

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

WRIT PETITION NO.14015 OF 2018

Dinesh Bansi Yadav. ... **Petitioner**

V/s.

1.The Hon'ble Grievance Redressal Committee
Mumbai Suburban, Mumbai.

2. Mrs.Gracy Eapen George.

3. Mr.Grace Eapen George. ... **Respondents**

Mr.Rahul Kedar i/b. Mr.Vikrant D.Shetty, for the Petitioner.

Mr.PV.Nelson Ranjan, AGP for the State.

CORAM : G. S. KULKARNI, J.

RESERVED ON : 28 September, 2021

PRONOUNCED ON : 1 FEBRUARY 2022

JUDGMENT:

1. The petitioner who is a slum dweller challenges an order dated 16 August 2018 passed by the Grievance Redressal Committee on an appeal filed by the petitioner under Section 35(1A) of the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act,1971 (for short '**the Slum Act**'). Some facts may be noted.

2. The petitioner made a complaint of illegal construction by the adjoining slum dwellers, who are respondent Nos.2 and 3. Admittedly, the petitioner has not produced the sanctioned building plan in respect of the structure of respondent Nos.2 and 3.

3. The petitioner's complaint against respondent Nos.2 and 3 dated 8 January 2016 was forwarded by the Assistant Engineer to the Competent Authority for its decision. The Competent Authority held a hearing on the complaint of the petitioner and passed an order dated 5th October 2016 without hearing respondent Nos.2 and 3 against whom the complaint was made by the petitioner. The Competent Authority by such order allowed the petitioner's complaint by directing the respondent No.2 to remove the unauthorized structures. Against such order passed by the Competent Authority, respondent No.2 approached the appellate authority being the Additional Collector (E/R) in an appeal (Appeal Nos. 1069 of 2016 and 1070 of 2016) which was filed, as permissible under the rules. The appellate authority considering the rival contentions, by an order dated 2nd April 2018 partly allowed the respondents' appeal. By such order, the appellate authority remanded the matter to the Competent Authority by permitting the parties to produce their respective documentary evidence and directing the Competent Authority to decide the petitioner's complaint afresh. The petitioner being aggrieved by the said decision of the appellate authority approached the Grievance Redressal Committee by filing Appeal No. 709 of 2018. The Grievance Redressal Committee by the impugned order while dismissing the appeal and upholding the order passed by the appellate authority and the remand of the matter to the Competent

Authority has observed that the petitioner needs to produce documentary evidence before the Competent Authority to support his case. The Competent Authority was directed to take a fresh decision upon the petitioner's complaint preferably within a period of three months from receipt of the said order. The operative order of the Grievance Redressal Committee is required to be noted, which reads thus :-

“1. Appeal is dismissed. The impugned judgment and order dated 02.04.2018 passed in appeal no.1069/2016 and 1070/2016 by the Appellate Authority i.e. respondent no.1 is hereby confirmed. The respondent No.2 and 3 herein are directed to appear before the Competent Authority within seven days from the date of receipt of this order or of communication hereof to produce the documents. The appellant may also produce documentary evidence before the Competent Authority. The Competent Authority is directed to take the decision upon the appellant's complaint preferably within the period of three months from the date of receipt of this order.
2. No order as to costs.”

4. The case of the petitioner is not different from what the petitioner urged before the Grievance Redressal Committee. The primary contentions of the petitioner *inter alia* as raised in the present petition are to the effect that the appellate authority failed to consider that there always existed a well and fully grown coconut tree on the south-west side of the petitioner's room and that respondent No.2 had illegally filled up the well and cut the coconut tree and had illegally constructed one room on the south-west side of the petitioner's room. The appellate authority and the Grievance Redressal Committee had also failed to appreciate the spot inspection report

of the learned Tahsildar that the construction carried out by the respondent No.2 appeared to be new. It is contended that on account of the illegal construction as carried out by respondent nos.2 and 3, the windows and ventilation of the petitioner's room was permanently blocked, and by this the petitioner and his family members were suffering from various health conditions. It is contended that the Grievance Redressal Committee ought not to have observed that the issue raised by the petitioner was a dispute of civil nature which could not be gone into by the Grievance Redressal Committee. It is next contended that the Grievance Redressal Committee had failed to appreciate that respondent Nos.2 and 3 had produced false and fabricated documents in support of their case. It is submitted that the appellate authority and the Grievance Redressal Committee have also erred in not recording any findings on the fabricated documents produced by respondent Nos.2 and 3 and had failed to consider the photographs produced by the petitioner supporting his case.

