

Shephali

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION (L) NO. 8 OF 2018**

Mohd Ayub Mohd Yaqub Choudhary ...Petitioner
Versus
Deputy Collector (ENC/REM) and The
Competent Authority Bandra-2 & Ors ...Respondents

Mr SM Gorwadkar, Senior Advocate, a/w Mr Asif Hussain, i/b
Nizam T Sharif, for the Petitioner.
Mr HB Takke, AGP for the Respondents Nos. 1, 3 to 5-State.
Mr Milind More, Additional GP, for Respondent No. 6-SRA.
Mr Karl Tamboly, i/b Ravi Thankaian, for Respondent No. 2.

CORAM: G.S. PATEL, J
DATED: 17th January 2018

PC:-

1. Heard Mr Gorwadkar for the Petitioner and the respective counsel for the Respondents.
2. In this Petition under Article 226 of the Constitution of the Constitution of India, the challenge is to an order dated 28 December 2017 of the Apex Grievance Redressal committee (“GRC”) established under the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act 1971 (“**the Slum Act**”). By that order the GRC dismissed the Petitioner’s application No. 101 of 2017. The application was filed under the

provisions of Section 35 (1A) of the Slum Act. It is the Petitioner's case that the GRC has passed an order which is perverse, illegal and contrary to establish documents on record.

3. Last week, I granted a temporary injunction and allowed the Petitioner a liberty to file a compilation. Mr Gorwadkar has tendered that compilation today and taken me through it.

4. Briefly stated, the case of the Petitioner is that he occupied a separate and independent structure in part of the area covered by the necessary slum notification and declaration for the new Kalina SRA Cooperative Housing Society Ltd, previously the Azgar Ali Chawl. The Petitioner says his name was shown in draft Annexure-II prepared by the society and the developer, at Sr. No. 51. Paragraph 3(i) of the Petition says that the premises were originally owned by one Abdul Malik from whom by an agreement dated 13th March 1995 the Petitioner's father purchased them. The Petitioner then claims that on 9th October 1997 the Petitioner's father gave these premises to the Petitioner. The Petitioner's father and his brother continued to occupy separate structures.

5. In the compilation at page 12, the draft Annexure-II is reproduced. It shows the name of one Mohd Yakub at Sr. No. 49. At Sr. No. 15 is the name of Ismail. Then at Sr. No. 51 is the name Ayub Choudhary and this, Mr Gorwardkar says, is a reference to the Petitioner. Two or three things are peculiar about this draft annexure-II. First, Iamail's name is referenced against a structure in column 5, viz., structure T3. This is also the same structure number

shown against Mohd Yakub, said to be the Petitioner's father at Sr. No. 49. Against Sr. No. 51, where the name Ayub Choudhary appears, there is no structure number and it is said that Ayub Choudhary's user is commercial. Importantly, for both Sr. Nos. 50 and 51, Ismail and Ayub (i.e., the Petitioner's brother and the Petitioner), column no. 7 says that their carpet area is included in the carpet area of 46 square metres shown against the residential user of Mohd Yakub at Sr. No. 49. In other words, the Petitioner and his brother were even in the draft Annexure-II shown as included in and part of the structure of their father. This is completely contrary to what is being urged in the Petitioner.

6. I notice that in paragraph 3(ii) of the Petition, the Petitioner then says that he was 'initially' residing with his father and family in the premises but that on 13th February 1995 he purchased 'the above said Suit premises which was having separate independent existence in the neighbourhood of his father's premises'. This is, *prima facie*, another inconsistency with what is now urged.

7. Mr Gorwadkar then draws my attention to page 23 of the compilation which is a receipt in the name of one Mohd Ayub. There is no structure number referenced in this receipt and I am asked to conclude or infer that the reference to Mohd Ayub is a reference to the Petitioner. There is a great deal of difficulty on this because in the draft Annexure-II referred to earlier the Petitioner's name is shown as Ayub Choudhary and his father's name is shown as Mohd Yakub. In the Petition itself, the Petitioner uses all four names and described himself as Mohd Ayub Mohd Yakum Choudhary.

8. Before the Competent Authority the same argument was raised and by an order dated 30th March 2017 the Competent Authority held that the application of the Petitioner to certify him as having a separate structure and for inclusion in the final Annexure-II was liable to be rejected because the Petitioner had apparently carved out some space in the structure that was in his father's name by erecting a partition. Indeed this is also the conclusion of the GRC in the impugned order. The question therefore is whether the Petitioner is able to show today that there is some unambiguous evidence of an independent structure in his own name. This is not done and I find that the Petitioner's father has not been joined as a party to this Petition.

9. Mr Tamboly for Respondent No. 2, the developer states that the father has entered into a separate alternative accommodation agreement and is currently in transit accommodation with others whose names are appeared in the final Annexure-II.

10. It is difficult in these circumstances to hold that this is a Petition which calls for any interference under Article 226 of the Constitution of India. First, to do so would involve a writ court having to investigate seriously disputed questions of fact. Second, it is by no means clear from the material that is on record, including the compilation for which I gave the Petitioners additional latitude, that there is the slightest evidence of the Petitioner having an independent structure in his own name.

11. It is unclear in whose name the receipt at page 23 has been issued and in any case that receipt is not structure-specific. The very document, i.e., the draft Annexure-II, that the Petitioner relies on does not, as I have noticed above, support the Petitioner's case, for it clearly states that the area claimed by the Petitioner is included in the structure No. T3 with an area of 46 square metres which stands in his father's name. Having regard to these circumstances, I do not believe this is a fit case for interference. The Petition is rejected. There will be no order as to costs.

12. Mr Gorwadkar states that some time will be required to shift. His client is present in Court. Mr Gorwadkar makes a statement on instructions that possession will be handed over to Respondent No. 2 by 5.00 p.m. on 30th January 2018. The statement is accepted as undertaking to the Court.

(G. S. PATEL, J)