

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 4934 OF 2022

Prashant Digambar Dhavale.

...Petitioner.

Versus

State of Maharashtra & Others.

..Respondents.

Mr. Rahul S. Kadam for the Petitioner.

Ms. R. M. Shinde, AGP for the Respondent-State.

CORAM : PRASANNA B. VARALE &
KISHORE C. SANT, JJ.

Date : **August 2, 2022.**

P. C. :

1. With the consent of learned counsel appearing for the Petitioner and learned AGP appearing on behalf of the Respondent – State, the petition is taken up for hearing disposal at the stage of admission itself.

2. The order under challenge in this petition is dated 7th December 2021 which is passed by the Deputy Regional Commissioner, Social Welfare, Pune Division, Pune–Respondent no.3 herein. The following facts emerge from the perusal of material placed on record.

. The Department of Social Welfare, Government of Maharashtra with the concurrence of Collector, Pune allotted certain lands to various societies for housing purposes, and one Satyawadi Co-operative Housing Society Limited was beneficiary of such allotment of land. The father of Petitioner, namely, late Digambar Dhavale, had submitted an

application for membership of the said society during the pendency of construction of building. As the application was pending, the father of Petitioner submitted his claim for another flat in the areas of urban land ceiling. Subsequently, the society was functional as the houses were constructed and one / house was allotted to the father of Petitioner.

. An objection was raised that two flats are allotted to Digambar Dhavale in one society, and such double allotment of houses is not permissible. On receipt of objection and on considering certain exchange of communications, Respondent No.3 passed the order dated 7th December 2021, which is impugned in the present petition. It is stated in the order that the communication is forwarded to the father of Petitioner but then there was no response. Ravindra son of Digambar submitted before the authority that he is searching for the documents of his deceased father. The authority then by taking into consideration only the communication and objection, arrived at the conclusion that deceased Digambar Vishwanath Dhavale misused the scheme of government and two flats were allotted to Digambar Vishwanath Dhavale. The authority by the order dated 7th December 2021 cancelled the membership of deceased Digambar Dhavale.

3. We have heard learned counsel appearing on behalf of the Petitioner as well as learned AGP appearing on behalf of the Respondent – State.

4. Learned counsel appearing on behalf of the Petitioner vehemently submitted that the order impugned in the petition suffers from

failure to observe the principles of natural justice; the authority without granting an opportunity of hearing to the legal heirs of deceased Digambar Dhavale, i.e., the Petitioner, directly jumped to the conclusion that deceased Digambar Dhavale misused the government scheme and was doubly benefited, and further by the said order cancelled the membership of Digambar Dhavale.

. It is also submitted by learned counsel for the Petitioner that had an opportunity of hearing been granted to the Petitioner, who is legal heir of deceased Digambar Vishwanath Dhavale, he could have produced all the necessary material before the authority to substantiate his claim as a legal heir of deceased Digambar Dhavale, and consequently that he is entitled for the membership of society in place of his deceased father. However, without giving such an opportunity of hearing, a coercive action is initiated and the order has, thus, caused serious prejudice to the Petitioner. Learned counsel for the Petitioner also raised various other grounds, however considering that there is merit in the first submission of learned counsel appearing on behalf of the Petitioner that the order impugned is passed without following the principles of natural justice, we deem it appropriate to dispose of the petition with following directions :

∴ ORDER ∴

The petition is allowed. The order dated 7th December 2021 passed by Respondent No.3 is quashed and set aside. Respondent no.3 is directed to hear the Petitioner. As the Petitioner is being represented by an advocate before this

Court, the requirement of issuing notice to the Petitioner is dispensed with. The Petitioner may submit an application before the authority, if he so desires, of being represented through an advocate. Respondent No.3 on receipt of such application, may consider the same and if there is no impediment, may permit the Petitioner to be represented through an advocate. If Respondent no.3 deems it appropriate to hear the objectors too, he may also consider granting an opportunity of hearing to them. The authority may grant hearing to all concerned by fixing date of hearing. Needless to state that date of hearing be intimated to the parties well in advance. By giving such an opportunity of hearing, Respondent No.3 shall pass appropriate order afresh and as expeditiously as possible and not later than twelve weeks from the date of receipt of a copy of this order.

[Kishore C. Sant, J.]

[Prasanna B. Varale, J.]