

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

WRIT PETITION NO.1734 OF 2016

1. S. D. Corporation Pvt. Ltd.,]
a Company incorporated and registered]
under the provisions of the Companies]
Act, 1956 and having its office at]
SP Centre, 41/44, Minoo Desai Marg]
Colaba, Mumbai 400 005]
Through its Authorized Signatory]
Mr. Sachin Pashilkar]..Petitioner

Versus

1. Additional Collector/Appellate Officer]
Having office at Old Custom House]
1st Floor, Shahid Bhagatsingh Road]
Fort, Mumbai 400 001.]

2. Dy. Collector,]
Encroachment Removal &]
Competent Authority]
Colaba Division, Mumbai-400 001.]

3. New Jaiphalwadi SRA Co-operative]
Housing Ltd. Building No.B2 B-9, CS No.]
Tardeo, Mumbai 400 034.]

4. Smt. Prabha Daya Kharwa]
Age: Adult, Occ: Nil]
Residing at Room No.1407,]
Building No.B-9, New Jaiphalwadi]
Co-operative Housing Ltd. Tardeo]
Mumbai 400 034]..Respondents

Mr. G. S. Godbole i/by Mr. T. D. Deshmukh for the Petitioner.
Ms. Kavita N. Solunke, AGP a/w Mr. M. A. Sayed, AGP for the
Respondent Nos.1 & 2.

CORAM : R. M. SAVANT, J.
DATE : 15th OCTOBER, 2016

ORAL JUDGMENT

1 At the outset the Learned Counsel for the Petitioner seeks deletion of the Respondent No.3 from the cause title of the Petition as in the context of the challenge raised it is a formal party. Leave granted. Amendment to be carried out forthwith.

2 Rule. Having regard to the nature of the challenge raised made returnable forthwith and heard.

3 The writ jurisdiction of this Court is invoked against the order dated 30.05.2016 passed by the Appellate Authority i.e. the Additional Collector, Mumbai City, by which order, the Appeal filed by the Petitioner herein came to be dismissed and resultantly, the revised Annexure-II dated 14.12.2015 declaring the Respondent No.4 herein as “eligible” came to be confirmed.

4 Shorn of unnecessary details a few facts can be stated thus :-

5 The Petitioner herein is implementing the Slum Rehabilitation Scheme under Development Control Regulation 33(10) of the Development Control Regulations, 1991. The said scheme is being

implemented for members of three societies of slum dwellers namely, New Jaiphalwadi CHS, Nav Maharashtra CHS and Janta Hill CHS who are all situated on the same plot of land. In so far as the eligibility of the slum dwellers is concerned, pursuant to a survey carried out an Annexure-II came to be issued on 21.08.1996 wherein the husband of the Respondent No.4 one Daya Shankar Kharwa was shown as not eligible qua structure No.445 which he claimed to be his structure. Similarly, one Smt. Jaliben Narottam Umarwanshi was also shown as not eligible qua structure No.430. The relevant extract of the said Annexure-II has been annexed to the Petition. It seems that thereafter a corrigendum came to be issued on 05.10.1996 to the said Annexure-II on 21.08.1996, whereby the husband of the Respondent No.4 i.e. said Daya Shankar Kharwa was shown as eligible with respect to the said structure No.445. In view of his eligibility, the said Daya Shankar Kharwa has been allotted a permanent alternate accommodation being Room No.1407 in rehab building No.B-9 in the said scheme.

6 The controversy involved in the present Petition is as regards the entitlement of the Respondent No.4 who is the wife of the said Daya Shankar Kharwa to an allotment qua the structure No.430 in respect of which the original occupant as indicated above was one Smt. Jaliben Umarwanshi. It seems that the said Smt. Jaliben Umarwanshi expired on

