

Arjun

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

WRIT PETITION NO.15250 OF 2023

Sitara Anil Sharma

...Petitioner

V/s.

The Apex Grievance

...Respondents

Redressal Committee,

Slum Rehabilitation Authority,

Bandra (East), Mumbai. & Ors.

Mr. Aniesh Jadhav i/b Shyam K. Singh a/w Pradeep Gaikwad,
for the Petitioner.

Mrs. P. H. Kantharia, for the Respondent No.1-AGRC.

Mr. Yogesh Patil i/b Vijay Patil, for Respondent No.2-SRA

Mr. Anil Mishra a/w Sneha Dedhia, for Respondent No.3.

**CORAM : MADHAV J. JAMDAR, J.
DATED : DECEMBER 19, 2023**

ORAL JUDGMENT

1. This Writ Petition was completely argued on 8th December 2023 and the same was adjourned to 11th December 2023, as learned Counsel appearing for Respondent No.3 took time on 8th December 2023 to take instructions so that the impugned Order dated 28th June 2023 passed by the Respondent No.1-Apex Grievance Redressal Committee (“AGRC”) could be set aside by consent by giving liberty to the Respondent No.3 to challenge the said Order. However, thereafter, Respondent No.3 took time to file affidavit-in-reply.

2. This Court, by passing the detailed Order dated 11th December 2023 granted time till today. The said Order dated 11th December 2023 reads as under :-

“1. This matter was argued on 8th December 2023 and the same has been kept today for the Respondent No.3 to take instructions to set aside the impugned Order by consent by giving liberty to the Respondent No.3 to challenge the Order dated 28th June 2023 passed by the Respondent No.1-Apex Grievance Redressal Committee (hereinafter referred to as **“the AGRC”**). However, today time is sought on behalf of the Respondent No.3 to file affidavit-in-reply.

2. The Petitioner is challenging the legality and validity of the undated Order passed in Application No.76 of 2023 by the AGRC (hereinafter referred to as **“the impugned Order”**). **The impugned Order has been passed on the Application seeking Speaking to the Minutes of Order dated 28th June 2023.** Learned Counsel by pointing out paragraph No.1 of the Order states that as the matter came up before the AGRC on 15th September 2023, the impugned Order can be taken as Order dated 15th September 2023.

3. The AGRC has passed the following Order on 28th June 2023:-

“Order:

22. Considering the aforesaid facts following Order is passed:-

a) This Committee directs Respondent No.2 to

pay applicable Transit Rent to the Applicant and to register the Agreement (within 10 working days) executed on 20.04.2022 between Respondent No.2 & the Applicant for Permanent Alternate Accommodation.

b) Further this Committee upholds the Impugned Order dated 12.01.2023 passed by Respondent No.1 Tahsildar-2(Special Cell) under section 33 & 38 of Maharashtra Slum Areas (I.C. & R) Act, 1971.

23. With the aforesaid direct, Application No.76 of 2023 filed by Mrs. Sitara Anil Sharma is disposed of.”

(Emphasis added)

3. On the praecipe seeking Speaking to the Minutes of said Order dated 28th June 2023, the following Order was passed on 15th September 2023:-

Order:

12. Considering the aforesaid facts, the following Order is passed.

(a) The para 22(b) of the Order passed on 28.06.2023 in the present Application is to be read as follows:

“(b) This Committee directs Respondent No.2 to pay applicable transit rent to the Applicant and to execute the Agreement (within 10 days) with the Applicant for Permanent Alternate Accommodation.”

(c) Rest of the Order reads as same.

With the aforesaid direction, Application dated

12.09.2023 for speaking to minutes filed by Respondent No.2 Developer is disposed off.”

(Emphasis added)

The above Order dated 15th September 2023 is impugned in the present Writ Petition.

5. Perusal of the said impugned Order and particularly paragraph Nos.6 to 10 shows that what has been done by the impugned Order is not that the Order is passed on the Application for Speaking to the Minutes but Order dated 28th June 2023 has been reviewed. There is no statutory provision granting power of Review under the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971 (hereinafter referred to as “the said Act”).

6. Learned Counsel appearing for the Petitioner has relied on the decision of the Supreme Court in *Naresh Kumar & Ors. v. Government (NCT of Delhi)*¹. In the said decision, the Supreme Court has relied on the decision of the year 2010 in the case of *Kalabharati Advertising v. Hemant Vimalnath Narichania*², wherein it has been held that it is settled legal proposition that unless the statute/rules so permit, the Review Application is not maintainable in case of judicial/quasi judicial Orders. In the absence of any provision in the Act granting an express power of review, it is manifest that a review could not be made and the Order in review, if passed, is ultra vires, illegal and without jurisdiction.

7. It is unfortunate that though a Review is not permissible under the provisions of the said Act, yet an

1 (2019) 9 SCC 416

2 (2010) 9 SCC 437

Application seeking Review has been filed by terming the same as Speaking to the Minutes of Order dated 28th June 2023 and under the garb of Speaking to the Minutes what has been done is essentially a Review of Order dated 28th June 2023. The AGRC has completely ignored the settled legal position. *Prima facie*, the impugned Order is without jurisdiction and therefore, nullity.

