

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.1301 OF 2022

Balasaheb Shankar Kakde
Versus

.. Petitioner

The Grievance Redressal
Committee & Ors.

.. Respondents

Mr. Pradeep Thorat i/b Aditi S. Naikare for the Petitioner.

Mr. Pushplata N. Diwan for Respondents No.1 and 2.

Mr. C.D. Mali AGP for the State-Respondent No.3.

CORAM: ABHAY AHUJA, J.

DATE : 20th JULY 2022

P.C. :-

1. By this Petition filed under Section 227 of the Constitution of India, Petitioner is aggrieved by the order dated 4th February, 2021 passed by the Grievance Redressal Committee in Appeal No. 77 of 2020 and order dated 22nd January, 2017 passed by Respondent No. 2-Additional Collector (Encroachment / Removal) in Appeal No. 51 of 2017. Petitioner claims that he is entitled to enter his name in Annexure-II in respect of New

Trimurti SRA Co-operative Housing Society Limited implemented at CTS No. 3996-part, 3999 part of village Ghatkopar, Taluka – Kurla, Mumbai Suburban District whereby Petitioner has been declared as non eligible for residential rehabilitation on the ground that his existence in occupation prior to 1st January, 2000 is not established.

2. Mr. Pradeep Thorat, learned Counsel for the Petitioner would submit that both the authorities have erred in ignoring that Petitioner was residing at Room No. NXB-71, 3/73, Bhalerao Chawl, Nityanand Nagar, Ghatkopar West, Mumbai-400086 (the ‘said premises’) prior to 1st January, 2000. Learned Counsel draws the attention of this Court to Exhibit C, page 35 of the Petition, which is a copy of an Affidavit from the previous occupant. In paragraph no. 2 of the said Affidavit it is stated that Petitioner has been sharing the said premises for the last two to three years for his residence. Learned Counsel submits that the said premises is a structure prior to 1st January 2000. He submits that the authorities have failed to consider that Petitioner holds receipt No. 1921950 in his own name, which signifies his presence in the said slum, during the

survey conducted on 10th August 2000. Learned Counsel submits that Petitioner also has Electricity bill, Identity card issued by Election Commission in his name. The aforementioned documents are annexed to the Petition as exhibits. Learned Counsel therefore, refutes the finding of the Grievance Redressal Committee when it says that if the predecessor to Petitioner viz. Mr. Arjun Rambhau Hoge was in actual occupation till 21st September 2000, then on 10th August 2000 census survey form should have been in his name and not in the name of Petitioner. It is submitted that this argument of rejecting Petitioner's application is fallacious. On the contrary the arguments should have been that if Petitioner's name is shown on the census survey form on 10th August 2000 and as stated in the affidavit of Mr. Arjun Hoge that Petitioner was residing at the said premises for 2 to 3 years, then the finding should have been that Petitioner was in occupation of the said premises prior to 1st January 2000.

3. Mr. Thorat also submits that pursuant to Government Resolutions dated 16th May 2015 and 16th May 2018 the cut off date has been extended to 1st January 2011 and it would be in

the fitness of things if the matter is remanded back to Respondent No. 2- The Additional Collector (Encroachment/ Removal) for consideration of the aforementioned aspects and the documents.

4. Ms. Diwan learned Counsel for Respondents No. 2 and 3 submits that while passing orders dated 22nd January, 2017 and 4th February, 2021 the authorities have considered all the documents submitted by Petitioner and only thereafter they came to a conclusion that Petitioner's name is not entitled to be entered in Annexure-II.

5. I have heard learned Counsel for the parties. It is observed from paragraph No. 2 of the affidavit dated 22nd September, 2000 of Mr. Arjun Hoge, the purported predecessor of the said premises who had transferred the said premises to Petitioner, that Petitioner had been residing in the said premises for last 2 to 3 years i.e. prior to 1st January, 2000. Further, that since the cut off date as stated by learned Counsel for Petitioner has been extended to 1st January, 2011 in my view, remanding the matter back to Respondent No. 2--

Additional Collector (Encroachment / Removal), would serve the ends of justice.

6. In this view of the matter, the orders dated 22nd January, 2017 and 4th February, 2021 are hereby set aside. The Respondent No. 2-Additional Collector (Encroachment/4 Removal), is directed to consider the application of Petitioner afresh keeping in mind the aforesaid discussion as well as the the documents that may be submitted by Petitioner in support of his claim, in accordance with law. The said exercise be completed preferably within a period of three months.

7. The Petition is allowed in aforesaid terms. No costs.

Digitally
signed by
YUGANDHARA
SHARAD
PATIL
Date:
2022.07.22
18:19:09
+0530

(ABHAY AHUJA, J.)