

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

**WRIT PETITION NO.820 OF 2020**

**Madhukar Harishchandra Khot**

**: Petitioner.**

**Versus**

**Deputy Collector and Competent Authority**

**Bandra-1 and ors.**

**: Respondents.**

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Mr. Bhushan Deshmukh a/w Mr. Jay Sanklecha and Ms. Sayali Gharpure I/by S Mahomedbhai & Co. for the Petitioner.

Mr. Kedar Dighe, AGP, for Respondent Nos. 1 and 2.

Ms. Sweta Shah i/by Mr. Abhijit P Kulkarni for Respondent No.4.

None for Respondent Nos.7 to 10

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**CORAM : ARIF S. DOCTOR, J.**

**DATE : 16<sup>th</sup> FEBRUARY 2023**

**P.C. :**

1. The present Petition impugns orders dated 3<sup>rd</sup> July, 2015, 18<sup>th</sup> August, 2018 and 22<sup>nd</sup> August, 2019 passed by Respondent Nos.4, 2 and 3 respectively.

2. By the impugned orders, the Respondents-Authorities have held the Petitioner as also Respondent Nos.7 to 10 as being eligible in respect of Slum

Structure No.127 (“the said slum structure”), situated at Narli Agripada, 18<sup>th</sup> Road, Khar (West), Mumbai 400 052 on the plot of land bearing CTS No.G-626 & 164A of Village Bandra, Taluka Andheri, Mumbai Suburban District. The Petitioner and Respondent Nos.7 to 10 have held eligible in respect of the said slum structure, on the ground that they are all the legal heirs of Rukmini Harishchandra Khot, their mother and on the basis that the mother of the Petitioner was eligible in respect of the said slum structure.

3. It is the Petitioner’s contention that the Petitioner is solely eligible in respect of the said slum structure being a protected slum dweller within the meaning of 3Y and 3Z(2) of the Maharashtra Slum Area (Improvement Clearance & Redevelopment) Act, 1971 (“the Slums Act”). It is the Petitioner’s case that Respondent Nos.7 to 10 have included their names in Annexure-II by playing a fraud upon Respondent No.1. Learned counsel for the Petitioner, in respect of his contention that the Petitioner is protected slum dweller, who is solely entitled to the said slum structure, invited my attention to Section 3Y and 3Z(2) of the Slums Act which read as under:-

*“3Y. Issuance of photo-pass and maintenance of Register - (1) The Government or any officer generally or specially authorised by it in this behalf shall, after verifying certain documents or records, as may be prescribed, issue a photo-pass for the purposes of this Act, in the prescribed format to the actual occupier of a dwelling structure, in existence on or prior to [1<sup>st</sup> January 2000.]*

*(2) If the photo-pass issued under sub-section (1) is lost or destroyed or defaced, the holder of the photo-pass shall forthwith, intimate the loss, destruction or defacement, of the photo-pass to the concerned authority which has granted the photo-pass and shall apply, in writing, to the said authority with the prescribed fee for issue of a duplicate.*

*(3) On receipt of an application under sub-section (2), the authority shall, after verifying the records and carrying out such inquiry, if any, as deemed fit, issue a duplicate photo-pass to the applicant with a clear marking on such photo-pass as "Duplicate".*

*(4) If after the issue of a duplicate photo-pass, the original is found, it shall be incumbent upon the applicant to forthwith surrender the same to the authority by which it was issued.*

*(5) The Government shall maintain in the prescribed form an up-to-date Register of the photo-passes issued by it under sub-section (1).*

**3Z. *Protection, relocation and rehabilitation of protected occupiers –***

*(1) -----*

*(2) When, in the opinion of the State Government, it is necessary, in the larger public interest, to evict the protected occupiers from the dwelling structures occupied by them, the State Government may, subject to the condition of relocating and rehabilitating them in accordance with the scheme or schemes prepared by the State Government in this behalf, evict them from such dwelling structures:*

*Provided that, if any of the protected occupiers does not comply with the terms and conditions of the scheme for relocation and rehabilitation, such occupier shall forfeit the claim for such relocation and rehabilitation and shall become liable for eviction without being relocated and rehabilitated."*

Learned counsel pointed out that the Petitioner has been issued a photo-pass bearing No.19BAHW002432 dated 3<sup>rd</sup> January 2004, and was thus a protected slum dweller in respect of the said slum structure. He also invited my attention to Government Resolution dated 11<sup>th</sup> July 2001 which provides that the photo identity card is evidence of residence of the slum dweller in the slum prior to 1<sup>st</sup> of January 1995. He thus submitted that given the fact that the Petitioner has been issued photo-pass, the eligibility of the Petitioner stood determined.

