

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

WRIT PETITION NO. 14641 OF 2018

Shamiullah Basim Shaikh & Ors.	...	Petitioners
V/s.		
Additional Collector (E/R)		
Mumbai City & Ors.	...	Respondents

Mr.P.S. Sethi for Petitioners.
Ms.M.S. Bane, AGP for Respondent Nos.1 and 2.
Mr.B.A. Bhalwal i/b. Vyas and Bhalwal for Respondent Nos.3 and 4.
MrDharmesh Joshi for Respondent No.6.

CORAM : A.S. GADKARI, J.

DATE : 20th August 2019.

P.C. :

1] By the present Petition under Article 227 of the Constitution of India, the petitioners have taken exception to the Order dated 4th August 2018 passed by the Grievance Redressal Committee (Mumbai City) in Appeal No.30 of 2018, rejecting the said appeal and confirming the Orders passed by two Authorities below.

2] Heard Mr.Sethi, the learned counsel for the petitioners at length, Ms.Bane, AGP for the respondent Nos.1 & 2, Mr.Bhalwal, learned counsel for the respondent Nos.3 & 4 and Mr.Joshi, learned counsel for

the respondent No.6.

Perused the entire record annexed to the Petition and Affidavit-in-Reply dated 9th October 2018 filed by the respondent No.2.

3] The record reveals that the petitioners claimed to be eligible hutment dwellers situated on Survey No.144, Shantinagar, Salt Pan Road, Antop Hill, Wadala, Mumbai. That a slum rehabilitation scheme under the name of Aman Sagar Co-operative Housing Society Limited, was undertaken on Survey No.6 (part) and Survey No.117 (part) at the aforestated place. In the survey carried out by the Competent Authority, it was found that, the petitioners herein were not eligible for allotment of residential structure in the said rehabilitation scheme and accordingly in the Index-II an endorsement was made by the concerned Authority. The respondent No.3 is the developer who has undertaken the said project of slum rehabilitation of the respondent No.4-Society. The respondent No.3-Developer thereafter submitted a proposal in prescribed form as contemplated under Section 33 and 38 of *The Maharashtra Slum Areas (Improvement, Clearance And Redevelopment) Act, 1971* [for short the, "Said Act"] for taking appropriate action against the ineligible hutment dwellers with the respondent No.2. It appears from the record that, the

Developer had also filed Writ Petition No.1719 of 2015 in this Court for appropriate directions to the Competent Authority for taking action against the persons who have not vacated the premises and were causing obstruction in the development of the said scheme. This Court by its Order dated 13th August 2015 directed the concerned Authority to take appropriate decision on the application filed by the respondent No.4-Society as contemplated under Section 33 and 38 of the said Act within 12 weeks. Accordingly, the respondent No.4-Society informed the respondent No.2 to take action against the petitioners who are the concerned persons of the respondent No.4, found to be ineligible as per the survey and Index-II submitted to the respondent No.2 in that behalf. After receipt of the said proposal, the respondent No.2 issued notices to the petitioners. The petitioners appeared before the respondent No.2. The respondent No.2 thereafter conducted hearing of the said application on various occasions. The respondent No.2 after hearing the parties to the said application and after perusing the evidence available on record came to the conclusion that, the huts of the petitioners are situated on Survey No.6 (part) and not on Survey No 144 (part). The respondent No.2 also came to the conclusion that the petitioners are creating

obstruction in the redevelopment of the slum rehabilitation scheme undertaken by the respondent No.3 of the said Society (respondent No.4). As the petitioners are ineligible for getting benefit in the slum rehabilitation scheme undertaken by the respondent No.3 and are causing obstruction in the development of the said scheme, the respondent No.2 directed the petitioners to vacate the huts occupied by them and give the land beneath their huts to the respondent No.3 within 7 days from the date of passing of the said Order, failing which the respondent No.2 and the other Competent Authorities would be constrained to initiate action under Section 38 of the said Act and the costs for the same would be recovered from the petitioners. The respondent No.2 issued separate orders in that behalf against the petitioners of same date i.e. 20th May 2017.

4] The petitioners therefore preferred common Appeal under Section 35 of the said Act before the respondent No.1, bearing Appeal No.680 of 2017. The respondent No.1 after hearing the parties and after re-appreciating the entire evidence available on record rejected the said appeal by its Judgment and Order dated 12th January 2018.

The petitioners feeling aggrieved by the said Judgment and

Order dated 12th January 2018 passed by the respondent No.1 in Appeal No. 680 of 2017 preferred further Appeal under Section 35-(1A) of the said Act before the Grievance Redressal Committee (Mumbai City), bearing Appeal No.30 of 2018. The said Committee by a speaking Order dated 4th August 2018 has rejected the said appeal.

5] Mr.Sethi, learned counsel for the petitioners submitted that, the Grievance Redressal Committee has infact not decided any issue involved in the appeal and has simply observed that the said Committee has no jurisdiction to decide the eligibility of the petitioners. He further submitted that, the Grievance Redressal Committee has erroneously observed that, the issue of irregularity committed by the respondent No.3 along with other Government Departments cannot be looked into. He submitted that, the huts of the petitioners are situated on Survey No.144 which land belongs to the Central Government and therefore, it is exempted from the scheme of rehabilitation under the said Act. He submitted that, the respondent Nos.3 and 4 by changing the alignment of the plan has incorporated the huts of the petitioners in Survey No.6 which is an illegal act. He further submitted that, though the Government Authorities have categorically emphasized that, the petitioners huts are

situated on Survey No.6, tomorrow if the Central Government claims the land beneath the huts of the petitioners, the petitioners will be of no where and will not be entitled for any benefits from the Government. He therefore submitted that, by applying the principles of natural justice, equity and good conscience, the interest of the petitioners may be protected by setting aside the impugned Orders and allowing the present petition.

The learned counsel appearing for the respective respondents vehemently opposed the present petition.

6] A minute perusal of the record and impugned Orders would indicate that, in pursuance of Order dated 13th August 2015 passed in Writ Petition No.1719 of 2015, the respondent No.2 has given reasonable and fair opportunity to the petitioners to produce necessary and relevant evidence to prove their claim for eligibility for getting benefits under the re-development scheme undertaken by the respondent No.3 under the said Act. It is to be noted here that, the petitioners have been found to be illegible for rehabilitation as per Index-II of the said Society. The respondent No.2 after scrutinizing the entire evidence available on record has come to the conclusion that, the huts of the petitioners are situated

on Survey No.6 (part) and the petitioners are not eligible for getting benefits of the Slum Rehabilitation Scheme undertaken by the respondent No.3.

7] As noted earlier, the respondent No.1 and the Grievance Redressal Committee have recorded concurrent finding with the respondent No.2.

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.

8] 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*.

9] Apart from the fact that, there is concurrent finding recorded by all the three authorities below, the contention of the petitioners that their huts are situated on Survey No.144 has no substance in it. The respondent No.2 has filed an Affidavit-in-Reply dated 9th October 2018. In para 4 of the said Affidavit, a positive statement is made by the concerned Authority that the hutments of all the petitioners are situated on Survey No.6, which land belongs to the State Government and the same are not situated on Survey No.144, as contended by the petitioners. It is further stated that, the said fact has been confirmed by the Surveyor of their Office and Land Record Department of Mumbai City by site visit of the said area.

10] The pleadings in the petition and the arguments advanced across bar amounts to re-appreciation of evidence. After perusing the entire record made available, this Court is of the considered view that, all the authorities below have not committed any error, either in law or on facts, while passing the impugned Orders.

11] Petition being devoid of merits is accordingly rejected.

[A.S. GADKARI, J.]