

R.M. AMBERKAR
(Private Secretary)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O.O.C.J.

WRIT PETITION NO. 3055 OF 2018

Ayyub Ismail Khan

.. Petitioner

Versus

The Grievance Redressal Committee &
Ors.

.. Respondents

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- Mr. Altaf Khan for the Petitioner
 - Mrs. Uma Palsule Desai AGP for Respondent Nos. 2, 3 and 8
 - Mr. Cherag Balsara a/w Mrs. Leena Shah, Aiman Warsi i/by M/s. Shah and Furia Associates for Respondent No. 4
 - Mr. Firoz Bharucha i/by Mr. Pranesh Gada for Respondent No. 5
 - Mr. J.G. Aradwad (Reddy) for Respondent No. 6 - SRA
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CORAM : AKIL KURESHI &
S.J. KATHAWALLA, JJ.

DATE : JULY 31, 2019.

P.C.:

1. The petitioner has challenged an order dated 17.5.2018 passed by the Appellate Authority on an Appeal under Section 35(1A) of the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971 (hereinafter referred to as the "**Act of 1971**"). By the said order, giving detailed reasons, the petitioner's claim of being an occupant of a premises in slum area being developed under the said Act of 1971, came to be rejected.

2. The Appellate Authority has given elaborate reasons for not accepting the petitioner's presence as an occupant at the site when the area was declared as slum and the developer, then appointed for development, was allowed to propose the scheme. The case of the petitioner in short is that his father along with other family members was occupying a shed which was earmarked as 'No. 88' whereas the petitioner was occupying an independent structure adjacent to the shed of the father which was earmarked as 'No. 88A'. The other respondents as well as the society have contended throughout that there was no such independent existence of shed "88A"; that the petitioner had merely extended the roof and that there was no habitable area where he could reside with his family. According to them, the petitioner had put up a claim merely to earn resettlement premises.

3. The Appellate Authority found insufficient evidence of existence of the petitioner on the cut off date. It has noted that in the conveyance deed by the owner with the developer, he was shown to be occupant of area of 32.60

sq.ft. According to the Appellate Authority, the petitioner was residing with his father and he had merely created another door to the room to claim independent eligibility for allotment of residence. Other material produced by the petitioner was also taken into consideration. The Authority however found that the evidence on record did not establish independent existence of the petitioner's premises. This petition is therefore directed against the said order.

4. Previously, we had heard the petition from time to time trying to ascertain the truth through the rival contentions and material on record. One of the factors which had caught our eye was a map presented by the petitioner at Exh. F at page 59 of the petition. As per the averments made in the petition, this map Exh. F was submitted by the landlord along with survey plan on 22.1.2009 which contained the premises in question earmarked as '88A'. If this was correct, this would be one of the significant factors which would some bearing on the petitioner's claim. We had, therefore, gone deeper into the subject and inquired with the Slum Rehabilitation Authority. We had called for original records.

Further affidavits were also allowed to be filed. Learned counsel for the SRA today produced before us the original file containing all documents presented by the developer with an application for permission to develop the area of the slum already declared. The map in question is found at page 123 of the compilation. This map does not show existence of separate shed marked as '88A'. It only shows one structure marked as '88'. In fact, there was no indication of any independent structure marked as '88A' which is in conflict with the map produced by the petitioner at Exh. F. The documents annexed with the said application of the development contained a list of occupants. It also at Sr. No. 88 shows the name of the father without there being any mention of the son occupying any independent structure. A copy of the map contained in the file of SRA is taken on record and marked **"X"** for identification. Original file be returned.

5. Minutely examining such contemporaneous documents on record would show that the map produced by the petitioner at Exh. F is not found in the original records. The

petitioner has shown his inability to explain the source of the said map at Exh. F. Though an attempt was made to suggest that the same was received by a friend of the petitioner in response to an application made under RTI Act, we have not found any evidence or documents in support of such assertion. We have also inquired with the society which was formed at the relevant time if there was any indication of the shed of the petitioner as an independent unit. We did not find such evidence. We notice that the petitioner had attended certain meetings of the society at the initial formative stage, however, that itself would not establish his presence as an independent occupant. Learned counsel for the Society had pointed out that all residents were allowed to participate which the petitioner, his father and brother also did. The petitioner's attempt therefore to demonstrate before us that the map Exh. F showed the existence of shed 88A which the development himself had produced before SRA stands falsified.

6. Independent of this map, we do not find any evidence on record to dislodge the factual findings arrived at by the

Appellate Authority in the impugned order. The list of occupants produced by the developer (Annexure II) at page 341 of the original records of the SRA also supports the case of the respondents.

7. Under these circumstances, we do not find that the petitioner has made out any case for interference. Writ Petition is accordingly dismissed.

[S.J. KATHAWALLA, J.]

[AKIL KURESHI, J]