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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 5056 OF 2019**

Rajesh s/o. Sarju Jaiswar

...Petitioner.

V/s.

The State of Maharashtra and ors.

...Respondents.

**WITH
INTERIM APPLICATION NO. 1002 OF 2021
IN
WRIT PETITION NO. 5056 OF 2019**

SMGK Developers Pvt. Ltd.

... Applicant

In the matter between

Rajesh s/o. Sarju Jaiswar

...Petitioner.

V/s.

The State of Maharashtra and ors.

...Respondents.

Mr. Rajesh Singh a/w. Mr. Vishal Kanade, Mr. Iftekar Sayed, Mr. Nadim Malik and Mr. Shubham Singh for the Petitioner.

Mr. C.D. Mali, AGP for the Respondent – State.

Mr. Drupad Patil a/w Mr. Zaid Ansari and Mr. Mangesh R. Kokare i/b Zaid S. Ansari and Associates for Intervenor in I.A.

**CORAM : G. S. KULKARNI, J.
DATE : NOVEMBER 30, 2021.**

PC :

1] The petitioner has been declared to be ineligible for the benefit of a permanent alternate accommodation in a slum redevelopment in Shivdhar Sharma Chawl No.3 at Shastri Nagar, Jogeshwari (West), Mumbai-400 102 being undertaken by the developer viz. M/s. SMGK Developers (Pvt.) Ltd.

(for short ‘developer’), who is not a party to the petition (who has filed a separate Interim Application). The petitioner is assailing the final orders passed by the Grievance Redressal Committee, Mumbai Suburban, Mumbai (for short “**GRC**”) dated 5.4.2018 rejecting his appeal which confirms the orders passed by the Additional Collector (Enc/Remv) holding the petitioner to be ineligible.

2] As the petitioner’s eligibility was subject matter of consideration before the GRC., the developer had provided transit accommodation to the petitioner, despite the petitioner being not eligible for a transit accommodation. The petitioner was causing hurdles in the further implementation of the scheme by not vacating the transit accommodation hence proceedings under Section 33 read with Section 38 of the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971 came to be initiated against the petitioner resulting into an order of eviction.

3] It appears from the record, that the present petitioner along with one Ramkant Pandey were prosecuting their claims for an eligibility to a permanent alternate accommodation in the slum scheme in question, in the proceedings before the GRC. The GRC passed a common order in the

proceedings of the petitioner and Ramakant Pandey. Insofar as Ramakant Pandey was concerned, he had approached this Court independently by filing Writ Petition No. 5154 of 2019. The said petition was also filed through the same advocate who has filed the present petition. Such petition was also filed without impleading the developer as party, who was adversely affected. A coordinate Bench of this Court (Coram : M.S. Karnik, J.) by an order dated 18.8.2021 dismissed his petition with a direction that the petitioner therein shall file an undertaking within a period of one week from the date of said order that he will vacate the transit accommodation within a period of four weeks and for such period the petitioner was eligible to claim rent as offered by the Developer. The contention of Mr. Patil, learned counsel for the Developer is to the effect that the present petition is also covered by such order. Mr. Patil's contention is opposed by Mr. Rajesh Singh, the learned counsel for the petitioner. It is his submission that this petition be independently heard. Accordingly, I have heard learned counsel for the parties at length.

4] The record indicates that initially Annexure-II (list of eligible slum dwellers, who would be entitled to be rehabilitated in a permanent alternate accommodation) came to be prepared on 25.5.2006, in which, there were multiple entries qua different persons in respect of the very same

structures. The petitioner, however, appears to have taken advantage of such defective Annexure II which was subsequently cancelled by the authorities. This for the reason that the petitioner was listed at item No.32 and without any structure shown in his name was nonetheless declared to be eligible. This apart, for the same structure, his brother Nagendra Jaiswal was shown to be eligible namely for structure No.G-9. Perusal of such defective Annexure II also indicates that another person at Sr. No.2 Sharda V. Yadav was shown eligible again for structure No.G-9. It is for such reasons that after following a proper verification exercise, the said inherently defective Annexure II was cancelled and a fresh Annexure II prepared.

5] In the subsequent Annexure II, which was prepared by the authorities which was after a detailed verification of all the documents and inspection of the slum dwellers, the petitioner was not held to be eligible. In this regard, the detailed reasons were set out. The essential documents did not indicate that the petitioner would become eligible.