28.07.1996. The Respondent No.4 herein laid a claim for being eligible for a permanent alternate accommodation in lieu of the said structure on the basis of a Power of Attorney and an affidavit dated 21.03.1996 executed by the said Smt. Jaliben Umarwanshi. It is her case that in terms of the said Power of Attorney and affidavit she has purchased occupancy rights in respect of the said structure No.430. The Respondent No.4 also claimed to be eligible on the basis of the affidavit and Power of Attorney dated 11.06.2001 executed by Shri. Dalsukhbhai Surti and Shri. Hasmukhbhai Surti who according to her are the heirs of the said Smt. Jaliben Umarwanshi. The said claim of the Respondent No.4 was rejected by the Slum Rehabilitation Authority by order dated 22.09.2011 on the ground that her name did not appear in the Annexure-II and therefore she was ineligible in respect of the said structure No.430. In view of the fact that the claim for eligibility of the Respondent No.4 in respect of structure No.430 had been rejected. The Petitioner herein preferred an application under Section 3Z of the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971 (For short "the Slum Act") seeking eviction of the Respondent No.4. The Respondent No.2 herein i.e. the Deputy Collector (Encroachment/ Removal), Mumbai City passed an order dated Nil June 2014 directing the eviction of the Respondent No.4 on the ground that she has failed to prove that the

structure occupied by her was in existence prior to 01.01.2000 which is the cut-of date. Upon this, the Respondent No.4 preferred an Appeal under Section 35 of the Slum Act being Appeal No.328 of 2014 before the Respondent No.1 herein i.e. the Additional Collector who at the relevant time was the Appellate Authority. The Additional Collector rejected the said Appeal by his order dated 16.02.2015 and the ground of rejection was that the husband of the Respondent No.4 has already been allotted a permanent alternate accommodation for structure No.445 and therefore the Respondent No.4 who is his wife could not seek permanent alternate accommodation in respect of structure No.430. As a result of the dismissal of the Appeal filed by the Respondent No.4 against the order passed by the Deputy Collector (Encroachment/Removal), the Authorities issued an eviction notice to the Respondent No.4 on 21.02.2015 and thereafter on 24.02.2015 the structure of the Respondent No.4 i.e. structure being No.430 of the Respondent No.4 came to be demolished.

7 It seems that after the structure of the Respondent No.4 was demolished, the Respondent No.4 once again applied for being declared as eligible by filling up the pink form and thereby seeking a revision in the Annexure-II, which as indicated above had already been issued long back. The Respondent No.2 pursuant to the pink form filled up by the

Respondent No.4 by order dated 14.12.2015 revised the Annexure-II and declared the Respondent No.4 eligible in respect of the structure No.430 in respect of which structure the Respondent No.4 was earlier declared as ineligible. The said order dated 14.12.2015 revising the Annexure-II resulted in the Petitioner herein filing an Appeal being No.40 of 2016 before the Respondent No.1 i.e. the Appellate Authority. Amongst the grounds on which the order dated 14.12.2015 passed by the Respondent No.2 was challenged, was the ground based on the order dated 16.02.2015 passed by the same Appellate Authority in the earlier round. The Respondent No.1 i.e. the Appellate Authority by the impugned order dated 30.05.2016 has dismissed the Appeal filed by the Petitioner herein and thereby confirmed the order dated 14.12.2015 passed by the Respondent No.2. Significantly, in the impugned order though a reference has been made to the order dated 16.02.2015 passed by him in the earlier round, the efficacy of the said order or the consequences of the said order on the Appeal filed by the Petitioner herein has not been considered. The Appellate Authority as can be seen from the impugned order has referred to various documents which were produced by the Respondent No.4 herein which are the same documents on the basis of which the Respondent No.4 was declared ineligible in the earlier round. As indicated above, it is the said order dated 30.05.2016 passed by the

Respondent No.1 i.e. Appellate Authority which is taken exception to by way of the above Petition.

8 The principal contention of the Learned Counsel appearing for the Petitioner Mr. G. S. Godbole was that the Appellate Authority could not have dismissed the Appeal filed by the Petitioner in the light of the earlier order passed by him being the order dated 16.02.2015. The Learned Counsel would contend that there was no change in circumstances for the Appellate Authority to take a different view than the one taken by it earlier whilst rejecting the Appeal filed by the Respondent No.4 by order dated 16.02.2015. The Learned Counsel would contend that though a reference has been made to the said order dated 16.02.2015, the said order has not been dealt with by the Appellate Authority in the impugned order.

9 Per contra, the Learned AGP Mr. M. A. Sayed and the Learned Counsel for the Respondent No.4 Mr. Bhujbal sought to support the impugned order, but not with any deal of conviction.