8. It is also required to be noted that this matter was completely argued on 8th December 2023 and as learned Counsel appearing for Respondent No.3 sought time to take instructions as indicated above, the same has been adjourned to today i.e. 11th December 2023 and directed to be placed high on board.

9. Today, Ms. Sneha Dedhia, learned Counsel appears for Respondent No.3 and seeks time to file reply. Let such reply be filed on or before 18th December 2023.

10. Stand over to **19th December 2023 at 2.30 p.m.**

11. Till next date, no coercive steps be taken against the Petitioner.”

(Emphasis added)

4. Today, learned Counsel appearing for Respondent No.3 has filed Affidavit-in-Reply. In the Affidavit-in-Reply, it is contended that the AGRC while passing the Order of speaking to the minutes has recorded certain clarifications in respect of correcting the error in

the Order dated 28th June 2023 erroneously referring the terminated agreement for Permanent Alternate Accommodation which is basically regarding sale component and the same is not a review. However, the reasoning and findings given by the AGRC in paragraph 6 onwards clearly show that the earlier Order dated 28th June 2023 is reviewed. The said paragraphs 6 to 11 are set out herein below for ready reference :-

“Reasoning and findings:

6. As per record Applicant is eligible Slum Dwellers at Serial No. 335 for Commercial premises under subject S R Scheme. **Accordingly, Respondent No. 2 Developer agreed to provide Shop premises admeasuring 600 Sq ft (225 sq ft free of cost as per SRA and rules and balance 375 sq ft RERA carpet area from sale building) in regards to same Respondent No.2 also executed agreement dated 26.11.2009.**

7. The contention of the Applicant is that Respondent No.2 is not executing agreement for permanent Alternate accommodation for area admeasuring 600 sq ft. with Applicant. However, Applicant being eligible Slum Dweller is entitled for the commercial premises having area admeasuring 225 Sq Ft and with regards to same Respondent No. 2 have already executed Agreement for Permanent Alternate Accommodation and further also ready to registered the same in the office of Sub Registrar of Assurance.

8. As far as the extra area of 375 Sq ft is concerned,

Respondent No. 2 will provide the said area from Sale Component to the Applicant. Further SRA is not concerned with that as the same is internal arrangement between the concerned parties. SRA does not have power to force Developer to registered the agreement for an area beyond the SRA rules.

9. In the present case Respondent No. 2 is going to provide Permanent Commercial Alternate Accommodation of an area admeasuring 600 Sq ft. out of which 225 Sq ft for free of cost, for which Respondent No.2 has already executed Agreement dated 26.11.2009.

10. AGRC being the Appellate Authority under Slum Act is only concerned with rights of the Slum Dwellers which they are entitled under Slum Scheme. Agreement dated 20.04.2022 is with respect to the Sale Component hence this Committee can not force Respondent No. 2 Developer to registered to same.

11. **Order:**

12. Considering the aforesaid facts, the following order is passed:

(a) The para 22(b) of the order passed on 28.06.2023 in the present Application is to be read as follows:

“(b) This Committee directs Respondent No.2 to pay applicable transit rent to the Applicant and to execute the Agreement (within 10 working days) with the Applicant for Permanent Alternate Accommodation.”

(c) Rest of the order reads as same.

With the aforesaid direction, Application dated 12.09.2023 for speaking to minutes filed by Respondent No.2 Developer is disposed off.”

(Emphasis added)

5. Thus, it is clear that as recorded in the Order dated 11th December 2023, it is a settled legal proposition that unless the Statute/Rules so permit, a Review Application is not maintainable in case of judicial/quasi judicial Orders. What has been done by the AGRC is that under the guise of styling the Order as speaking to the minutes of Order passed on 28th June 2023, the Order is effectively reviewed.

6. Accordingly, the impugned Order on pages 105 to 108 by which the Order dated 28th June 2023 is reviewed, is quashed and set aside. It is clarified that it is open to the Respondent No.3 to challenge the said Order dated 28th June 2023 by filing appropriate proceedings. It is further clarified that the impugned Order is quashed and set aside only on the ground that there is no statutory jurisdiction of review.

7. It is also clarified that all the contentions on merits are expressly kept open. Accordingly, the Writ

Petition is allowed with no order to Costs.

8. At this stage, learned Counsel appearing for the Petitioner states that in compliance with the original Order dated 28th June 2023, if the applicable transit rent is paid to the Petitioner and agreement executed on 20th April 2022 or the agreement containing same terms and conditions as agreement dated 20th April 2022 is executed and registered, then the Petitioner will immediately vacate the subject structure. The said statement of the Petitioner is accepted as an undertaking given to this Court. Accordingly, it is directed that further steps be taken to secure vacant position of the said structure from the Petitioner only if the Order dated 28th June 2023 is complied with.

9. The Writ Petition is allowed subject to above.

[MADHAV J. JAMDAR, J.]