6] At the outset, it would be appropriate as to what the Additional Collector (Encl./Remv.) Western Suburbs has referred in respect of the petitioner, in declaring him to be ineligible. The official translation of the supplementary schedule-II (ate page 63-A to 63-E to the paperback) reads

thus:

SUPPLEMENTARY SCHEDULE -II
ORDER U/S 35 OF THE MAHARASHTRA SLUMS (I.C.& R.) ACT, 1971
OM SAI SHASTRI NAGAR CO-OPERATIVE HOUSING SOCIETY,
VILLAGE-BANDIVALI, TAL. ANDHERI,
C.S.NO.31 E/5 PT.

Sr. No.	Sitaram Yadav Sr.No.in the complaint	Nirmal a Yashari Yadav Sr.No. in the appeal	Sr. No. in the Sch.2	Name of the slum dweller	Slum use in original Sch.2	Eligible/ non-eligible in original Sch.2	Evidence in Sch.2	Evidence submitted at the time of hearing	Opinion after reverification of evidences	Opinion of the Addl. Collector (Enc/Rem) Western Suburbs & Appellate Officer	Eligible/ non-eligible finally
19	1/19	-	32	Rajesh Jaiswar	Residential	Eligible	1. L.F-1 A-26610982 dt. 30/05/94	1. Sarju Jaiswar's name in BSES electricity LF1 C.No. 26470789 dt.27/7/93 2. copy of voter list 39A/328/86 3. Reliance Energy Elec. Bill I.I-1No.150196008 dtd. 13.8.2012 4. Union Bank of India Passbook account No.41990 2010534274 5. Driving License dated 26/12/92.	1. As per the letter of the Dy. Election Registration Officer, 165 Andheri West V.M.S. bearing No.Election /165 Andheri west/VMS/ 2015 dt. 22.1.2015 in the election list of 39 Amboli constituency for the year 1995 the name of Shivpar Sharma mentioned at Chawl No.3 list Part No. 328 at Sr. No.86, T-9. 2. As per Reliance Energy's email letter No. SCD-PJM-127-PPP-1150/2014 dt.26 march 2015,	The complaint of the complainant is that, the electricity bill No. A 26610982 at Sr. No.32 of Sch.2 for original connection is bogus. As per the report of Dy. Collector (Enc/Rem) Andheri dated 20.10.2012 the electricity bill as is untrustworthy, truth is seen in the complaint. 39 Amboli V.M. Constituency, voters list of 1995, the name of Shivdhar Sharma mentioned at Chawl no.3, List Part No.328, S.No.86, T-9. However, Narendra Kumar Sarju Jaiswal being eligible at Sr. No.33 of Sch. 2 in the 39 Amboli VMConst. Voters List	Non - eligible

									C..No.A-26470689 from prior to May 1992 the residential electricity connection, in the name of Sarju Vasanta Jaiswar (change of name from Jan.2006 CA-150196008 in the name of Rajeshkumar Jaiswar) electricity connection disconnected in Sept. 2012.	1995, Shivdhar Sharma Chawl No.3, List Part No.328, Sr. No. 85, T-9 , as per the report submitted at the time of hearing, the original electricity connection is seen in the name of father. The other members in the family being eligible at Sr.No.33, by cancelling the eligibility of Rajesh Jaiswal for residential use at Sr.No.32 he is being declared as non-eligible.	
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(emphasis supplied)

7] Being aggrieved by the above decision of the Additional Collector (Encr/Remv) holding the petitioner ineligible, the petitioner approached the GRC. By the impugned order the GRC has rejected the petitioner's appeal. The GRC in doing so has referred to all the documents which were submitted on behalf of the petitioner and has recorded detailed reasons to reject the petitioner's claim of his eligibility in passing the impugned order. The GRC has observed that the petitioner has attempted to rely upon Voter's list part-328 of the year 1995 in respect of hut No.T-9. However, for the said hut No.T-9 in the same Voters List, another person Nareshkumar Sarju Jaiswal, who is the brother of the petitioner, was already held to be eligible in the Annexure-II. It is hence observed by the GRC that the Additional

Collector has rightly held that the petitioner is not eligible. The reasons set out by the GRC rejecting the petitioner's claim are required to be noted, in as much as it is quite significant that some bogus documents were also sought to be relied upon by the petitioner, to support his unwarranted claim. It is observed that the petitioner intended to mislead the Committee.

