

Dusane

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

WRIT PETITION NO.1539 OF 2023

Rosy Balaswamy Gandhi ...Petitioner

V/s.

Apex Grievance Redressal ...Respondents
Committee & Ors.

Mr. Altaf Khan a/w Akash Mangalgi, Yogesh Samant
for Petitioner.

Ms. P.H. Kantharia for Respondent No. 1- ARGC.

Mrs. V.S. Nimbalkar, AGP for Respondent Nos. 4
and 5.

Ms. Aparna D. Vhatkar for Respondent Nos. 2 and 3
SRA.

Mr. Milind Nar for Respondent No. 6.

CORAM: MADHAV J. JAMDAR, J.

DATE: 11th October 2023

P.C.:

1. Heard Mr. Altaf Khan, learned Counsel appearing for the
Petitioner, Mrs. Kantharia, learned Counsel appearing for
Respondent No. 1- AGRC, Mr. Nar, learned Counsel appearing for
Respondent No. 6 and Mrs. Nimbalkar, learned AGP appearing
for the State.

2. The Petitioner, who is eligible slum dweller has challenged the legality and validity of order dated 5th June 2018 passed by the Assistant Registrar, Co-operative Societies (East and West Suburbs), Slum Rehabilitation Authority, Mumbai as well as order dated 28th February 2022 passed by the learned Apex Grievance Redressal Committee in Application (L) No. 142 of 2018.

3. By the impugned order dated 5th June 2018, it has been held that the Petitioner will be entitled to the rent only from the date on which, she has been held as an eligible slum dweller. The said order is confirmed by the learned Apex Grievance Committee.

4. The factual position on record shows that the hut in question is demolished on 24th September 2013, pursuant to the notice, which has been served on the occupants of various slums on 21st September 2013. In the said notice, the Petitioner's name is mentioned at serial No. 11. Thus, it is clear that when the said hut was demolished, the Petitioner was the occupant of the slum structure in question. Initially by Annexure-II dated 5th October 2009, the Petitioner has been held to be ineligible and therefore she has been held eligible.

5. Mr. Khan, learned Counsel appearing for the Petitioner has relied on decision of a learned Single Judge of this Court dated

13th January 2020 in the case of **Smt. Kusum Subhash Baisane Vs. State of Maharashtra & Ors.** passed in OOCJ Writ Petition (Lodging) No. 3219 of 2019. In the said Writ Petition also, the Petitioner was paid rent from the date on which she has been held eligible and not from the date of demolition of the structure. Reliance is also placed on the Circular No.153 of SRA dated 6th June 2015.

6. Mr. Nar, learned Counsel appearing for Respondent No.6 has also placed reliance on the said Circular. It is his contention that the Petitioner has acquired the rights with respect to the said slum after demolition of said slum structure. However, it is an admitted position that the structure has been demolished on 24th September 2013, pursuant to demolition notice dated 21st September 2013. The said notice mentions name of the present Petitioner. Thus, it is clear that the present Petitioner was the occupant of said structure even before demolition and she has not acquired rights after the demolition of the slum structure.

7. A learned Single Judge in **Smt. Kusum Baisane** (supra) has clearly held that once the Petitioner is held to be eligible, her eligibility would relate back to the first certified Annexure-II list. In any case, the Petitioner was found to be in possession of said structure when the demolition took place. The relevant paragraph no. 20 of said decision, reads as under:

"20. In the considered opinion of the Court, both the competent authority as well as AGRC had fallen into error in taking the aforesaid view that entitlement of the Petitioner to transit rent would be from the date of declaration of eligibility i.e. 27th November 2017 and not from the date of demolition of the structure i.e. 17th November 2014. Though the Petitioner was adjudicated as eligible by the competent authority on 27th November 2017, eligibility of the petitioner would relate back to the first certified Annexure-II list dated 14th June 2010 as she was found to be residing in the demolished structure prior to 1st January 2000 and therefore, on the date of demolition of her structure i.e. 17th November 2014, Petitioner would be construed to be an eligible slum dweller."

The said decision is squarely applicable to the present case.

8. Accordingly, the Writ Petition is allowed by setting aside order dated 5th June 2018 passed by Assistant Registrar, Co-operative Societies (East and West Suburbs), Slum Rehabilitation Authority, Mumbai as well as order dated 28th February 2022 passed by the learned Apex Grievance Redressal Committee. Accordingly, the Petitioner will be entitled for a transit rent w.e.f. 24th September 2013 i.e. w.e.f. the demolition of said slum structure.

9. It is an admitted position that the Petitioner has been paid transit rent since 6th February 2018. Accordingly, the Respondent No. 6 shall pay the arrears of transit rent to the Petitioner for a period from 24th September 2013 to 5th February 2018, within a period of eight weeks from today. The

said rent be paid as per the rent, which has been paid to other occupants of the said slum society.

10. The Writ Petition is disposed of in above terms, however, with no order as to costs.

BHALCHANDRA
GOPAL DUSANE

(MADHAV J. JAMDAR, J.)

Digitally signed by
BHALCHANDRA
GOPAL DUSANE
Date: 2023.11.23
17:05:57 +0530