4. Mr. Deshmukh then submitted that Respondent Nos.7 to 10 had mischievously and fraudulently sought inclusion of their names in Annexure-II by playing fraud upon Respondent No.1 by placing reliance upon the Indemnity Bond which was stated to be signed by the Petitioner when in fact the same never was. Mr. Deshmukh invited my attention to the said Indemnity Bond and pointed out therefrom that though the name of the Petitioner appears in the Indemnity Bond, the Petitioner's signature was missing. He submitted that this is the sole basis on which impugned order dated 3<sup>rd</sup> July 2015 came to be passed.

5. Mr. Deshmukh then submitted that impugned orders dated 3<sup>rd</sup> July 2015, 18<sup>th</sup> August 2018 and 22<sup>nd</sup> August 2019 passed by Respondent Nos.4, 2 and 3 respectively also proceeded on the basis that the Petitioner had

given consent to inclusion of the names of Respondent Nos.7 to 10.

6. Mr. Deshmukh took pains to point out that the proceedings before Respondent No.4 arose only for transmission of eligibility of legal heirs of the deceased slum dweller. He submitted that Respondent No.4 was not exercising powers as the Competent Authority under the Slums Act to determine eligibility and prepare Annexure-II, and that the power is vested solely in Respondent No.1. Mr. Deshmukh then submitted that Respondent No.1 had in fact submitted a Site Visit Report to the Slum Rehabilitation Authority ("SRA") stating that Panchanama dated 12<sup>th</sup> December 2014 revealed that the Petitioner had been solely residing in the said slum structure No.127 for the last 15 years and Respondent Nos. 7 to 10 were all residing elsewhere.

7 Mr. Deshmukh then submitted that since the Annexure-II in this case was issued by Respondent No.2, the Petitioner filed an Appeal directly before Respondent No.2. He pointed out that the inclusion of names of Respondent Nos. 7 to 10 in Annexure-II in this case had been issued by Respondent No.2 was illegal and wrongful and thus prayed that the sole name of the Petitioner be included in the Annexure-II as the eligible slum dweller in respect of the said slum structure. The said Appeal however came to be dismissed by order dated 18<sup>th</sup> August 2018, as also the Appeal preferred by the

Petitioner against the said order dated 18<sup>th</sup> August 2018 came to be dismissed by Respondent No.3. He submitted that the orders dismissing the Appeals filed by the Petitioner were proceeded on the basis that the Petitioner had signed the said Indemnity Bond and given his consent for inclusion of the names of Respondent Nos.7 to 10 as eligible slum dwellers in respect of the said slum structure No.127. It is thus Mr. Deshmukh submitted that the impugned orders are liable to be quashed and set aside as the proceeded *ex-facie* on untenable ground that the Petitioner had consented to the inclusion of the names of Respondent Nos.7 to 10, when a plain reading of the Indemnity Bond shows that the same was never signed by Petitioner.

8. Today, though served, none had appeared on behalf of Respondent Nos. 7 to 10. Learned Counsel for the Petitioner has tendered two Affidavits of Service. The same are taken on record.

9. Respondent Nos.7 to 10 have filed Affidavit in Reply. The said Affidavit in Reply essentially sets out that the Petitioner is residing at Gazadhar Shivshahi Co-op. Housing Society (slum proposed) where the Petitioner is one of the members, and that the Petitioner has claimed permanent alternate accommodation in the said Gazadhar Shivshahi Co-op. Housing Society. In the Affidavit in Reply it is the contention of Respondent Nos.7 to 10 that the

Petitioner cannot claim two alternate accommodations under the Slums Act. It is further stated that the Petitioner is claiming eligibility in respect of the said slum structure on the basis of the false and fabricated documents, and thus it was the mother of Respondent Nos.7 to 10 who was eligible in respect of the said slum structure. It is essential on this ground that Respondent Nos. 7 to 10 have opposed the present Writ petition.

