

AS

***IN THE HIGH COURT OF JUDICATURE AT BOMBAY***

***CIVIL APPELLATE JURISDICTION***

***WRIT PETITION NO.3612 OF 2019***

|                                 |                |
|---------------------------------|----------------|
| Deepak Tukaram Joshi            | ..Petitioner.  |
| V/s.                            |                |
| The State of Maharashtra & Ors. | ..Respondents. |

Mr.Angad Giri with Sagar Batavia for the petitioner.

Mr.S.H.Kankal, AGP for respondent Nos.1 to 4.

Mr.H.M.Inamdar for respondent No.5(c).

***CORAM: NITIN W.SAMBRE, J.***

***DATE : JUNE 14, 2019***

**P.C.:-**

Heard respect counsel.

2. The factual matrix as is necessary for deciding the petition is as under:-

The petitioner and his brother Ramakant Joshi claims to be jointly entitled for inclusion in annexure-II in an Slum Rehabilitation Authority (SRA) scheme, being successor of Tukaram Laxman Joshi. Initially, the Competent Authority included their names in

Annexure-II as persons entitled for benefit under the SRA scheme.

3. The respondent-brother has taken out proceedings for deletion of the petitioner from Annexure-II on ground that the petitioner was not residing in the property in question. Accordingly, Competent Authority i.e. Deputy Collector, passed an order and thereby deleted the name of the petitioner vide order dated September 10, 2009.

4. The said order dated September 10, 2009 was subject matter of challenge in appeal. However, the appellate authority vide communication dated February 22, 2016 disposed of the said appeal without hearing the petitioner.

5. As a consequence, the petitioner preferred another appeal under section 35 of the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971 ('the Act' for short) against the order of removal of his name from Annexure-II. However, since the appeal did not disclose any material, the said appeal came to be withdrawn.

6. The petitioner thereafter preferred third appeal which came to be disposed of by the appellate authority on the ground that the same is barred by limitation by refusing to condone the

delay. As a consequence, the petitioner preferred an appeal under section 35(1A) of the Act before the Grievance Redressal Committee. The Grievance Redressal Committee proceeded to decide the claim of the petitioner in appeal and thereby ordered condonation of delay and dismissed the appeal on merits after hearing.

7. The submissions of Mr.Giri is, once the name of the petitioner was included in Annexure-II to be the beneficiary of the SRA scheme, the removal of the name of joint holder, who is the real brother, is without any basis or material evidence on record. So as to substantiate the said contention, learned counsel for the petitioner has invited the attention of this Court to first order passed by the Deputy Collector, SRA whereby his name came to be removed by order dated September 10, 2009.

8. Learned counsel would then urge that the brother of the petitioner, namely Ramakant, being one of the successor to the claim of his father i.e. Tukaram, ought not to have taken objection to the inclusion of the name of the petitioner to Annexure-II, being legal heir of deceased Tukaram. As such, his submission is, the impugned order is not sustainable.

9. *Per contra*, Mr.Inamdar, learned counsel for respondents would support the order and contend that when the second appeal was withdrawn, no liberty was obtained from the authority and that being so, the Grievance Redressal Committee has rightly held that the appeal is not maintainable. The respondents would further urge that after the death of Tukaram, the petitioner had disassociated with Ramakant and it was Ramakant who followed matter with the SRA, which is found to be the basis for deletion of the name of the petitioner. A further submission is, since the respondents are in possession of the property for last couple of years, this Court may not disturb the said position.

10. Having dealt upon the controversy, which has been brought to my notice, upon perusal of the order impugned dated September 10, 2009 passed by the Deputy Collector, the name of the petitioner was removed from Annexure-II. Such order lacks reasons and non consideration of material evidence in support of the conclusion drawn therein. The only reason cited in the said order is, a person should be in continuous possession of the property and the petitioner was not in possession thereof which

prompted them to order deletion of his name from Annexure-II.

11. The least that was expected of the said authority was to consider the submissions, analyse the evidence brought by either of the parties and then record a findings with appropriate reasons.

12. By cryptic order, the respondent Deputy Collector and Competent Authority has proceeded to pass the order of removal of name of the petitioner from Annexure-II which in any case is not justifiable.

13. Apart from above, even if the respondents have raised the issue of dismissal of the second appeal, though the first appeal was disposed of without having been heard, that by itself would not preclude the petitioner from questioning the legality and propriety of the order passed by the Competent Authority removing his name from Annexure-II. As such, in my opinion, the petition needs to be allowed. Hence the order :-

- i. The order dated September 10, 2009 passed by the Deputy Collector, Competent Authority thereby ordering removal of the name of the petitioner from Annexure-II and the subsequent order passed by the Appellate Authority thereof are hereby set aside;

- ii. The parties hereby agree that they shall appear before the Competent Authority on July 15, 2019 with the requisite papers and evidence;
- ii. The Competent Authority after giving opportunity of hearing to the parties, shall pass appropriate and reasoned order;
- iv. In the meanwhile, the petitioner undertakes to this Court that he shall not disturb the position as it exists on date of this petition till the order is passed by the Competent Authority and four weeks thereafter, in case if the order is adverse to the respondents;
- v. The petition stands disposed of in the above terms.

*(NITIN W.SAMBRE, J.)*