10 Having heard the Learned Counsel for the parties, I have considered the rival contentions. At this stage, it would be relevant to refer to the affidavit filed by the Respondent No.1 herein pursuant to the

directions issued by this Court. The only explanation given by the Respondent No.1 in the affidavit filed by him is that the copy of corrigendum dated 05.10.1996 issued to the Annexure-II dated 21.08.1996 was not before him and what was before him was the Annexure-II dated 23.03.2004 in respect of structure No.38 of Nav Maharashtra CHS Ltd., wherein the husband of Respondent No.4 has been declared ineligible. The said stand taken by the Respondent No.1 herein would be dealt with a bit later.

11 In the instant case, as indicated above, the husband of the Respondent No.4 has been declared as eligible pursuant to the corrigendum dated 05.10.1996 issued to the Annexure-II originally issued on 21.08.1996. On account of the said eligibility of the husband of the Respondent No.4 he has already been allotted a permanent alternate accommodation being room No.1407 in rehab building No.B-9 in the said scheme. In so far as the Respondent No.4 is concerned, she lays a claim to the said room No.430 of which the original occupant was the said Smt. Jaliben Umarwanshi, on the basis of the affidavit and Power of Attorney executed by the said Smt. Jaliben Umarwanshi as also the affidavit and Power of Attorney executed by her heirs. However her claim for being declared as eligible was rejected by the Slum Rehabilitation Authority by order dated 22.09.2011. The said order as indicated above was carried in

Appeal by the Respondent No.4 which Appeal as indicated hereinabove came to be dismissed by the Respondent No.1 by order dated 16.02.2015. Apart from reiterating the reason given by the Slum Rehabilitation Authority for rejecting the claim of eligibility made by the Respondent No.4, the Respondent No.1 has dismissed the Appeal on the ground that the husband of the Respondent No.4 has already been allotted a permanent alternate accommodation in the rehab scheme.

12 The underlying principle in rejecting the said Appeal was therefore that a member of a family was entitled to only one allotment and cannot claim multiple allotments on the basis of being declared eligible in respect of some other structures. However in spite of the said adjudication having taken place, whereby the Respondent No.4 has been declared ineligible qua structure No.430 the Respondent No.4 chose to fill in the pink form which is the modality provided to the slum dweller for applying for eligibility and for participating in the slum scheme. The Respondent No.2 herein notwithstanding what had happened in the earlier round surprisingly deemed it appropriate to make the Respondent No.4 eligible and thereby has taken a stand which is contrary to the stand taken in the earlier round. The matter has been compounded further by the Respondent No.1 by dismissing the Appeal filed by the Petitioner herein against the order passed by the Respondent No.2. Significantly,

though his own order dated 16.02.2015 was relied upon in support of the challenge to the order dated 14.12.2015 passed by the Respondent No.2, the Respondent No.1 has not dealt with the said order and has thereby failed to take into account the consequences that flow out of the said order as regards the claim for eligibility made by the Respondent No.4.

13 Now coming to the stand taken by the Respondent No.1 to justify the impugned order dated 30.05.2016 passed by him. In my view, the stand taken by the Respondent No.1 is not at all convincing and has been taken to somehow justify the impugned order dated 30.05.2016 passed by him. The Respondent No.1 is a Senior Officer in the hierarchy of Revenue Officers and now as per the designation mentioned in his affidavit is the Managing Director of one of the Government of Maharashtra Corporations. It is therefore expected of the Respondent No.1 that he is aware of the basic legal niceties. The Respondent No.1 therefore ought to have been aware of the impact that his order dated 16.02.2015 would have on the claim for eligibility made by the Respondent No.4. However the Respondent No.1 in my view has failed in his duty as an Appellate Authority and has dismissed the Appeal without considering the efficacy of his order dated 16.02.2015 and for reasons which are not germane to the issue of the eligibility of the Respondent No.4. In my view therefore a note of caution is required to be issued to

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the Respondent No.1 to be careful in future whilst exercising quasi judicial powers.

14 In view of the fact that the consequences of the order dated 16.02.2015 passed by the Respondent No.1 were not taken into consideration by him, the impugned order dated 30.05.2016 would have to be quashed and set aside and is accordingly quashed and set aside and the Appeal is relegated back to the Appellate Authority for a de-novo consideration of the Appeal in terms of the observations made hereinabove. Needless to state that the contentions of the parties are kept open for being urged before the Appellate Authority. The Petition is allowed to the aforesaid extent. Rule is accordingly made absolute with parties to bear their respective costs.

15 Parties to appear before the Appellate Authority on 17.11.2016 at 3.00 p.m.

[R.M.SAVANT, J]