The observations of the GRC to that effect are as under:

"In respect of the appellant No.2, he has attempted to rely upon the Voter List part-328 of year, 1995 in respect of hut No.T-9. However for the said hut No.T-9 of the same Voter List, another person i.e. Nareshkumar Sarju Jaiswal is already held eligible in the Annexure-II at Sr. No.33 (original Annexure -II) and therefore this appellant No.2 has been rightly declared as ineligible. This Committee has noted that both the appellants have mislead the authorities below. The appellants have attempt to show that they have documents in support of their claim of eligibility. However after going through the documents annexed with this appeal memo, it is seen that said document viz. Private rent receipts and copy of bank pass book are neither sufficient proof nor the conclusive proof of the existence of an independent protected hutment on the site. The appellant No.2 has produced his Voter Card which is issued on 04.04.2014. Said document is prima facie showing that the appellant was not residing in the hutment since prior to 01.01.2000. He has attempt to show the existence of an independent hut prior to 01.01.2000 by producing his father's (Sarju Jaiswal) Voter ID Card. However said voter card of his father bears address as 'T-9, Shivadhar Sharma Chawl No.3, Momin Nagar Patel Estate, S.V. Road East, Jogeshwari (West), Mumbai-400 102'. It is observed earlier that another person is already held eligible in respect of said hut No.T-9 (Nareshkumar S. Jaiswal). On the face of record, said Nareshkumar Sarju Jaiswal seems to be brother of the appellant No.2. This also goes to show that the appellant No.2 has knowingly and intentionally suppressed documents from this Committee, and at the same time propounded such documents before this Committee which documents are already verified by the authorities below and declared as not reliable. This Committee is of the opinion that both the appellants have adopted tactic of misleading this Committee by

Suppresio Veri Suggestio falsie.”,

(emphasis supplied)

8] Being aggrieved by the above order passed by the GRC, this petition came to be filed on 9.1.2019 that too without impleading the Developer as party. It appears from the record that from January 2019 till 2021, there was no order passed by this Court of any protection being granted to the petitioner. However, on 10.3.2021, when a notice dated 2.3.2021 issued to the petitioner calling upon the petitioner to hand over the possession of the tenement within 48 hours, this Court was moved for certain interim protection. This Court (Coram: M.S. Karnik, J.) directed that till next date the structure of the petitioner be not demolished. The above order has continued to operate till date.

9] Mr. Rajesh Singh, learned counsel for the petitioner is assailing the impugned order passed by the GRC, has again tried to place reliance on the same documents which according to him show the petitioner's eligibility. These documents referred are limited in number and are required to be noted. Firstly, the petitioner relies on the security deposit receipt which was issued by the Bombay Suburban Electric Supply Ltd. in favour of one S.B. Jaiswar. This document does not indicate any address of the premises for which payment was received. It also does not indicate clearly the date when such receipt was issued. Mr. Rajesh Singh is not in a position to inform the

Court as to whether such receipt was in fact issued in favour of the petitioner's father.

10] The next document which referred by Mr. Rajesh Singh is again a receipt issued by the Bombay Suburban Electric Supply Ltd. issued in favour of one S.B. Jaiswar, the father of the petitioner. This document does not indicate any address of the premises, in respect of which payment was received by Bombay Suburban Electric Supply Ltd.

11] The next document as relied by Mr. Rajesh Singh is the electricity bill issued by the Bombay Suburban Electric Supply Limited dated 27.10.1992, issued in the name of Sarjoo Basanta Jaiswar. Mr. Rajesh Singh states that such document was not produced before the authorities below. In any case, this document also clearly does not indicate the room number except for the fact that it describes that it was issued in favour of "Sarjoo Basanta Jaiswar Shiev Dhar Sherma CHL S.V. Rd. Shastri Nagar Jogeshwari – W Bombay-102".

12] The next document is an electricity bill which was issued by Reliance Energy, of February 2007, issued in the name of petitioner which also does not refer to the room number.

13] Mr. Rajesh Singh has next referred to a photocopy of Ration Card, which according to him, shows the name of petitioner with other family members, on the basis of which, he contended that the petitioner was residing along with his father in the premises in question. Perusal of the address on Ration Card again does not indicate the specific room number which the petitioner's father was occupied and /or as claimed by the petitioner in respect of premises No.G-9 as noted above.

