

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.9158 OF 2022

Smt. Purnima Dhotre

..Petitioner

Versus

The Apex Grievance Redressal Committee
Government of Maharashtra,
Slum Rehabilitation Authority and Ors.

..Respondents

Mr. A. N. Giri, for the Petitioner.

Mr. Jagdish G. Aradwad (Reddy), for the Respondent No.1/AGRC.

Mr. Pavan S. Patil, for the Respondent No.3.

Mr. C. D. Mali, AGP for the Respondent No.6.

CORAM : NITIN W. SAMBRE, J.

DATE : 2nd AUGUST, 2022

PC.

1. The challenge in the petition is to the order dated 6th July, 2022 passed by the respondent No.1/Apex Grievance Redressal Committee (AGRC), so also order dated 14th February, 2022 passed by the Tahsildar (Special Cell), Slum Rehabilitation Authority.

2. The issue involved in the petition pertains to rival claims to entitlement to the tenement under the Slum Rehabilitation Scheme which is subject matter of the petition, as the petitioner, so also respondent No.3 are claiming such right over the tenement in a redeveloped building.

3. The facts giving rise to the filing of the petition are as

under :-

The petitioner and the mother of respondent No.3 were the hutment/slum dwellers on the property bearing City Survey No.E-86/10, E-86/12 at Mouje Bandra, Taluka Andheri. A scheme under the provisions of the slum act came to be implemented on the same. While implementing the scheme, two lists of qualified slum dwellers to be beneficiaries were identified in the Annexure-II, which were published on 23rd August, 2006 and 18th October, 2008. The case of the respondent No.3 before the authorities was the hutment bearing Hut No.T/4 was purchased by deceased Shantabai Kadam, mother of respondent No.3 way back in 1971 for a consideration of Rs.500/- from one S. B. Dhotre i.e. father-in-law of petitioner. Based on the same, the name of Shantabai Kadam was included in Annexure-II in 1997 at Sr. No.110 and was held to be eligible for the benefit under the scheme to be implemented under the slum act.

4. After the death of Shantabai Kadam, the respondent No.3 i.e. her daughter went to her native place to perform rituals of her mother. Taking advantage, it is claimed that petitioner and her family members enrolled their names against the aforesaid Hut No.T/4. Having noticed so, the respondent No.3/Pushpalata Kadam on 18th April, 2004, lodged a complaint about theft of her articles and taking forcible possession of her hut. Since the police have not taken cognizance of the same, she lodged a complaint with the

Government on Lokshahi Din on 6th January, 2010. Having noticed that the name of the husband of the petitioner and her father-in-law was included in place of the mother of respondent No.3, the proceedings were taken up before the SRA authorities for inclusion of her name in Annexure-II. The said grievance was forwarded to Collector with an endoresment that S. B. Dhotre and Ramchandra Dhotre are members of the same family as that of present petitioner and based on forged document eligibility was secured. As such, the Deputy Collector rejected the claim of the respondent No.3. In the intervening period, it was noticed that S. B. Dhotre's name was shown at Sr. No.98 and Sushant Dhotre's name at Sr. No.94 to be ineligible as against the two huts in Annexure-II and declared Sushant Dhotre as eligible at Sr. No.98. The claim of the respondent No.3 was rejected on the ground that she was not in continuous possession of the hut post death of her mother.

5. As a sequel of above, the society on or about 16th July 2013 handed over possession of tenement No.703 to the husband of the petitioner same being permanent alternate accommodation.

6. Feeling aggrieved, proceedings were taken up by respondent No.3 before the High Power Committee, who in turn remanded the same to the Additional Collector for deciding afresh by considering the documents. Again the Additional Collector rejected the claim of the petitioner on 19th August, 2015. Feeling aggrieved, she approached the High Power Committee vide

Application No.75 of 2015 which claim was also rejected. The petitioner thereafter preferred Writ Petition No.2080 of 2018 which set aside the order of the committee with directions to hear the same afresh. The grievance authority thereafter again remitted the matter back to the Deputy Collector to consider the eligibility of the respondent No.3. The Deputy Collector accordingly vide order dated 9th February, 2021 cancelled the eligibility of S. B. Dhotre and declared present respondent No.3 eligible. Feeling aggrieved, the husband of the petitioner preferred Appeal No.279 of 2021 before the Additional Collector and sought stay of the order of the Deputy Collector. The prayer was rejected on 1st March, 2021 against which an appeal was preferred being Appeal No.238 of 2021 before the Grievance Redressal Committee. The Grievance Redressal Committee thereafter directed the appeal to be decided i.e. Appeal No.279 of 2021 within a period of three weeks and till then directed *status-quo* to be maintained. The said *status-quo* was thereafter extended by this Court vide order dated 10th December, 2021.

