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

WRIT PETITION NO. 7985 OF 2022

Smt.Maimuna Shaikh Haider Husain ... Petitioner

Vs.

The State of Maharashtra & Ors. ... Respondents

Adv.Pradeep J. Thorat for Petitioner.
Adv.M.S.Bane – AGP for State.

CORAM : ABHAY AHUJA, J.
DATE : 7th JULY 2022

P.C. :

1. It is submitted on behalf of the Petitioner that Petitioner was the occupant of property bearing Census No.NXA-925/5 situate in Noorbi Chawl, Nityanand Nagar, Behind Sherkhan Building, Ghatkopar (West), Mumbai : 400 086 having received the same by transfer from one Fazal Latif Waghoo under an Affidavit dated 22nd March, 1994, though originally the transferor's father Latif Hussain Waghoo was the occupant. Petitioner is aggrieved that at the time of implementation of Slum Rehabilitation Scheme, the Competent Authority has failed to consider her request to include her name in the Annexure-II.

2. It is further submitted that grievance was raised in this regard before the Respondent No.3-Assistant Municipal Commissioner, however, the same came to be rejected by communication dated 12th February, 2016. That the Respondent No.3 has placed reliance upon the decision dated 4th June, 2015 of the Additional Collector-Respondent No.2 in Slum Appeal No.46 of 2015 which was a consideration under Sections 33/38 of the Maharashtra Slum Areas (Improvement, Clearance & Redevelopment) Act, 1971, (the "Slum Act") without independently applying his mind to the documents presented before him. Aggrieved by the same, the Petitioner filed an Appeal before the Additional Collector who rejected the Appeal by an order dated 16th March, 2016 on the ground of earlier rejection vide order dated 4th June, 2015 of the Additional Collector.

3. Mr.Pradeep Thorat, learned Counsel for the Petitioner would submit that the Respondent No.3 as well as the Respondent No.2 while considering Petitioner's application for inclusion in Annexure-II ought to have considered the documents of the Petitioner on its own merits without being influenced by the decision of the Respondent No.2-Additional Collector in the

proceedings under Sections 33/38 of the Slum Act. Learned Counsel would submit that those are proceedings only for the purposes of clearing the area under the slum scheme from encroachments so that the development can be proceeded with and not for the purposes of determining the eligibility under the slum scheme to be included in Annexure-II. Learned Counsel refers to the decision in the case of ***Andrade Motors V/s. Additional Collector (Eng./Rem), & Competent Authority & Ors [2009(3) Bom.C.R.120]*** of this Court and submits that Authority under Section 33 of the Slum Act, is not empowered to interfere with the final sanctioned scheme. He submits that the Authority under Section 33 has very limited power and jurisdiction and can only consider, if the person though directed, is not shifting or vacating the plot in question as it affects the progress of the scheme / project, to pass an order of eviction after hearing such person.

4. Learned Counsel also draws the attention of this Court to the two subsequent Government Resolutions issued by the Government of Maharashtra in respect of the slum scheme whereby, the cut off dates of the schemes have been respectively extended first to 01.01.2000 and then to 01.01.2011. Learned

Counsel would submit that the Authorities ought to have considered the case of Petitioner on its own merits keeping in mind the two subsequent Government Resolutions dated 16th May, 2015 as well as 16th May, 2018.

5. On the other hand, learned AGP representing Respondents No.1 and 2 submits that the order of the Additional Collector dated 4th June, 2015 has considered all the documents submitted by the Petitioner and as such, the said order is valid.

6. At the outset, it would be pertinent to refer to Paragraphs 11 to 13 of the decision in the case of ***Andrade Motors V/s. Additional Collector (Eng./Rem), & Competent Authority & Ors (cited supra)*** which are quoted as under:

“11. The issue of the petitioner’s entitlement pursuance to Circular No. 70 dated 30th December, 2004 and issue of CRZ, affecting the scheme are kept open for appropriate challenge by appropriate proceedings. In my view, the Authority under section 33 of the Act, has very limited power and jurisdiction. It only requires to consider if the person though directed not shifting or vacating the plot in question and as it affecting the progress of the scheme/project, after hearing such person, to pass order of eviction. This Authority has no jurisdiction and authority to test the validity of SRA Scheme and Letter of intent already issued on such issues.

12. The Schemes under the Act are with intention to redevelopment of Slums and Rehabilitation of the slum dwellers. The “Competent Authority” and the

“Slum Rehabilitation Authority-SRA” or “High Power Committee” are distinct Authorities with “Special power and jurisdiction”.

13. The Authority under section 33 of the Act, is not empowered to interfere with the final sanctioned scheme. Therefore, no question to deal with the various challenges raised about the CRZ and the entitlement of extra area/structures, merely because the petitioner has raised such issues and resisted by the other side, that itself noway enlarge the scope and purpose of section 33 of the Act and related Rules. Even otherwise, the petitioner’s remedy is elsewhere.

(emphasis supplied)

7. It is quite clear from the above decision that the Authority under Section 33 of the Slum Act has very limited power and jurisdiction and it only requires to consider if the person though directed to shift has not shifted or vacated the plot in question and as such an act affects the progress of the slum scheme, the said Authority passes an order of eviction after hearing such person. There is therefore no doubt that the purpose of a 33 proceeding is only for the limited purpose of evicting/vacating the plot proposed to be developed under a slum scheme and not for deciding eligibility under the slum scheme. That needs to be independently considered by the Authorities after taking into account the various documents submitted by an applicant for the purpose of inclusion in Annexure-II.

8. After the matter is heard for some time, both the learned Counsel are *ad idem* that it would be in the fitness of things that the matter be remanded back for fresh consideration by Respondent No.3.

9. Having heard learned Counsel for Petitioner and the learned AGP for the Respondents No.1 and 2, it appears that although the Additional Collector seems to have considered the documents pursuant to which the Petitioner has occupied the said premises in the Section 33 proceedings, but the documents submitted for the purposes of deciding eligibility of Petitioner for inclusion in Annexure-II as well as the two Government Resolutions referred to above have remained to be independently considered on their own merits by Respondents No.2 and 3.

10. In this view of the matter, the order dated 12th February, 2016 (Exh.C) and order dated 16th March, 2016 (Exh.G) are hereby set aside.

11. The Respondent No.3 is directed to consider the eligibility of the Petitioner on its own merit after considering all the documents and submissions made by the Petitioner and after

granting an opportunity of hearing to the Petitioner, keeping in mind the two Government Resolutions dated 16th May, 2015 and 16th May, 2018 and to pass a reasoned order without being influenced by the earlier orders within a period of four weeks from the date of this order. The Petitioner is permitted to file the necessary documents in support of her claim within two weeks.

12. The Petition accordingly stands disposed. No costs.

(ABHAY AHUJA, J.)