

Ashwini

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 2915 OF 2019**

Ishtiyak Allauddin Khan And Anr ...Petitioners
Versus
The Additional Collector, Mumbai City & Ors ...Respondents

**WITH
INTERIM APPLICATION NO. 838 OF 2021
IN
WRIT PETITION NO. 2915 OF 2019**

Ishtiyak Allauddin Khan And Anr ...Applicants/
Petitioners
Versus
The Additional Collector, Mumbai City & Ors ...Respondents

Mr SG Kudle, for the Petitioner.
Mr Amit Shastri, AGP, for Respondent No. 3-State.
Mr Anoop Patil, for Respondent No. 4-SRA.
Mr Yuvraj D Patil, for Respondent No. 6.

**CORAM G.S. Patel &
 Madhav J. Jamdar, JJ.**
DATED: 14th February 2022

PC:-

1. Heard.

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2. The Petitioners assail an order of 21st February 2019 of the Grievance Redressal Committee, Mumbai Suburban (“GRC”). The Petitioner No. 1 is the son of the Petitioner No. 2.

3. The challenge before the GRC was to an order of 14th September 2018 passed in an Appeal No. 147 of 2017 by the Additional Collector Western Suburbs. That appeal was filed only by the Petitioner No. 1 asking for an inclusion of his name in Annexure-II of the Slum Rehabilitation Scheme called the Shree Ramayan CHSL. This is being implemented at village Malwani, Taluka Borivali, Kandivali-West in the Mumbai Suburban District. The Deputy Collector Malad-2 is the Competent Authority for this scheme.

4. Petitioner No. 1 contended that he had three independent structures or hutments, each with separate independent documentary proof satisfying all necessary eligibility criteria. What the Petitioner No. 1 contended before the Additional Collector was that only one of these hutments at Sr No. 95 had been considered for rehabilitation and held to be eligible. The other two hutments were not surveyed. Petitioner No. 1 produce some documentary proof. The appellate authority, namely the Additional Collector (E&R), Western Suburbs considered these documents and held that in the original survey plan, only one structure, i.e. hut No. 95, was shown to be in existence. That stood in the name of present Petitioner No. 2, the 1st Petitioner’s father. Accordingly, Petitioner No. 2 was considered for determination of his eligibility at that time. He was however found to be ineligible for inclusion in Annexure-II dated 29th August 2006 because he failed to produce documentary

proof. The appellate authority observed that he had not even tendered any explanation for a delay of about eleven years in making this claim of two structures (in addition to Hut No. 95). The appellate authority therefore concluded that Petitioner No. 1 had failed to prove his case. On 18th January 2019, the two Petitioners (in inverted order) filed Writ Petition (L) No. 125 of 2019. An order came to be passed granting interim protection against coercive steps while their Appeal was pending before the GRC.

5. The Petitioners' Advocates were heard by the GRC as were the Advocates for the Respondents. The Petitioners' written submissions were taken on record and considered. The committee in fact granted the Petitioners additional time to file further documentary proof. Then further written submissions followed. The hearing was ultimately closed for orders. Some written submissions and additional documents were also allowed on record.

6. There is a narrative in paragraph 3 of the impugned order of the previous history of litigation. This includes an even earlier Writ Petition (L) No. 876 of 2018 filed by the Petitioners on which this Court passed an order on 22nd March 2018 directing the appellate authority to dispose of the Appeal No. 147 of 2017, to which we have referred above. In the meantime, the Petitioners were protected. There was another Appeal No. 420 of 2018 by the same appellate authority. That Appeal was also jointly filed by the present Petitioners. It challenged an eviction notice dated 22nd January 2018 under Sections 33 and 38 in respect of Structure No. 95.

7. Paragraph 4 of the GRC orders sets out its reasoning. The GRC considered this claim of the two structures, i.e., those in addition to structure No. 95. It quite correctly set aside any consideration regarding structure No. 95 because that was not the subject matter of the appeal before it. Hut No. 95 was subjected to proceedings under Sections 33 and 38 and, as the GRC correctly held, it had no bearing on the merits of the case before it.