7. The Additional Collector on 20th January, 2022 dismissed the appeal of the petitioner's husband which has resulted into filing of another Appeal No.471 of 2021 before the Grievance Redressal Committee along with an application for stay. In the meantime, respondent No.2 has initiated action under Section 33 of the Maharashtra Slum Areas (I.C. & R.) Act, 1971 against the present petitioner for eviction from rehab tenement No.703. The aforesaid proceedings thereafter were stayed. However, subsequent thereto

vide impugned order the claim of the petitioner for staying eviction proceedings came to be rejected. As such, this petition.

8. Contentions of counsel for the petitioner are, in Annexure-II maintained under the Act at Sr. No.97 the name of Ramchandra Dhotre, at Sr. No.94 name of Sushant Dhotre and at Sr. No.98 name of S. B. Dhotre were recorded. According to him, said entries are based on the settled possession of the husband of the petitioner on the hutment which was claimed by the respondent No.3 being successor of her deceased mother Shantabai Kadam. According to him, there is enough material available on record to infer that the husband of the petitioner was a hutment dweller prior to 1995 and as such, his name was qualified to be listed in the Annexure-II. It is also claimed that the respondent No.3 is claiming her right to the property by virtue of her mother being occupant of Hutment No.T/4. However, the said hutment in fact was owned by the husband of the petitioner. It is claimed that consistently all the authorities have held against the respondent No.3 but for the impugned orders and that being so, orders impugned are liable to be quashed and set aside. According to him, the orders passed in Writ Petition Nos.2285/2012, 2287/2012, 2289/2012 and 2291/2012 delivered on 12th April, 2012 are not considered by the authority while passing the order impugned. It is further claimed that while passing the orders impugned the authorities below has failed to consider the evidence particularly of the petitioner as regards documentary evidence produced on record. According to

petitioner, the petitioner's rights are still subjudice before the Apex Grievance Redressal Committee and that being so, the orders impugned are liable to be set aside.

9. All the respondents have supported the claim of the respondent No.3 while opposing the petition. It is brought to the notice of this Court that the mother of the respondent No.3 Shantabai Kadam expired on 30th October, 2003. In support of the claim that she was in settled possession of Hutment No.T/4, reliance is placed on the Ration Card No.SC No.522422, the Voters' List of area where the hut was situated of the year 1995 and 2002 and Election Card of deceased Shantabai Kadam issued in the year 1995 and the various applications moved for inclusion of name of respondent No.3. The respondent No.3 has also relied on the document wherein name of deceased Shantabai Kadam was included in Annexure-II in Slum Rehabilitation Scheme, so also Annexure-II of 23rd August, 2006 wherein name of S. B. Dhotre is shown at Sr. No.98. The respondent No.3 has also relied on the report of Deputy Collector, Competent Authority (Enforcement) in relation to the alleged fraud practiced by the petitioner's husband in the matter of getting the name in Annexure-II.

10. As such, it is claimed that the petition is devoid of merit and is liable to be dismissed.

11. I have considered aforesaid submissions.

12. Vide order impugned dated 14th February, 2022, the petitioner's challenge to the proceedings for eviction taken out under Section 33 of the Slum Act are decided against her. Vide said order, it is directed that the petitioner be evicted from Flat No.703, 'B' Wing of the respondent society. The said order was assailed by the petitioner before the respondent No.1/AGRC who has rejected her claim on 6th July, 2022. Both these authorities while recording findings noticed that the petitioner is not entitled for any protection particularly when the names of family members of the petitioner are reflected in Annexure-II. The Deputy Collector in his report dated 20th September, 2011 has specifically mentioned as to the fraud being practiced so as to eliminate the claim of the respondent No.3.

13. In the Annexure-II maintained under the Slum Act at Sr. Nos.94, 97 and 98 mentions the names of the blood relations of the petitioner. The hutment mentioned at Sr. No.98 in the Annexure-II was occupied by deceased Shantabai mother of respondent No.3/Pushpalata. The petitioner along with her relatives have stopped respondent No.3 from entering the said hutment resulting into registration of NC No.834 of 2004, however, the said issue was not taken to its logical end. It appears that the mother of respondent No.3 has expired on 30th October, 2003 who was holding Ration Card No.SC-522422. Her name was entered in the voter list on 1995 for 36 Bandra member of assembly constituency in paragraph 152 at Sr. No.936. In 2002 in relation to same constituency, her name could be noticed in paragraph 152 at same

serial number. She has produced the election identity card dated 15th October, 1995, based on which she has sought inclusion of her name i.e. mother of respondent No.3 in the Annexure-II.

