

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 4179 OF 2019

Smt. Tanuja Bharat Pawar

... Petitioner

Vs.

The Grievance Redressal Committee/
Additional Collector and Ors.

... Respondents

Mr. Manish Kale for the petitioner.

Mr. Prakash Hartalkar with Mr. Tejas P. Hartalkar for respondent no. 5.

Mr. P.P. Pujari, AGP for respondent no. 1.

Mr. S.V. Pitre I/b Mr. Ajit Ram Pitale for respondent no. 2.

Mr. Jaydeep Deo for respondent no. 3.

CORAM : NITIN W. SAMBRE, J.

DATE : 11th June, 2019.

P.C. :

The order impugned in this petition is passed by the Grievance Redressal Committee, Thane City under the provisions of Maharashtra Slum Areas (Improvement, Clearance, Redevelopment Act), 1971 thereby dismissing the appeal preferred by the present petitioner in which the order dated 06/04/2015 passed by the Competent Authority viz. Deputy Commissioner, Thane Municipal Corporation in respect of Hut No. 66 in Smanway Cooperative Housing Society (Proposed), Dhobighat,

Kopari, Thane came to be confirmed. By the said impugned order the petitioner and respondent no. 5 are jointly held to be eligible for Hut No.66.

2 Facts necessary for deciding the petition are as under:

Ramu Maruti Pawar was blessed with four sons Bharat, Kisan, Yashwant and Nivrutti. Petitioner is wife of Bharat whereas respondent no. 5 is wife of Kisan. The original occupant Ramu Maruti Pawar was having little bigger structure, consisting of Room No.66 and Room No.67 and on the top of Room No. 66 and 67 there was one upper/mezzanine floor. The said property No. 3040884 was divided vide Order dated 23/01/2015 for the purpose of Tax Assessment by Thane Municipal Corporation as under:

- “a) Hut No. 66, Ground floor bearing Property No. 3040884/1 which is in occupation of the Appellant,
- b) Hut No. 67, Ground floor, bearing Property No. 3040884/03 which is in occupation of the Reshma Yashwant Pawar and,
- c) Upper floor/Mezzanine floor on the top of hut no. 66 and 67, bearing Property No. 3040884/02 which is in

occupation of Respondent no. 4.”

3 So far as aforesaid property is concerned, the petitioners and contesting respondents have not disputed their continuous possession. The certificate dated 10/12/2002 issued by Thane Municipal Corporation in 1998-1999 shows that the husband of Respondent No. 5 Kisan was residing on mezzanine floor.

4 The other evidence viz. electricity bills, tax receipt in categorical terms speaks of possession of petitioner and respondent no. 5 on their respective area.

5 In the aforesaid background, the learned counsel for petitioner submits that since the petitioner was occupying ground floor of room in question, impugned order passed by the authority holding the petitioner and respondent no. 5 jointly eligible, itself runs contrary to their own scheme and policy. According to petitioner, the party occupying the mezzanine floor are not entitled for eligibility certificate. That being so, the authorities have committed an error in passing the order impugned. The learned counsel would urge that the authorities have

treated petitioner, respondent no. 5 and the other occupiers of room no. 67 viz daughter of Yashwant unequally, though petitioner and respondents are having equal share in the property of Maruti.

6 The learned counsel for respondent submit that the authorities have identified the right of the petitioner and respondent *qua* the original hutment dweller namely Ramu Maruti Pawar in whose shoe both have stepped in. The petitioner and respondent no. 5 are claiming property through their husband and as such, they are eligible through right of Ramu to the hutment in question. According to him, at the most petitioner can establish the right through competent civil court of having equal share in the property.

7 Having dweled upon the controversy, what is required to appreciate in the facts of this case is, both the authorities below have appreciated the blood relationship between the parties to the hutment in question and accordingly, ordered joint eligibility in favour of the petitioner and respondent no.5.

8 The petitioner has not questioned eligibility of the daughter

of Yashwant, who is occupying room no. 67 but has chosen to question the joint eligibility granted in favour of respondent no. 5. This itself speaks voluminous about the fact that the petitioner claimed her eligibility at par with the eligibility awarded to respondent no. 5. Apart from above, the fact remains that once both the authorities having looked in records and documentary evidence, has recorded findings of facts, this Court hardly notice any serious perversity or illegality which warrants interference in supervisory jurisdiction. As such the petition fails, stands dismissed.

9 However, this would not preclude the petitioner from taking out civil proceeding so as to establish her right to the property in question.

10 If such suit is brought in motion, it is expected of Civil Court to decide the same on its own merits without being influenced by finding recorded herein above.

(N. W. SAMBRE, J.)