

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

WRIT PETITION NO.384 OF 2012

Mehamood Bayuddin Kutty Ahmed ..Petitioner

Versus

The Chief Executive Officer,
Slum Rehabilitation Authority and others ..Respondents

Mr. Ramesh Ramamurthy for the Petitioner.

Mr. Girish Utangale a/w Chetan Mhatre i/by M/s. Utangale & Co., for
the Respondent No.1.

Mr. Anil Sakhare, Senior Advocate a/w Shital Mane for the
Respondent-MCGM.

Mr. S. G. Surana for the Respondent No.3.

CORAM : R. M. SAVANT &
SMT. SADHANA S. JADHAV, JJ
DATE : 11th JULY, 2017

PC.

1 The principal grievance of the Petitioner is as regards the order dated 19.11.2011 passed by the High Power Committee ("HPC" for short), by which order, the Petitioner's grievance in respect of his entitlement for a bigger area under the Slum Rehabilitation Scheme came to be rejected.

2 The Petitioner is an eligible slum dweller who was running a Restaurant in a structure which was situated on the land wherein a Slum

Rehabilitation Scheme has been implemented by the Respondent No.3. The name of the Petitioner appears in the Annexure-II issued by the Competent Authority of the Municipal Corporation of Greater Mumbai (MCGM) as the land on which the slum was situated was vesting in the MCGM. The Petitioner has been held to be entitled to allotment of a premises admeasuring 225 sq.ft. and in fact has been allotted the premises admeasuring the said area in the rehab component. However the Petitioner has chosen not to accept the said premises on the ground that the Petitioner is entitled to a premises of a bigger area. It is on the said basis that the Petitioner had earlier filed applications before the High Power Committee and Petitions in this Court. It is pursuant to the last round that the instant impugned order dated 19.11.2011 came to be passed by the High Power Committee rejecting the claim of the Petitioner for being entitled to a premises of a bigger area.

3 On behalf of the MCGM which is the authority which as indicated above has issued the Annexure-II, an affidavit in reply has been filed, in which reply Sub Regulation 5.3 of Regulation 33(10) of the Development Control Regulation, 1991 has been referred to. It has been stated in the said reply that in terms of the said Sub Regulation 5.3, the Petitioner's entitlement is to an area of 225 sq.ft. in the maximum.

4 The Learned Counsel appearing on behalf of the Petitioner Shri. Ramesh Ramamurthy would seek to draw our attention to Sub Regulation 5.2 to contend that the claim for a bigger area can be raised on the basis of the said Sub Regulation 5.2. The said Sub Regulations are appearing in Appendix IV under the heading Right of Hutment Dwellers, the same are reproduced hereinunder for the sake of ready reference :-

“5.2 In the rehabilitation component, the built-up area for commercial / office / shop / economic activity that existed prior to 1st January 1995 subject to the provisions in the sub-regulation below, shall be given. Where a person has both residential and commercial premises without common wall between residential and commercial premises, for commercial / office / shop / economic activity in the slum/ pavement, he shall be held eligible for a residential unit and also for built-up area for commercial/office/shop/ economic activity, both free of cost.

5.3 Built up area for commercial/office/shop/economic activity upto 20.90 sq.m. (225 sq. ft.) carpet area or actual area whichever is less, shall be provided to the eligible person free of cost as part of the Rehabilitation Project. Any area in excess of 20.90 sq.mt. to the extent of existing area may, if required, be sold on preferential basis at the rate for commercial area in the free-sale component.”

(emphasis supplied)

5 On a reading of the aforesaid Sub Regulations, we do not find anything in Sub Regulation 5.2 to assist the Petitioner in his claim for a bigger or higher area. In so far as the said Sub Regulation 5.2 is

concerned, it makes it very explicit that the entitlement to the area would be subject to Sub Regulation 5.3. As indicated above, Sub Regulation 5.3 contemplates an area to the maximum of 225 sq.ft. or actual area whichever is less being allotted, free of cost, meaning thereby that even if a slum dweller has a bigger area in the original structure in the slum, he would still be entitled to a maximum of 225 sq.ft. in the rehab component of the Slum Rehabilitation Scheme. The said Regulation further provides that if the slum dweller wishes to have a bigger area, then the same can be sold to him at the rate for commercial area in the free sale component. Hence the entitlement over and above the area of 225 sq.ft. is not a matter of right. In the instant case, it is required to be noted that the building comprising of the rehab component is completed in the year 2009 and all the tenements have been allotted. The said fact is sought to be disputed by the Learned Counsel for the Petitioner by contending that the adjoining premises are as yet not allotted. In so far as the free sale component is concerned, it seems that the building comprising of the free sale component has also been completed in the year 2010. The same can be seen from the photographs at Exh.G and Exh.I to the affidavit filed on behalf of Respondent No.3. Hence, sufficient time has elapsed since the completion of both the rehab component as well as the free sale component in respect of which

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allotments must have been made long ago. Assuming that some premises which are adjoining the premises are available, it is not possible for this Court in its writ jurisdiction to issue any direction either to the developer or the SRA to allot the premises as the Petitioner as a matter of right cannot claim a bigger premises, especially at this point of time when both the rehab as well as the free sale component have been completed long back. The HPC has also dismissed the Appeal filed by the Petitioner on the ground that the Petitioner i.e. the Appellant before the HPC has failed to show or produce any documents regarding steps taken by him to purchase the additional area, since the year 2003 or other steps he has taken to contest the area of 306 sq.ft. In the facts and circumstances as above, we do not find any fault with the impugned order passed by the HPC. Hence, no relief can be granted to the Petitioner in the above Writ Petition. The Writ Petition is accordingly dismissed. All interim orders stand vacated.

[SMT. SADHANA S. JADHAV, J]

[R.M.SAVANT, J]