

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

WRIT PETITION (L) NO.3219 OF 2019

Smt. Kusum Subhash Baisane ... Petitioner
V/s.
State of Maharashtra and ors. ... Respondents

Mr.Altaf Khan, Advocate for the Petitioner.
Mr.G.B.Walawalkar i/by Mr.S.P.Thorat, Advocate for
Respondent Nos.3 and 4.
Mr.Santosh Pathak with Ms.Purva Naik, Advocate for
Respondent No.7.
Mr.Himanshu Takke, AGP for Respondent No.1-State.

**CORAM : UJJAL BHUYAN, J.
DATE : JANUARY 13, 2020.**

P.C.:-

1. Heard Mr.Altaf Khan, learned counsel for the petitioner; Mr.Himanshu Takke, learned AGP for respondent No.1-State of Maharashtra; Mr.G.B. Walawalkar, learned counsel appears for respondent Nos.3 and 4; and Mr.Santosh Pathak, learned counsel appears for respondent No.7.

2. By filing this petition under Article 226 of the Constitution of India, petitioner seeks quashing of

orders dated 29th May, 2018 passed by the Assistant Registrar of Co-operative Societies, Slum Rehabilitation Authority (SRA) as well as the order dated 12th September, 2018 passed by the Apex Grievance Redressal Committed (AGRC).

3. Short point for consideration in this writ petition is entitlement of the petitioner to transit rent as an eligible slum dweller from the date of demolition of her structure i.e. 17th November, 2014 or from the date of determination of her eligibility i.e. 27th November, 2017.

4. Facts are not in dispute and therefore, a detailed recital of facts is considered not necessary.

5. Briefly stated, petitioner was in use, occupation and possession of a residential premise situated over land bearing CTS No.29(Pt.) of village Chembur, Mumbai in respect of which respondent No.8, Co-operative society was formed for implementation of Slum Rehabilitation Scheme through respondent No.7, the developer.

6. In the Annexure-II list prepared by the Competent Authority on 14th June, 2010, petitioner's name appeared at Sr. No.40 and was marked as "Not eligible".

7. It is stated that petitioner was unaware of the Slum Rehabilitation Scheme as well as her eligibility status. She could come to know from her neighbours about the scheme only in the year 2013, whereafter she filed an appeal before SRA on 12th August, 2013 claiming inclusion of her name in the Annexure-II list as an eligible slum dweller, entitled to permanent rehabilitation and either transit rent or accommodation in the interregnum.

8. While the appeal of the petitioner was pending, eviction notice was served upon the petitioner on 7th November, 2014 under the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971 pursuant to which petitioner's residential structure was demolished on 17th November, 2014.

9. Since there was hardly any progress in the appeal preferred by the petitioner, it is stated that petitioner filed another appeal before the competent authority on 2nd July, 2015. It is stated that on 27th November, 2017 petitioner was informed by the office of the competent authority, SRA that she was declared as an eligible occupant and her name was included as an eligible occupant in the supplementary Annexure-II list.

10. Petitioner submitted application seeking transit rent from respondent No.7 from the date of demolition of the residential premises i.e., from 17th November, 2014. The application was filed before the Assistant Registrar of Co-operative Societies, SRA. On 29th May, 2018, Assistant Registrar of Co-operative Societies, SRA i.e. respondent No.4 held that petitioner was not entitled to transit rent from the date of demolition but from the date of her eligibility.

11. Aggrieved, petitioner preferred appeal before AGRC. Appeal of the petitioner was dismissed by the AGRC vide order dated 12th September, 2018.

12. Aggrieved, present writ petition has been filed.

13. While learned counsel for the petitioner submits that though eligibility of the petitioner was adjudicated subsequently, the eligibility would relate back to the date of demolition, whereas according to learned counsel for respondent No.7, entitlement to the transit rent would arise only from the date of adjudication of eligibility and not prior thereto.

14. Submissions made by learned counsel for the parties have been considered. Also perused the materials on record.

15. At the outset, it would be apposite to advert to the impugned order dated 12th September, 2018 passed by

the AGRC, relevant portion of which is extracted hereunder:-

“6. Record produced before this Committee shows as follows:

(a) Applicant Smt Kusum Subhash Baisane was in use and in occupation and in possession of her Residential premises situated on subject plot of land bearing CTS No. 29(Pt.) of Village Chembur, Taluka-Kurla, Panchsheel Nagar, Chembur. Applicant Smt Kusum Subhash Baisane was declared non-eligible at Sr. No. 40 in Certified Annexure-II dated 14th June, 2010 issued by Chief Officer, Mumbai Board, MHADA.