8. On studying the appeal memo, the GRC found that both father and son claimed now to be in joint occupation of these so-called two additional commercial structures. The GRC then looked at the documents that were produced. These included a Gumastha License, i.e. Registration Certificate of the establishment. This was dated 16th April 2005 and stood in the name of the 1st Petitioner “Ansar Communication” with the address Saibaba Seva Samitee Premises No. 1, Babrekar Nagar, Kandivali West, Mumbai 400 067. This was renewed annually until 2011 and was in respect of a telephone facility or STD/PCO. There were also electricity bills of 2nd April 2016 in the name of 1st Petitioner for commercial use for this Ansar Construction business at the same address. These documents clearly pertained to a single structure and the same STD/PCO booth. The GRC held that these documents could not establish that these structures and their commercial user was since before the cut-off date of 1st January 2000. There were electricity bills of 2nd January 2019 and 2nd April 2016 at the same address for the same business, a Gumastha license of 16th April 2005, renewal proof at the same address with the same business, a passport, a telephone bill, a census survey certificate dated 10th August 2000, a voter identity card and so on. All these documents are enumerated

in the impugned order. The GRC concluded from these documents that the 1st Petitioner had only one set of commercial documentary proofs for a single structure. This showed that the business of the STD/PCO was being run since 2005. There were simply no documents that the Appellants could produce to indicate the existence of two other commercial structures in their name. It is to be remembered that the entire case was that their existed two commercial structures other than Hut No. 95.

9. On this presentation, the GRC held that the Appellant had failed to establish their case that they were in actual occupation of a total of three commercial structures on site since before the required cut-off date of 1st January 2000. The Appellants, the GRC held, had prolonged the removal of their obstructing structures on the pretext of this claim of two additional structures when they were actually occupying a single hut.

10. It was in these circumstances that the GRC rejected the Appeal.

11. Before us, Mr Kudle argues, *inter alia* with reference to ground (d) at pages nos. 10 to 13 of the Petition, that the GRC ought to have directed an on site survey. This, to our mind, begs the question. In any SRA scheme, it is not the mere existence of a structure on site that is relevant but whether there is material to show that it is eligible and it shown to be in existence since prior to the cut-off date. But here even the very existence of the structures could not be shown. It is not the task of the GRC to direct survey

after survey to find some method to assist every claimant. There is no doubt that the original table survey and slum survey were carried out. This is not disputed at all. This table survey showed only a single structure, i.e. hutment No. 95. So far as hutment No. 95 is concerned, the GRC did not touch that aspect of the matter, and, in our view, correctly so. The conspectus of the appeal before the GRC and, therefore of the Petition before us, is the Petitioners' claim that there are two *additional* structures, other than Hut No 95, and that both these additional structures are eligible. This has not been established and it is, even today, after several rounds of hearing nothing more than the mere ipse dixit of the Petitioners.

12. There is no legal infirmity in the impugned order that we can find. As has been repeatedly settled, in exercise of our Writ Jurisdiction we cannot embark on an exercise of re-appreciation of facts. We cannot substitute our view for that of the authority. We are not concerned with the decision but only with the decision making process.

13. We see no merit in the Petition. It is rejected. There will be no order as to costs.

14. Previous ad-interim orders stand vacated forthwith.

15. Mr Kudle applies for protection. We decline that. This has gone on long enough. Every opportunity has been given and in fact this Court has protected the Petitioners more than once. All that has happened is that repeated Petitions and Appeals were filed, all

canvassing the same point on the same documents but with no proof at all. At the end of the day, this is what matters: whether the Petitioners can show they have documents to establish their claim. Once it is shown that they do not, this cycle of endless litigation must end. The application is rejected.

16. All concerned will act on production of a digitally signed copy of this order.

(Madhav J. Jamdar, J)

(G. S. Patel, J)