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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.3723 OF 2019**

Mr. Umashankar R. PandeyPetitioner.

V/s

State of Maharashtra and Others Respondents.

**ALONGWITH
WRIT PETITION NO.3677 OF 2019**

Priyanka U. Pandey Petitioner.

V/s

State of Maharashtra and Others Respondents.

Mr. Ghanshyam Upadhyay for the Petitioners.

Mr. S.L. Babar, AGP for Respondent Nos. 1 to 3.

Mr. Hamid Ahmad for Respondent No.4.

CORAM: NITIN W. SAMBRE, J.

Reserved on: 19th July, 2019

Pronounced on : 9th August, 2019.

P.C.:-

1] Heard Mr. Upadhyay, learned Counsel for the Petitioners.

2] Both these Petitions are directed against common order dated 14/09/2015 passed by Respondent No.2 – Additional Collector (Enforcement & Removal) in Appeal No.67 of 2015 and Order dated 05/07/2018 passed by the Grievance Redressal Committee in Appeal Nos. 572/2018 and 571/2018 whereby claim of the Petitioners of being entitled for inclusion of their names in Annexure-II, came to be rejected, thereby terming their encroachments as illegal and as a consequence liable for eviction.

3] Brief facts, necessary for deciding the present Petitions are as under:-

4] The Petitioner in Writ Petition No.3677 of 2019 viz Priyanka U. Pandey, claimed to be daughter of the Petitioner in Writ Petition No.3723 of 2019. It is the claim of the Petitioners, as is canvassed by the learned Counsel Mr. Upadhyay, that in Appeal No.1276 of 1977, the Maharashtra Slum Areas (I.C. & R.) Tribunal, Bombay has granted declaration in favour of father of the Petitioner-Umashankar that property bearing CTS Nos. 266/62, 49 to 51 and 68 to 70 from the

area known as Prakash Wadi are not part of notified slum. As such, Petitioner-Umashankar alongwith his brothers Harishankar, Dayashankar and daughter Priyanka entered into an articles of agreement with Respondent No.4 in March, 2010, thereby giving up their entire claim for consideration of Rs 2,50,000/-. According to learned Counsel for the Petitioners, because of the said agreement, present Petitioners agreed to give up their claim/rights in the property in question. However, their allotment of five permanent alternate accommodations under the Slum Rehabilitation Scheme in terms of existing Rules and Regulations was kept intact. As a consequence of the said agreement, the case of the Petitioners is they have parted with possession of the property to Respondent No.4 – developer. Attention of this Court is also invited to Clauses 4, 10 and 11 of the said agreement of sale. The learned Counsel Mr Upadhyay, as such, submits that since there was a legitimate claim pursuant to the aforesaid agreement for entitlement of allotment of five permanent alternate accommodations in favour of the parties mentioned in the agreement referred to above, all five parties applied for inclusion of their names in Annexure-II. According to Mr. Upadhyay, of the five

parties, Harishankar, Dayashankar and Rajiv are the persons, whose names are included in Annexure-II, whereas claim of both these Petitioners are rejected. The learned Counsel would urge that once other three persons named above are held to be entitled for the benefit under the Slum Rehabilitation Scheme, the case of the Petitioners, which is at par with these three persons, should have been accepted by the Respondent-authorities for benefit thereunder. Mr. Upadhyay would urge that in survey carried out, Petitioners were noticed to be the encroachers on the land in question alongwith other three qualified owners, which fact is intentionally ignored by the Respondent-authorities. Relying upon the judgment of this Court in the matter of *Shri Umashankar R. Pandey and another vs. The State of Maharashtra and others* in Writ Petition No.470 of 2015 decided on 29/04/2015, Mr. Upadhyay would urge that Division Bench of this Court has already recorded a finding in favour of the Petitioners, thereby directing the developer to pay compensation of Rs 8,000/- per month in the facts and circumstances of the case. As such, the order impugned, declaring the Petitioners disqualified to be entitled to the benefit of inclusion in Annexure-II, is not sustainable. The learned

Counsel then would urge that documents existing prior to 2000, so as to demonstrate the possession of the Petitioners over the property in question, were very much produced. However, the authorities have failed to appreciate the same. He submits that, that being so, the orders impugned are liable to be quashed and set aside with directions to the authorities to include names of Petitioners in Annexure-II.

5] The contentions are objected by the learned Assistant Government Pleader and learned Counsel for Respondent No.4. According to learned AGP, Division Bench Judgment, as is relied upon, will be hardly of any assistance, as compensation ordered of Rs 8000/- in favour of the Petitioners was in the interest of justice and taking into consideration the facts and circumstances of the case. He would urge that the Petitioners are no more entitled for the said benefit as their claim for inclusion of their names in Annexure-II and their eligibility is already rejected. According to Respondents, Petitioners are held to be ineligible, as their presence was not noticed at the time of survey. It is not established that their encroachment is

prior to 01/01/2000. The learned Counsel for Respondent No.4 adopted the submissions made by the learned AGP.

6] Considered the rival submissions.

7] The Additional Collector (Encroachment & Removal), by the order impugned dated 14/09/2015, after analysing the material brought before him, has noticed that the Petitioners were residing with Harishankar Pandey, who is held to be eligible after his name is included in Annexure-II. The authority below has gone through the record in detail. The fact that the Petitioners were residing with Harishankar Pandey can be inferred from the voters' list. As such, finding of fact is recorded that both these Petitioners have failed to demonstrate that they were occupying the place in question independently of Harishankar prior to 01/01/2000. The Grievance Redressal Committee, whose order is also questioned in the Petition, has noticed that, though the Petitioners claim to be the owners of structures of hutments mentioned at Serial No.165 in Annexure-II, no such entry could be noticed in the revenue record or property card, as

is claimed by them. The said Committee then proceeded to re-appreciate and analyze the entire pleadings and evidence brought before it and noticed that prior to cut off date i.e. 01/01/2000, it cannot be held that the Petitioners were in continuous occupation of the hutments. The said appellate Committee has considered all the aforesaid contentions which are canvassed by the learned Counsel Mr. Upadhyay, including that of ex-parte decree in Suit No.2704 of 1990 and gave a finding that the Petitioners have failed to establish that they were in occupation of the premises in question prior to 01/01/2000.

8] In supervisory jurisdiction under Article 227 of the Constitution of India, this Court need not to appreciate the entire evidence in the light of pleadings, unless high degree of perverse or arbitrary findings are brought to the notice of this Court. All the three authorities, upon appreciation of evidence brought on record before it, have noticed that there is no material to infer that before cutt off date i.e. 01/01/2000, it can be inferred that the Petitioners were hutment dwellers and they were in possession of such hutments.

9] In the aforesaid background, the view expressed by all the three authorities below, thereby concurrently holding that the Petitioners are not entitled to be included in Annexure-II since they have failed to demonstrate that their encroachments are prior to 01/01/2000, does not call for any interference. Both these Petitions are devoid of merits. Hence, dismissed.

(NITIN W. SAMBRE, J.)