14. As far as the Sr. No.98 in the Annexure-II is concerned, the name of S. B. Dhotre is recorded. The petitioner has conveniently avoided to mention the name of her husband in the cause-title so as to avoid disclosure of her identity qua her father-in-law.

15. This Court appreciated the aforesaid evidence including the NC registered with Police Inspector (crime), Police Station, Khar and has noted that the details of the same are not available, however, has not denied about registration of NC at the behest of respondent No.3. In the matter of criminal act of petitioner and her family members of use of physical force with criminal intention against the respondent No.3 can be inferred against petitioner.

16. Once the respondent No.3 or her mother were restrained from occupying the hutment as against the Sr. No.98 by the petitioner and her blood relations, there is no question of respondent No.3 being not available on the spot at the time of physical verification. This Court is required to be sensitive to the fact that the Makhija Developers in 2000 has qualified the mother of respondent No.3 in Annexure-II, however, the name of mother of respondent No.3 was deleted for which convincing explanation is

not available on record but for she being not physically occupying the property on the subsequent date.

17. This Court is required to be sensitive to the order of the High Power Committee dated 1st February, 2014, wherein it was directed to decide the entitlement of the respondent No.3 being legal heir of deceased Shantabai who is claiming entitlement in Annexure-II as against Sr. No.98. The fact remains that the impugned orders which are passed by the Deputy Collector (Enforcement) on 9th February, 2021 in categorical terms deals with all the aforesaid facets and has recorded specific finding in tune with the aforesaid reasoning. The said authority has noted that S. B. Dhotre through whom the petitioner is claiming to be succeeding to the property was never entitled for such benefit in law. Following details as regards the voter list will clearly clarify the claim of the petitioner and the respondent No.3 :-

झोपडीधारकाचे नाव	मतदार यादी भाग क./अ.क.	घर क्रमांक	सन, 1997 च्या परि-2 मधील क्रमांक	सन, 2006 च्या परि-2 मधील क्रमांक
मंजुळा पांडुरंग चव्हाण	152/930	त-2	107	95
रामचंद्र शिवराम धोजे	152/933	त-3	109	97
प्रशांत रामचंद्र धोजे	152/935	त-3	106	94
शांताबाई तुकाराम कदम	152/936	त-4	110	---
एस. बी. धोजे	नाव नाही	घर क्र. नाही	परिशिष्टात नाव नाही.	98
डेविड फिलीप्स फर्नांडीस	152/937	त-5	108	96

18. Rather the findings are recorded that the father-in-law

of the petitioner in fact was not alive when the Annexure-II was prepared and as such, by practicing fraud the name of said person was entered at Sr. No.98. These very findings are endorsed by the higher authorities while passing the orders impugned.

19. In the aforesaid background, it has to be observed that the respondent No.3 has able to establish that her mother Shantabai's name in the voter list in 1995, so also in 2000 with House No.T-4 which qualifies her to be included in Annexure-II. There is no justifiable reason for not continuing or exclusion of name of Shantabai in the revised Annexure-II of 2006, as said Shantabai has expired and the petitioner through her relatives have restrained respondent No.3 from entering the said premises. There is no material to infer that late S. B. Dhotre was qualified to be enter into Annexure-II, particularly, when the name of said S. B. Dhotre was not reflected in the voter list with house number. The name of husband of the petitioner, namely Ramchandra was entered at Sr. No.97 in the Annexure-II. There is no justification to maintain the name of deceased Shivram (S. B.) Dhotre who died on 14th October, 1993 in Annexure-II at Sr. No.98.

20. In view of above, it can be noticed that the fraud is practiced on the right of the respondent No.3 by the petitioner and her relatives so as to grab the property by fraudulently entering the name of S. B. Dhotre in Annexure-II in spite of the fact that S. B. Dhotre was not alive on the said date of finalizing Annexure-II. In

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this factual background, the orders impugned cannot be faulted with.

21. The petition is devoid of merits and the same stands dismissed.

[NITIN W. SAMBRE, J.]