

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 9833 OF 2018

Dattatraya Maruti Balsane
 Aged about 62 yrs., Occ. Service
 An Indian Inhabitant of Mumbai
 Having Room No. 301, 3rd Floor,
 Aman Nagar CHS Ltd., Mohan
 Damodar Patil Marg, Worli,
 Mumbai 30.

..... Petitioner

VERSUS

1. The Additional Collector)
 (Appellate Authority),)
 Mumbai City Old Custom House,)
 1st Flr., Shahid Bhagar Singh Marg,))
 Fort, Mumbai 1.)
2. The Asst. Municipal Commissioner))
 G/South Ward, Dhanmil Naka,)
 N.M. Joshi Marg, Elphinstone,)
 Mumbai 25.)
3. Dy. Collector SRA Mumbai City)
 Office at 5th Flr., Sra Bldg., A.K.)
 Marg, Bandra (E), Mumbai 51.)
4. M/s Surana Construction)
 768, Singapore Arcade, 3rd Flr.,)
 Khar (W), Mumbai 52.)
5. Chairman/Secretary)
 Aman Nagar CHS Ltd.,)
 Mohan Damodas Patil Marg)
 Worli, Mumbai 30.)

- | | | |
|----|-----------------------------------|---|
| 6. | Kasubai Baburao Balsane, |) |
| | 27/07, BMC Tenament, Near |) |
| | Prbodhankar Udyas, Sewari, |) |
| | Mumbai. |) |
| | |) |
| 7. | The Grievance Redressal Committee |) |
| | (Mumbai City), Bandra (E), |) |
| | Mumbai 51. |) |
- Respondents**

Mr. S.S. Redkekar for the Petitioner.

Mr. Y.D. Patil, AGP for the State-Respondent Nos. 1, 3, & 7.

Ms. Sheetal Mane, I/b. Mr. Jernold J. Xavier for the Respondent No. 2.

Mr. Abhijit P. Kulkarni for the Respondent No. 3.

CORAM : S. S. SHINDE J.

DATED : 30th APRIL, 2019

JUDGMENT :-

1. This writ petition is filed with following substantive prayers:-

b) This Hon'ble Court be pleased to quash & set aside the impugned order dt. 09.08.2018 passed by the Respondent No. 7/G.R.C. along with order dt. 22.9.2017 passed by the Respondent No. 1/Addl. Collector (Appellate Authority) Mumbai City & order dt. 4.10.2016 passed by the Respondent No. 2 Asst. Municipal Commissioner, G/s Ward;

(c) Or in alternative to prayer clause (b), this Hon'ble Court be pleased to quash and set aside the order dt. 9.8.2017 passed by G.R.C. and matter be remanded back to G.R.C. for fresh hearing;

2. It is the case of the petitioner that, the petitioner was occupying the Hut No. 36 in Amar Nagar Rahivashi Sangh, Sasmira Marg, Worli,

Mumbai 30. Respondent No. 4 developer has agreed to provide temporary transit camp premises to the petitioner vide his letter dated 15.10.1999. Respondent No. 4 also given his no objection for inclusion of name of the Petitioner in the Supplementary Annexure II. Thereafter, Respondent No. 5 addressed a letter dated 17.12.2007 wherein it is stated that, the Petitioner is occupant of the old premises. Respondent No. 4 require the said transit camp premises, therefore Developer agreed to provide/give Room No. 301, B-Wing, Aman Nagar SRA CHS Ltd., Sasmira Marg, Mumbai 30 as temporary transit accommodation. The Respondent No. 2 passed order u/s. 33 of Slum Act dated 4.10.2016, thereby, holding that since the name of the Petitioner is not included in the Annexure II, he should be evicted from the Room No. 301.

3. Being aggrieved by the aforesaid order the Petitioner preferred an Appeal before Additional Collector (Appellate Authority), Mumbai City. The said authority passed the order on 22.09.2017 and confirmed the order passed by Respondent No. 2. Being aggrieved by the aforesaid two orders, the petitioner filed Appeal No. 137/2017 before the Grievance Redressal Committee, Mumbai City. The Grievance Redressal Committee was pleased to reject the Appeal vide order dated 09.08.2018. Thereafter, Respondent

No. 2 wrote a letter dated 28.8.2018 to the Petitioner thereby informing the Petitioner to give possession of the premises within 48 hours, failing which forcible possession will be taken. Hence this writ petition.

4. Learned counsel appearing for the petitioner submits that, Respondent No. 4 developer has allotted the premises to the Petitioner as temporary transit premises. It is submitted that, since the Petitioner has been held as eligible by order dated 16th May 2018, passed by the Respondent No. 2 and therefore, he is entitled for permanent alternate accommodation. It is submitted that the order passed by the Grievance Redressal Committee on 9th August 2018 was without hearing the petitioner and therefore, the matter may be remitted back to the said authority for fresh hearing. Learned counsel also invites attention of this Court to the grounds taken in the petition and submits that, the petition deserves to be allowed.

5. On the other hand, learned counsel appearing for the Respondent No. 6 relying upon an averment in the affidavit in reply submits that, the petitioner occupied tenement No. 301-B illegally and unauthorizedly. It is submitted that, that the husband of Respondent No. 6 was residing in the old premises where the slum scheme was sanctioned.

