

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 5375 OF 2018

Mr. Akshay Durgesh Manjrekar ..Petitioner.
V/s.
The Grievance Redressal Committee
Mumbai Suburb and Ors. ..Respondents.

Mr. A.N. Giri a/w Sagar Bataria for the petitioner.
Smt. M.S. Bane, AGP for State.
Ms. Rukmini Thokal for respondent no.4.
Mr. G.T. Kanchanpurkar for respondent no. 5.

CORAM: A.S. GADKARI, J.

DATE : 5th July, 2019.

P.C.:-

By this present petition under Article 226 and 227 of Constitution of India, the petitioner has challenged the concurrent findings recorded by both the Authorities below.

2 Heard learned counsel Shri. A.N. Giri for petitioner, learned counsel Ms. Rukmini Thokal for Respondent no. 4, learned counsel Shri. G.T. Kanchanpurkar for Respondent no. 5 and learned

AGP Ms. M.S. Bane for the State. Perused the record annexed to the petition.

3 The petitioner claims eligibility for allotment of an alternate accommodation in the Respondent no. 4- Society in respect to Hut No. 86. The petitioner in support of his case at first instance before the Deputy Collector and Competent Authority, Bandra had produced an Agreement for Sale dated 17th January, 2013 between himself and Shri. Achinkumar Bholenath Chandra, Power of Attorney dated 17th January, 2013 and Affidavit dated 17th January, 2013. The Deputy Collector i.e. Respondent no. 3 has rejected the claim of the petitioner on the ground that the petitioner has failed to produce necessary and relevant documents as contemplated by Government Resolution dated 16th May, 2015 issued by Government of Maharashtra.

4 The Appeal preferred by the petitioner under section 35 of the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971 (for sake of brevity “said Act”) has been turned down by Respondent no.2 by its order dated 29th September,

2016. The Respondent no.2 in its order has observed that, despite granting sufficient opportunity, the petitioner has failed to produce necessary and relevant documents/evidence in support of his contention that he is eligible for allotment of an alternate accommodation in the Respondent no. 4-Society. Further, Appeal as contemplated under section 35(1A) of the said Act before the Grievance Redressal Committee, Mumbai, Suburban Mumbai i.e. the Respondent no. 1 has met with a fate of rejection. As noted earlier, there is concurrent finding recorded by both the Authorities below.

5 The Supreme Court in the case of *Krishnanand (Dead) Through Legal Representatives & Ors. Vs. Deputy Director of Consolidation & Ors. reported in (2015) 1 SCC 553* has held that, it is a settled law that, a jurisdiction under Article 226 of the Constitution cannot be exercised for re-appreciating the evidence and arrival of findings of facts unless the authority which passed the impugned order does not have jurisdiction to render the finding or has acted in excess of its jurisdiction or acted is patently perverse. It is further observed that, interference with concurrent findings of fact can be

called for only on the ground that authorities/Courts below acted perversely i.e. lacked or exceeded jurisdiction or rendered perverse findings.

It is observed in para 7 of the said decision that, a plain reading of the impugned Order therein shows that, the High Court had committed an error in re-appreciating the evidence by setting aside the findings of fact, which is normally impermissible in exercise of its jurisdiction under article 226 of the Constitution of India.

6 The Constitution Bench of the Supreme Court in the case of *Syed Yakoob Vs. K.S. Radhakrishnan & Ors.*, reported in AIR 1964 SC 477, while enumerating the nature and limits of the jurisdiction of the High Court in issuing a writ of certiorari has held that, the jurisdiction of the High Court to issue a writ of certiorari is a supervisory jurisdiction and the Court exercising it is not entitled to act as an Appellate Court. This limitation necessarily means that the findings of fact reached by the inferior court or Tribunal as result of the appreciation of evidence cannot be reopened or questioned in writ proceedings. That, an error of law which is apparent on the

face of the record can be corrected by a writ, but not an error of fact, however grave it may appear to be.

In regard to a finding of fact recorded by the Tribunal, a writ of certiorari can be issued if it is shown that in recording the said finding, the Tribunal had erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence which has influenced the impugned finding. Similarly, if a finding of fact is based on no evidence, that would be regarded as an error of law which can be corrected by a writ of certiorari.

A finding of fact recorded by the Tribunal cannot, however, be challenged in proceedings for a writ of certiorari on the ground that the relevant and material evidence adduced before the Tribunal was insufficient or inadequate to sustain the impugned finding.

7 The Supreme Court in the case of *Shalini Shyam Shetty & Anr. Vs. Rajendra Shankar Patil*, reported in (2010) 8 SCC 329 has enumerated the principles in the exercise of High Court's jurisdiction

under Article 227 of the Constitution of India. It is held that, the High Courts cannot, at the drop of a hat, in exercise of its power under Article 227 of the Constitution, interfere with the Orders of tribunals or courts interior to it. Nor can it, in exercise of this power, act as a court of appeal over the orders of the court or tribunal subordinate to it. In cases, where an alternative statutory mode of redressal has been provided, that would also operate as a restraint on the exercise of this power by the High Court. That, the High Court can interfere in exercise of its power of superintendence when there has been a patent perversity in the orders of the tribunals and courts subordinate to it or where there has been a gross and manifest failure of justice or the basic principles of natural justice have been flouted.

It is further held that, in exercise of its power of superintendence, the High Court cannot interfere to correct mere errors of law or fact or just because another view than the one taken by the tribunals or courts subordinate to it, is a possible view. In other words, the jurisdiction has to be very sparingly exercised.

That, the power of interference under this Article is to be kept to the minimum to ensure that the wheel of justice does not come to a halt and the fountain of justice remains pure and unpolluted in order to maintain public confidence in the functioning of the tribunals and courts subordinate to the High Court.

The afore-stated view expressed in the case of *Shalini S. Shetty (Supra)* has been further affirmed by the larger Bench of the Supreme Court in the case of *Radhey Shyam & Anr. Vs. Chhabi Nath and Ors. Reported in (2015) 5 SCC 423*.

8 Perusal of record would clearly indicate that, the petitioner has failed to produce necessary and relevant evidence before the concerned Authorities as required by G.R. dated 16th May, 2015. The record further discloses that, the Respondent no.2 has properly appreciated the evidence on record while arriving at the conclusion that the petitioner is not eligible of alternate accommodation.

9 Apart from the fact that, there is concurrent findings recorded by the Authorities below, the Respondent no. 4 has filed a

detailed affidavit-in-reply dated 17th June, 2019 wherein it is specifically stated that, Respondent no.3 on 17th May, 2012 had issued notice to the predecessor in title of the petitioner namely Chand Achin Kumar, directing him to vacate the said hut as he had accepted rent from developer for a period of 12 months for temporary transit accommodation. It is clear from the record that, in pursuance of the said notice dated 17th May, 2012 the structure i.e. Hut No. 86 was demolished by the Competent Authority and on the date of execution of alleged agreement dated 17th January, 2013 between the petitioner and Achinkumar Chand the said structure was not in existence. The record further indicates that, the petitioner has thereafter laid his claim on the said structure. The learned counsel for respondent pointed out that, a survey was conducted by the Competent Authority in the year 2004 itself and the said structure was found to be closed and not occupied by anybody.

10 As recorded by both the Authorities below, the petitioner has failed to establish his claim for eligibility about his entitlement

for Respondent no.4-society by producing cogent and convincing evidence. After perusal of the record, this Court is of the view that, both the Authorities below have not committed any error either in law or at facts in passing the impugned orders.

11 The petition being devoid of merits, is accordingly rejected.

(A.S. GADKARI, J.)