	Whether he is entitled for membership and grant of subsidy?	No
3	Whether the eligibility certificate given to him can be continued?	No.
4	Whether his statement recorded on 27-12-1982 is to be taken into consideration while cancelling his eligibility?	No
5	Can the Deputy Registrar for Co-operative Societies enroll his name as a member of the Society?	No.
6	Whether he was allotted the plot by the Society?	No.
7	Whether the problem of his resettlement is solved permanently or otherwise?	Yes.

5 The Collector, during the course of the hearing before him considered the statement of the original petitioner and held that the original petitioner being the owner of a house, in which he had been residing all along cannot be said to be a dis-housed person affected by the floods. As per the policy of the Government, only the person dis-housed in the floods was entitled to the membership of a Co-operative Housing Society formed by the flood affected persons and for grant of subsidy. As the original petitioner was not a person dis-housed during the floods, he was not entitled to membership of The Society and for subsidy. By his letter dtd. 6th April, 1967, the Collector informed the Deputy Registrar, Co-Operative Societies that under the circumstances the eligibility certificate for membership with subsidy given to the original petitioner could not be sustained. The Collector also held that the Deputy Registrar had no authority to enroll name of the original petitioner as a member directly. The procedure for membership in the circumstances, as narrated in the order, is that in order to get membership of the flood affected society a person had to apply to the Chairman of the Society alongwith the flood affected certificate granted by the Collector. Thereafter, it was for the Chairman to submit the proposal to the Deputy Registrar for Co-operative Societies with a copy of the Resolution taken in the meeting of the

General Body for approval. Stating the above reasons, the Collector passed following order :

“Under these circumstances, in exercise of the powers vested in me under Section 258 of the Maharashtra Land Revenue Code, 1966, I hereby order that the name of Shri. Krishnaji Keshav Adsul, stands at S. No.I in the office letter No.FLD/HSG/WS/1966 dated 6.4.1967, declaring him eligible for membership with subsidy in the Navjeevan Co-operative Housing Society should be deleted.”

6 Being aggrieved by the order, the original petitioner had approached the Commissioner, Pune Division with a Revision Application. The Additional Commissioner gave hearing to the original petitioner, after which by a detailed reasoned order dtd. 30th April, 1984, he dismissed the revision application. The original petitioner had contended before the Commissioner that he had been residing in his house bearing No.457, Ganesh Peth, Pune earlier. There were several tenants in the house but at the relevant time, the original petitioner was only person residing there with his family and the original petitioner was the sole occupant of the house. The original petitioner had admitted that he had repaired the house for occupation. He had applied for and was given an allotment of quota of cement and permit for the purpose. The original petitioner had been

paying taxes to the Corporation for his house. It was sought to be contended on behalf of the original petitioner before the Commissioner that the City Engineer of the Corporation had issued a certificate that the house owned by the original petitioner was damaged in the flood in the year 1961 and it could not be reconstructed as the site was unsafe and is liable to re-flooded. He had further relied upon notice issued to him in the year 1961 warning him that the house was damaged and that it should be demolished to avoid damage to public property and lives. But at the time of hearing of the proceedings before the authorities, there was another subsequent letter on record. By the letter dtd. 9th August, 1981, the original petitioner was informed by the Corporation that his house was suitable for occupation and therefore, the certificate of unsuitability could not be given to him. In view of this subsequent letter, the earlier letter recedes into irrelevance. It would also mean that the original petitioner had carried to the necessary repairs to the house to make it habitable. The Commissioner perused the entire record, which showed that the house of the petitioners is situate on the bank of Nagzari Nala and was ravished by the floods. Earlier the original petitioner was given shelter elsewhere alongwith other flood affected persons. However, he got the house repaired and started residing in that house. As per the record, the building standing at House No.457 is a three

storied building and admittedly in occupation of the original petitioner.