10. Mr. Deshmukh pointed out that in paragraphs 4 and 5 of the Rejoinder the Petitioner has categorically submitted as follows :-

*“4. It is alleged in the said Affidavit in Reply that I have and/or am claiming alternate accommodation in Guzdar Slum Scheme; that I am a Guzdar Scheme slum dweller; that I am a member of the Shivshahi Co-op Hsg. Society (Proposed) formed by the slum dwellers of the Guzdar Slum Scheme. For this purpose, the Respondent Nos.7 to 10 place reliance on a document which is annexed at Exhibit “A” to the said Affidavit in Reply. The said document at page 17 of the Affidavit falsifies the claims made in the Reply. Against Serial No.5078 of the list of slum dwellers in column 10 of the Table (see page 18 of the said Affidavit in Reply) it is clearly stated I have not given my consent to the slum scheme on the said property. Further, in column 12 of the table I have been declared as “ineligible” to participate in the Scheme. The Respondent Nos. 7 to 10 however in order to pull wool over the eyes have sought to allege that I am claiming two hutments. I do not reside in any Hutment in the Guzdar Slum Scheme propounded by Shivshahi Co-op Hsg. Society (Proposed). The said hutment is presently occupied by Smt. Sangita Krushna Panchal.*

5. *With specific reference to the repetitious allegations of the Respondent Nos. 7 to 10 as set out in the said Affidavit in Reply or otherwise, I categorically state that :*

*(a) I am not claiming any hutment / structure rights in the Guzdar Slum Scheme*

*(b) I have not submitted any documents claiming eligibility or a right of participation in the Guzdar Slum Scheme*

*(c) I am not claiming as a member of Shivshahi Co-op. Hsg. Society (proposed) in respect of the Guzdar Slum Scheme.*

*(d) I am not a party in the said Original Side Writ Petition No. 743 of 2001. I do not claim any benefit as member or otherwise under or through the Petitioner Guzdar Scheme Residents Trust in the said Writ Petition or under or through any orders that have been passed by this Hon'ble court in the said Writ Petition.*

Based on above, Mr. Deshmukh submitted that question of Petitioner's claiming alternate accommodation in any other slum scheme does not arise. He submitted that undertaking of the Petitioner in this regard can be recorded. In view thereof, he submitted that the present Petition ought to be allowed.

11. I have heard Learned Counsel for the Petitioner. I have perused the copies of the Writ Petition and the Affidavit in Reply as also Rejoinder. There is no dispute that inclusion of the names of Respondent Nos.7 to 10 in respect of the said slum structure was on the basis that (a) Respondent Nos.7 to 10 were the legal heirs of one Rukmini Harishchandra Khot (their mother); and (b) the

Petitioner had consented to the inclusion of the names of Respondent Nos.7 to 10 pursuant to the Indemnity Bond dated 10<sup>th</sup> February 2015 which was stated to be signed by all the legal heirs of the said Rukmini Harishchandra Khot. A perusal of the said Indemnity Bond reveals that the Petitioner has not signed this Indemnity Bond nor affixed his thumb impression thereto. The impugned order dated 3<sup>rd</sup> July 2015 which proceeded on the basis of Indemnity Bond is *ex-facie* untenable and, the order was passed without application of mind on the part of Respondent No.4, and therefore impugned order dated 3<sup>rd</sup> July 2015 passed by Respondent No.4, as also the impugned orders dated 18<sup>th</sup> August 2018 and 22<sup>nd</sup> August 2019 passed by Respondent Nos. 2 and 3 respectively dismissing the Appeals filed by the Petitioner on the basis of this very Indemnity Bond are required to be quashed and set aside. It is not in dispute that the Petitioner has been issued photo-pass and therefore he recognized as protected slum dweller in terms of Section 3Y and 3Z(2) of the Slums Act read with Government Resolution dated 11<sup>th</sup> July 2001.

12. In view thereof and for the aforesaid reasons, I pass the following order :-

**ORDER**

- i] The impugned orders dated 3<sup>rd</sup> July 2015, 18<sup>th</sup> August 2018 and 22<sup>nd</sup> August, 2019 passed by Respondent Nos.4, 2 and 3 respectively are set aside and the matter is relegated back to Respondent No.1 for a de-novo consideration.
- ii] The issue of Petitioner's eligibility as well as Respondent Nos.7 to 10's eligibility is to be determined by Respondent No.1.
- iii] The parties shall appear before Respondent No.1 at 11.00 am on 10<sup>th</sup> March, 2023 or any other date thereafter fixed by Respondent No.1.
- iv] Respondent No.1 shall carry out the said exercise within a period of two months from the date of appearance of the parties before it.
- v] Needless to state that Respondent No.1 shall consider each and every document produced by the parties and consider their submissions and decide the issue of their eligibility on its own merits and in accordance with law, after giving them an

opportunity of being heard, and shall record reasons while deciding the issue of eligibility.

- vi] It is made clear that I have not expressed any opinion on merits of the matter and all the contentions of the parties are left open.
- vii] With the aforesaid directions, Writ Petition stands disposed of.

**(ARIF S. DOCTOR, J.)**