14] Mr. Rajesh Singh next relied upon the Election Card issued in favour of his father Sarju Jaiswal. This election card indicates the address "T-9, Shidhara Sharma Chawl No.-3, Swami Vivekanand Road, Jogeshwari (W), Mumbai-400 102". It was issued on 12.1.1995. This document would certainly not determine petitioner's eligibility. In any event T-9 was claimed by the petitioner's brother.

15] Mr. Rajesh Singh has next relied on an election card issued in favour of the petitioner on 4.4.2014, which also indicates the address as "T-9, Shidhara Sharma Chawl No.-3, Swami Vivekanand Road, Jogeshwari (W), Tal Andheri, Dist. Mumbai Suburban (Maharashtra) -400 102.

16] Mr. Rajesh Singh, next refers to a copy of the Aadhar Card issued in favour of the petitioner bearing No. 4103 8120 2670, in which the address of the petitioner has been shown as “Shaiv Aadhar Sharma Chawl No.3, Room No.16, S.V. Road, Shastri Nagar, Jogeshwari West, Mumbai, Maharashtra 400102”, which according to Mr. Patil, the learned counsel for the Developer, is a different address.

17] There is a copy of bank passbook issued by the Union Bank of India, showing the account opening date as 8.12.2005, which is subsequent to the cut off date hence, it is not a relevant document.

18] On basis of the above documents, Mr. Rajesh Singh has submitted that all these documents show that the petitioner was lawfully occupying the structure in question along with his father namely slum structure No. T-9. He submits that the petitioner’s father expired on 3.12.2003 and the petitioner continued to occupy the premises T-9 and therefore the petitioner should be held eligible for allotment of a permanent alternate accommodation.

19] On the other hand, Mr. Patil, the learned counsel for the respondent-developer, has submitted that the documents relied by the petitioner are

totally insufficient to accept any claim of the petitioner to be declared as eligible qua the said structure. He submits that qua such structure the petitioner's brother was held to be eligible. Accordingly, he submits that the authorities have rightly rejected the claim of the petitioner and as none of the documents would show any independent claim of the petitioner. It is his submission that there cannot be two claims qua one slum structure.

20] Having heard the learned counsel for the respective parties and perusing each of the said documents, copies of which are placed on record. I am not inclined to accept any of the contentions as urged by Mr Rajesh Singh for more than one reason. It appears to be quite clear from the record that eligibility in regard to the slum structure was already considered and the petitioner's brother has been held to be eligible. Be that as it may, even considering the documents which are discussed above none of the documents indicate that the petitioner as a matter of independent right was occupying the slum structure in regard to which he claims electricity, so that he could be held as eligible.

21] As noted above the bills issued by Bombay Suburban Electric Supply Ltd, do not indicate any address, to show that the petitioner had an independent occupation of these premises. The petitioner claims that his

brother Nagendra Jaiswal was holding independent structure, which was not the T-9 structure and hence he was held eligible not for the T-9 structure, cannot be accepted in as much as the petitioner has failed to make out any such case to show that his brother was occupying the structure which was independent of T-9 structure and of which he was held to be eligible. Moreover, there are no documents of his brother which are placed on record to show that the claim of the petitioner's brother was independent from that of the petitioner. This is an attempt even to mislead this Court.

22] Perusal of the record clearly indicates that the petitioner in connivance with his brother was misleading the authorities to make a claim for the very same tenement, and that too by submitting bogus documents. The Additional Collector being the original authority has rightly considered and assessed all these documents and has rejected the claim of the petitioner.

23] Again the GRC has undertaken a detailed exercise to consider all these documents and has considered the findings of the Additional Collector to held that the petitioner not eligible. The observations of the GRC on the conduct of the petitioner of suppression are quite serious. In the above

circumstances as also considering the observations which are made by GRC, there is no case of any perversity or illegality in the findings as recorded by the authorities below. The petitioner has failed to make out any case for interference of this Court in its jurisdiction under Article 226 of the Constitution of India.

24] Writ Petition is accordingly, dismissed.

25] The petitioner is directed to vacate the structure in question, without creating any hurdles in the implementation of the scheme, within four weeks from the day a copy of this order is uploaded and made available, failing which, it would be open to the authorities to immediately execute the orders which are passed against the petitioner under Sections 33 and 38 of Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971.

26] In view of dismissal of main writ petition, the Interim Application is also disposed of.

(G. S. KULKARNI, J.)