(b) Thereafter Applicant Smt Kusum Subhash Baisanne being non co-operative slum dwellers, was served with 48 hours eviction notice under section 32 of Maharashtra Slum Areas (I,C&R) Act 1971 dated 7th November, 2014. Accordingly demolition was carried out on 17th November, 2014 by Competent Authority with the help of police protection. At the time of demolition Applicant Smt Kusum Shubhas Baisane was held non eligible as per Certified Annexure-II dated 14 June, 2010 issued by Chief Officer, Mumbai Board/ MHADA.

(c) Pursuant to the Application dated 2 July, 2015 file before Land Manager, Mumbai Board, MHADA & Competent Authority Applicant Smt Kusum Shubhas Baisane as eligible, Land Manager, Mumbai Board, MHADA & Competent Authority on the basis of the Government Resolution dated 16th May, 2015 whereby cut of date was extend 01.01.1995 to 01.01.2000 and considering the documents produce by the applicant Smt Kusum Subhash Baisane, Land Manager, Mumbai board, MHADA

& Competent Authority observed that Applicant was residing in the said structure prior to 01.01.2000. Therefore Land Manager, Mumbai Board, MHADA and Competent Authority declared Applicant Smt Kusum Subhash Baisane as eligible on 27th November, 2017 and accordingly informed the Dy. Collector/SRA by letter dated 27th November, 2017.

(d) As per Circular 153 dated 6th June, 2015 of SRA eligible Slum Dwellers whose structure are demolished for implementation of Subject S R Scheme are entitle for the rent from the date of demolition. However with respect to the rent paid to non-eligible slum dwellers, the rent is required to paid only after said Slum Dweller is declared eligible irrespective of the date of demolition.

(e) In present Application Applicant was held non eligible at the time of demolition of her structure. Thereafter applicant Smt Shubhas Baisane has been declared eligible on 27th November, 2017 by Land Manager, Mumbai Board, MHADA on the basis of Government Resolution dated 16th May, 2015, whereby the Cut of date was extended to 01.01.2000 from 01.01.1995."

16. From the above, what is evident is that in the certified Annexure-II list dated 14th June, 2010, petitioner was declared to be non-eligible at Sr.No.40. Ultimately, petitioner was served with eviction notice following which demolition of her structure was carried out on 17th November, 2014. At the time of demolition

petitioner was treated as non-eligible slum dweller. Subsequently, petitioner was declared to be eligible slum dweller vide order dated 27th November, 2017.

17. Though the initial cut off date to determine eligible slum dweller was 1st January, 1995, the same was extended to 1st January, 2000 vide Government Resolution dated 16th May, 2015. In the Annexure-II list which was certified on 14th June, 2010, petitioner was marked as not eligible. Petitioner's appeal against non-eligibility was allowed by SRA on 26th November, 2017. Competent authority recorded a clear finding of fact that petitioner was residing in the demolished structure prior to 1st January, 2000. If this be the position, then considering the fact that the competent authority had itself taken the view that petitioner was residing in the demolished structure prior to 1st January, 2000 eligibility of the petitioner would relate back to the certified Annexure-II list first published on 14th June, 2010. If that be so, then on the date of demolition i.e.

17th November, 2014 petitioner would have to be construed as an eligible slum dweller.

18. In circular No.153 of SRA dated 6th June, 2015, the procedure to provide rent to the slum dweller by the developer is provided. It is stated that the said procedure has been laid down so that the eligible slum dweller can get the rent without any hurdle from the date of demolition of the structure till he gets possession of the rehabilitation tenement. What is of relevance is the date of demolition. If on the date of demolition the slum dweller is construed to be eligible, then he would be entitled to the transit rent from the date of demolition.

19. From the factual narration what is evident is that on the date of demolition petitioner was held to be non-eligible. Subsequently, the competent authority declared the petitioner to be eligible slum dweller entitled to rehabilitation and transit rent in lieu of transit accommodation in the interregnum.

20. In the considered opinion of the court, both the competent authority as well as AGRC had fallen into error in taking the aforesaid view that entitlement of the petitioner to transit rent would be from the date of declaration of eligibility i.e., 27th November, 2017 and not from the date of demolition of the structure i.e. 17th November, 2014. Though the petitioner was adjudicated as eligible by the competent authority on 27th November, 2017, eligibility of the petitioner would relate back to the first certified Annexure-II list dated 14th June, 2010 as she was found to be residing in the demolished structure prior to 1st January, 2000 and therefore, on the date of demolition of her structure i.e. 17th November, 2014, petitioner would be construed to be an eligible slum dweller.

21. Consequently, both the orders dated 29th May, 2018 passed by respondent No.4 and order dated 12th September, 2018 passed by respondent No. 2 are modified to the extent that petitioner would be entitled to transit rent from the date of demolition of her

structure i.e. from 17th November, 2014. Consequential steps shall be taken accordingly.

22. Writ petition is allowed but without any order as to costs.

23. At this stage, learned counsel for respondent No.7 makes a prayer for staying this order for a period of eight weeks. On due consideration, court is not inclined to stay the order passed.

(UJJAL BHUYAN, J.)

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