

PMB

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

WRIT PETITION NO.2869 OF 2022

Gracy Louis Hendriques ..Petitioner
vs.
Grievance Redressal Committee and ors. ..Respondents

Mr. M. M. Vashi, Senior Advocate a/w Ms. Manisha Desai i/b.
M. P. Vashi and Associates for petitioner.
Mr. Kedar Dighe, AGP for respondent nos.2 to 4-State.
Mr. Sanjeev Singh for respondent no.5.

CORAM : M. S. KARNIK, J.

DATE : NOVEMBER 14, 2022.

P.C. :

- 1.** On the last occasion, I heard Mr. Vashi, learned Senior Advocate appearing on behalf of the petitioner and Mr. Dighe, learned AGP appearing on behalf of the respondent nos.2 to 4.
- 2.** Mr. Dighe opposed the writ petition.
- 3.** After hearing the parties, I had indicated on an earlier occasion that *prima facie* the appeal filed by the Tahsildar bearing No.90 of 2019 before the Grievance Redressal Committee was not tenable. The structures belonging to the petitioner were already demolished pursuant to which the

CNG station was set up and made operational. Mr. Vashi then had submitted that the petitioner could be granted liberty to make an application to the Collector (Suburban District) for allotment of an alternate plot of land for commercial use, abutting to minimum 36 metres wide road of Western Suburban in radius of 4 k.m. within a reasonable time. Mr. Dighe, learned AGP, however, proceeded to address the controversy on merits and opposed the writ petition.

4. The challenge in this writ petition filed under Article 226 of the Constitution of India is to an order dated December 17, 2020 passed by the respondent no.1- Grievance Redressal Committee (hereafter "GRC", for short). The Appeal before the GRC was filed by respondent no.2 i.e. Vinod Balkrishna Dhotre-Tahsildar in his personal capacity. It is one of the contention of Mr. Vashi that the Tahsildar could not have filed such appeal in his personal capacity. However, instead of going into such objection of Mr. Vashi, I proceed to examine the tenability of the appeal filed by the Tahsildar before the GRC on other grounds.

5. In respect of the residential/commercial structures mentioned in the writ petition of which the petitioner is the owner, the Deputy Collector, Mumbai issued a notice on July 31, 2012 to Mr. Rakesh Pawar, the constituted attorney of the petitioner, who had purchased three structures from the petitioner. The said notice was issued under Section 3Z(2) of the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971 (hereafter "the Slum Act", for short). The notice was duly replied by the petitioner. The Deputy Collector (Encroachment), Goregaon, Western Suburbs by the order dated July 25, 2013 held the structures of the petitioner admeasuring 4800 sq.ft. are unauthorised and therefore, are not protected structures under the Slum Act.

6. The petitioner filed appeal under Section 35 of the Slum Act before the Divisional Commissioner against the order dated July 25, 2013 passed by the Deputy Collector (Encroachment), Goregaon, Western Suburbs. The Divisional Commissioner by the order dated December 31, 2013 set aside the order passed by the Deputy Collector

(Encroachment), Goregaon, Western Suburbs dated July 25, 2013 and held that the structures of the petitioner are protected structures.

7. After more than six years, the Tahsildar filed an Appeal No.90 of 2019 before the GRC against the order passed by the Divisional Commissioner. By the impugned order, the GRC allowed the Appeal.

8. It is the submission of Mr. Vashi that though the Slum Act was amended on June 19, 2012, whereunder an appeal was provided before the GRC against the order passed by the Deputy Collector (Encroachment), Goregaon, Western Suburbs, the GRC was not constituted till the year 2017. In such circumstances, the petitioner filed an appeal under Section 35 of the Slum Act before the Divisional Commissioner, who continued to hear the appeals against the order of the Deputy Collector in absence of constitution of the GRC. By the order dated December 31, 2013, as indicated earlier, the Divisional Commissioner set aside the order dated July 25, 2013 passed by the Deputy Collector (Encroachment), Goregaon holding that the structures of

the petitioner are protected structures. In such view of the matter, after a gross delay of six years without satisfactory explanation, the GRC ought not to have entertained the appeal filed by the Tashildar. Moreover, during the period when the GRC was not constituted, the appeal provided under Section 35 of the Slum Act against the order of the Deputy Collector was maintainable and entertained by the Divisional Commissioner under Section 35 of the Slum Act. Even in the impugned order, in paragraph 23, the GRC has noted that as a stop gap arrangement until the appointment of designated officers as 'Appellate Authority', learned Administrator is continued to entertain and hear the appeals under Section 35, and the power and authority was of co-ordinate nature for the purpose of Section 35 of the Slum Act. In such view of the matter, when the GRC itself has observed that the jurisdiction of the Divisional Commissioner was of co-ordinate nature for the purpose of Section 35 of the Slum Act, the appeal against the order of the Divisional Commissioner, upon constitution of the GRC after it became functional sometime in June-July 2017, was

not tenable before the GRC.

9. In this view of the matter, the impugned order passed by the GRC deserves to be quashed and set aside. It is however made clear that against the order passed by the Divisional Commissioner dated December 31, 2013, it is open for the respondent authorities to avail of such remedies prescribed by law.

10. The structures of the petitioners are already demolished and even the CNG station has become operational on the land where the structures of the petitioners were situated. I am informed that the petitioner has filed a suit No.704 of 2019 for a declaration that the demolition carried out by respondent nos.3 and 4 is bad and illegal and for other reliefs. Mr. Vashi submits that he would not press the suit if this Court directs the Collector (Suburban District) to consider allotment of an alternate plot of land for commercial use, abutting to minimum 36 metres wide road of Western Suburban in radius of 4 k.m. expeditiously.

11. In view of the order passed by the Divisional

Commissioner that the structures of the petitioner were protected and the subsequent events, I find the request made by Mr. Vashi is reasonable. It is therefore, directed that in case the petitioner makes an appropriate application for allotment of an alternate plot of land for commercial use, abutting to minimum 36 metres wide road of Western Suburban in radius of 4 k.m. within four weeks from the date of this order, the Collector (Suburban District) to consider the said application on its own merits and in accordance with law. The application be decided expeditiously and preferably within a period of twelve weeks from the date of the application upon hearing the petitioner.

12. Needless to mention that Mr. Vashi would instruct the petitioner to take appropriate steps for withdrawal of the suit. It is made clear that such withdrawal is in view of the liberty to file the aforesaid application to the Collector.

13. The Writ Petition stands disposed of. No costs.

(M. S. KARNIK, J.)