

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO.1370 OF 2016

Arun Dhondiram Gaikwad. .. Petitioner
Vs
Smt. Hirabai Vasant Korale and Others. .. Respondents
—
Shri Anand Shinde i/b Mrs. Sneha S. Kadam for the Petitioner.
Shri Jagdish G. Reddy for the Respondent Nos.2 to 5.
Shri Amar Mishra, AGP for the Respondent No.6.
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CORAM : A.S. OKA &
SMT.ANUJA PRABHUDESSAI, JJ

DATED : 8TH DECEMBER 2016

PC.

1. Heard learned counsel appearing for the Petitioner and the learned counsel appearing for the second to fifth Respondents-High Power Committee. We have also heard the learned AGP for the sixth Respondent.

2. By this Petition under Article 226 of the Constitution of India, the grievance made by the Petitioner is as regards the non-inclusion of his name in Annexure-II certified by the Additional Collector in respect of Mahakali Darshan Sahakari Ghrah Nirman Sanstha at Gundavali, Andheri, Mumbai. His grievance is that though the Petitioner was eligible for entering his name in the Annexure-II, the

name of Smt. Hirabai Vasant Korale who is his Aunt has been included in the Annexure-II in respect of the present tenement held by him.

3. The question is whether the Petitioner has a remedy before the High Power Committee constituted under the Government Resolution dated 15th November 2007 passed on the basis of the directions of a Full Bench of this Court under the Judgment and Order dated 1st November 2007 in Writ Petition No.1326 of 2007 and other connected Petitions. The learned counsel appearing for the fifth Respondent High Power Committee has placed reliance on the Procedural Guidelines for Conduct of Business of High Power Committee. He pointed out that the Procedural Guidelines have been framed in terms of the judgment and order dated 24th March 2009 in Writ Petition No.4101 of 2007. Our attention is invited to Clause 2.5 of the guidelines which reads thus:-

“2.5 No application/ Appeal or prayer from the Political workers, Member of Legislative Assembly, Member of Parliament, Municipal Corporators or third party, shall be entertained by the High Power Committee, unless such person is a party, Respondent or Intervener in the proceedings.”

4. As far as the area of operation of the High Power Committee as defined by the Government Resolution dated 15th November 2007 is concerned, the disputes about the eligibility criteria

for including a person in the Slum Rehabilitation Scheme as well as the dispute relating to non-inclusion of an eligible person in the Slum Rehabilitation Scheme can be entertained by the High Power Committee. In the present case, the grievance of the Petitioner is that the Slum Rehabilitation Scheme is being implemented without treating him as eligible though, according to him, he is eligible.

5. The term “third party” included in Clause 2.5 of the Procedural Guidelines will have to be construed as ejusdem generis. The clause will apply when a person who is not concerned in any manner with the property under redevelopment and is not claiming to be eligible for allotment of a permanent accommodation makes a grievance regarding inclusion of certain slum dwellers in Annexure-II. Such a person can be called as a third party within the meaning of the said Clause 2.5.

6. Here, the grievance of the Petitioner is very specific. His grievance is that his name ought to have been included in the list of eligible persons for allotment of permanent accommodation and the scheme is being implemented without showing him as eligible. Therefore, we do not agree with the contention that the High Power Committee is not empowered to deal with the issues raised in this Petition.

7. We, therefore, propose to relegate to the Petitioner to the remedy before the High Power Committee.

8. We, accordingly, dispose of the Petition by passing the following order:

ORDER :

- (a) It will be open for the Petitioner to file appropriate proceedings before the High Power Committee;
- (b) It will be open to the Petitioner to claim appropriate interim relief, if any, in the proceedings;
- (c) We make it clear that the Application and/or Appeal which may be preferred by the Petitioner shall be decided on its own merits. We also make it clear that in view of the findings recorded in this order, it will not be open for the High Power Committee to reject the Application and/or Appeal which may be preferred by the Petitioner on the ground that the Petitioner is a third party within the meaning of Clause 2.5 of the Procedural Guidelines framed by the High Power Committee;

- (d) We make it clear that we have not examined the merits of the contentions raised by the Petitioner and all issues in that behalf are kept open;
- (e) Needless to add that the High Power Committee will have to give an opportunity of being heard to the first Respondent and other concerned parties in this Writ Petition;
- (f) The Petition is disposed of on above terms;

(SMT.ANUJA PRABHUDESSAI, J)

(A.S. OKA, J)