Prior to development of old structure wherein the Respondent No. 6 husband was residing, the land was under slum and there was housing society of tenants who were residing in the said plot of lands and husband of Respondent No. 6 was a member of the said society. Said society issued share certificate in the name of husband of Respondent No. 6. The learned counsel invites attention of this Court to the copy of said certificate placed on record at Exhibit-3(Page 59) of the compilation of the affidavit in reply. The learned counsel also invites attention of this Court to the copies of rent receipts issued in favour of husband of Respondent No. 6 on 30th April 1996 and also on 12th July 1989 and other receipts placed on record with the affidavit in reply. It is submitted that, while introducing the slum scheme, keeping in view the provisions of the Slum Act, 1971, Annexure-II was prepared by the competent authority showing names of the residents and their occupancy in respect of premises. Learned counsel invites attention of this Court to the copy of the said Annexure-II and submits that, the name of the petitioner was very much mentioned in the said Annexure-II. It is submitted that, on completion of rehabilitation building, though it was incumbent upon the developer to handover the possession of the rehabilitate building to the slum rehabilitation authority, however, 'Lottery'

system was followed and draw was conducted on 31st December 2009. In the said lottery tenement No. 301-B was shown to be owned by Baburao Maruti Balsane i.e. husband of Respondent No. 6. Though, the said tenement was allotted to the husband of Respondent No. 6, possession and keys were not given to him. On the contrary, illegally the said tenement was given for use to the Petitioner, though he was not held eligible at the relevant time. It is submitted that, the Petitioner pursued the Respondent authority continuously so as to put him in possession and handover the keys of tenement No. 301-B, however, except issuing direction to the concerned authority, an actual possession was not given to the husband of Respondent No. 6. It is submitted that, the Petitioner herein filed an application No. 390/2010 before High Power Committee, however, the said application was disposed of with direction to the Secretary to give hearing to the Petitioner and decide the same on merits. The High Power Committee gave hearing to the Petitioner and on 10th May 2012 intimated the Petitioner that, he is not entitled to remain in the aforesaid tenement.

6. Meantime, the Respondent No. 6 approached the Assistant Registrar, Co-operative Society, SRA Mumbai, requesting to handover the possession of the tenement or in the alternate give rent to the Respondent

No 6. The said authority had written various letters to the developer and directed him to handover the possession of the aforesaid tenement to the Respondent No. 6, however, there was no response from the developer.

7. It is submitted that, the Assistant Commissioner G/South MCGM issued a show cause notice to the Petitioner to vacate the aforesaid tenement which was illegally occupied by him. Thereafter, the Petitioner was heard and he was directed to vacate the aforesaid tenement within a period of 10 days. It is further submitted that, the husband of Respondent No. 6, was held eligible for rehabilitate tenement and as a matter of fact was allotted tenement No. 301-B, which has been illegally occupied by the Petitioner herein. Therefore, the directions by the authorities to the Petitioner to vacate the aforesaid tenement is keeping in view the relevant record. The record maintained by the respondent authorities unequivocally indicate the entitlement of the husband of Respondent No. 6. Therefore, learned counsel appearing for the Respondent No. 6 submits that, the petition may be rejected.

8. Learned counsel appearing for the other respondents, relying upon the reasons assigned by the Grievance Redressal Committee in its order dated 9th August 2018 submits that, the Petitioner though was not

held eligible prior to year 2018, the Petitioner illegally and unauthorizedly occupied the aforesaid tenement which was allotted to the husband of Respondent No. 6 in the year 2009 on permanent basis.

9. Upon appreciating rival contentions and perusal of documents placed on record which unequivocally indicate that, the husband of Respondent No. 6 was allotted tenement No. 301-B in the year 2009 itself. There are documents showing that, husband of Respondent No. 6 has paid rent as a member of society prior to slum rehabilitation, and he was held eligible for allotment of the tenement long back. In fact, the husband of Respondent No. 6, and after his death Respondent No. 6 should have been placed in possession of the aforesaid premises. The findings recorded by the forums below that, the Petitioner is illegally and unauthorizedly occupied the aforesaid tenement which has been permanently allotted to the husband of Respondent No. 6 and therefore, he should be evicted from the said premises, cannot be said to be perverse. The view taken by the authorities below is reasonable and plausible on the strength of material/documents which were placed on record before the said authorities. While dismissing the appeal filed by the Petitioner, the committee has recorded the finding of the fact that, admittedly the

Respondent No. 6 Smt. Kasubai Baburao Balsane is widow of deceased elder brother of appellant. As per appellant (Petitioner herein) on verification the pitch holder card was in the name of his elder brother. In Annexure-II also there is a name of his elder brother. Respondent No. 6 Kasubai has produced on record the photocopy of pitch holder card, payment receipts of Municipal Corporation, Greater Mumbai, copy of the share certificate, copy of agreement with the developer etc. and all these documents support the claim of Respondent No. 6 Kasubai.

10. Therefore, the findings recorded by the aforesaid redressal committee are on the basis of appreciation of documents placed on record by the parties. Thus, findings recorded by all three forums are not perverse and therefore, there is no reason for this Court to cause an interference in the impugned judgment and orders. Hence, writ petition stands rejected.

11. In case, the petitioner is held eligible as contended by the learned counsel appearing for the petitioner, the petitioner is free to pursue the concerned authority on the basis of his eligibility for allotment of tenement. This Court has not expressed any opinion about such contentions.

[S.S. SHINDE, J.]