7 Mr. Govilkar, the learned advocate for the petitioners submits that the status of the petitioner as flood affected person had been decided as long back as in the year 1967. Immediately after the floods, he had been issued a card being Card No. 16254, which stated the details of the persons residing in the house as on 12th July, 1961 i.e. the date of the flood and for recording the assistance given to him and his family by the Government. The miscellaneous assistance given as recorded in the card includes bedding, clothing and utensils. He argues that the application filed by The Society after lapse of 7 years of acceptance by the Government of his status as the flood affected person for cancellation of his membership, ought not to have been entertained by the Collector. Secondly, according to him, it was highly inappropriate on the part of the authorities to hold that the original petitioner had repaired his house by placing reliance upon the panchanama drawn by the Tahsildar in the year 1992. Thirdly he submits that the location of the house is such that during every rainy season, water enters into the house and the house gets flooded. Mr. Govilkar submits that it was also necessary for the authorities to consider the financial status of the original petitioner. He is a mere street cobbler. As such he cannot afford to construct a new house.

8 The claim of the original petitioner to the membership of The Society was solely dependent upon, his status as a “dis-housed flood affected person”. Therefore it was necessary for him to hold that status and to establish the same to justify the membership of The Society. There is no dispute that the original petitioner was the owner of the building and had been residing there prior to floods. There is also no dispute that he has been residing there even after the floods. Admittedly, portions of that building had been let-out by him to different persons. Though he claims to have only temporarily repaired the house, as per the record, as on today a three storied building is standing at the site, which is owned by him. The petitioners have been regularly paying municipal taxes for that building. As such, the petitioner, though a flood affected person did not fall in the category of “dis-housed flood affected person” for being eligible to allotment of land for construction of a house as a member of The Society. The flood affected person's card relied upon by him was obviously issued for the purpose of giving immediate assistance on being affected by the floods. The assistance recorded in the card is of the basic provisions of bedding, clothing and utensils etc. Therefore issuance of that card cannot help the petitioner in establishing that the floods had completely dis-housed him. Undoubtedly, the original

petitioner had been served with notice dtd. 1st August, 1961 by the Corporation stating that his house bearing No.457 was in dilapidated condition and was required to be demolished. The original petitioner, however does not disclose the action taken by him on receipt of the notice. Apparently, he has either reconstructed or repaired his house. This becomes clear from the letter dtd. 9th August, 1981 issued by the Corporation to him stating that his house was suitable for occupation. In the circumstances, there cannot be any infirmity in the view taken in the orders impugned in the petition. As regards the delay of seven years, it must be held that the same is inconsequential for two reasons. Firstly that any passage of time cannot cure the basic deficiency in the claim of the original petitioner. Secondly, the record shows that The Society had in fact been complaining that the authorities had not been responding to it's letters. In one of it's letters, it was alleged that the original petitioner was an influential person and had been managing the authorities.

9 The argument on behalf of the petitioner that the authorities could not have considered the subsequent panchanama for noticing the condition of the petitioner's house also needs to be rejected for the simple reason that there is no dispute that after the floods also, the original petitioner continued to reside in the same house and his

shifting therefrom was for a temporary short duration. The next claim of the original petitioner that he belongs to an extremely poor section of the Society needs to be only stated to be rejected. Admittedly, he was owner of a residential building which was big enough to accommodate tenants. Presently the house is a three storied building.

10 Mr. Govilkar submits that the building of the petitioners is so located near the nala that in every rainy season, the house is flooded. The petitioner's had always been at the same place. Merely because that place is inconvenient, they cannot claim a largesse from the Government.

11 The record also shows that the original petitioner had unsuccessfully approached the Co-operative Court to challenge cancellation of his membership of The Society. He had succeeded before the trial Court. However, the Co-operative Appellate Court set aside the order of the trial Court holding that the Competent Revenue Authority had held that the original petitioner was not a "dis-housed flood affected person" and it was admitted position that being a "dis-housed flood affected person" was a condition precedent for membership of The Society.

12 Apparently, the Government had classified the flood affected persons in different categories and the assistance by way of allotment of land was available only to a dis-housed flood affected person. In the facts of the case, the petitioner cannot be said to be a dis-housed flood affected person. Hence, the impugned orders are held to be correctly passed and the petition is dismissed.

(Smt. R.P. SondurBaldota, J.)