5. Having noted the contentions as raised on behalf of the petitioner, the submission as made on behalf of the petitioner need to be noted. Learned Counsel of the petitioner in assailing the impugned order passed by the Grievance Redressal Committee would firstly submit that in the facts and circumstances of the case and considering the order passed by the

Competent Authority in favour of the petitioner, an order of remand, ought not to have been made by the Grievance Redressal Committee. It is submitted that the Grievance Redressal Committee ought to have appreciated that the appellate authority had completely discarded as to what was decided in favour of the petitioner by the Competent Authority, in regard to the illegal structure of respondent no.2, against which the petitioner had complained before such authority. The petitioner has also contended that the appellate authority has failed to consider the inspection report. There are other detailed submissions as made on facts.

6. Having heard the learned Counsel for the petitioner and having perused the impugned order passed by the Grievance Redressal Committee, I am not persuaded to accept any of the contentions as urged on behalf of the petitioner. This more particularly, since the Grievance Redressal Committee has made a specific observation that the appellate authority against whose decision the petitioner had approached the Grievance Redressal Committee had categorically concluded that respondent Nos.2 and 3, being the appellants before the appellate authority, were not given an opportunity to produce documents, as also, it was necessary to have the documents properly verified, as per the Government Resolution dated 16th May 2015 so that a decision on merits can be taken by the Competent

Authority. It was observed that the appellate authority had thought it appropriate that it was necessary that the parties place on record relevant documents and hence had set aside the order passed by the Competent Authority, so that the issue can be decided afresh by the Competent Authority after hearing the parties. In my opinion, in these circumstances, no prejudice whatsoever would be caused to the petitioner, as the impugned order permits the petitioner to submit fresh material before the Competent Authority and the Competent Authority would consider such material so as to pass a fresh order after hearing the parties.

7. Once the appellate authority has observed that appropriate documentary evidence in support of his case be placed by the petitioner as also by respondent Nos.2 and 3 before the Competent Authority, which would be considered by the Competent Authority, in deciding the complaint of the petitioner afresh, in such situation, in my opinion, the petitioner cannot take a position that such an order of remand is against his interest. This also for the reason that all the contentions of the petitioner on the documents including on the documents on which respondent Nos.2 and 3 would rely can be gone into by the Competent Authority. Thus, the impugned order does not indicate any perversity or illegality that this Court should interfere in the impugned order which confirms the remand of the proceedings to the Competent Authority.

8. Certainly, the Grievance Redressal Committee was entitled to use its discretion in the interest of the parties to remand the matter to the Competent Authority so that an effective decision is taken by the Competent Authority by considering all materials which would be presented by the parties. Once such a discretion has been exercised, on cogent basis and on parameters which are borne out by the record, it cannot be said that exercise of such discretion would amount to any perversity.

9. For the aforesaid reasons, no interference is called for in the impugned order. The petition is accordingly disposed of, maintaining the order of the Grievance Redressal Committee, with liberty to the petitioner to raise all contentions before the Competent Authority.

10. Needless to observe that the contentions of the private respondents are also expressly kept open. The Competent Authority is directed to decide the petitioner's complaint on remand, as directed by the Grievance Redressal Committee, within a period of four months from the day a copy of this order is placed before it by the petitioner.

11. All contentions of the parties are expressly kept open.

12. Disposed of. No costs.

(G. S. KULKARNI, J.)

Gaikwad RD