

Wadhwa

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**  
**CIVIL APPELLATE JURISDICTION**  
**WRIT PETITION NO. 1675 OF 2024**

1. **VISHNU HARIBA DHAVLE,**  
Age: 50 years, Occupation: Service.
2. **DHANRAJ MOTIRAM CHAVAN,**  
Age: 59 years, Occupation: Service.
3. **NAMDEO MAHADEO PATIL,**  
Age: 51 years, Occupation: Service,  
Petitioners no.1 to 3  
R/o. Mumba Devi SRA CHSL,  
Kamgar Nagar No. 1, Prabhadevi  
Mandir Marg, Prabhadevi,  
Mumbai – 400025.
4. **NIRMALA RAMJI MISHRA,**  
Age: 70 Years, Occ: Housewife, R/o:  
Chhagan Patel chawl,  
Near Hari Nagar, Jogeshwari East,  
Mumbai – 400 060.
5. **SHAILAJA KAMALKUMAR**  
**YADAV,**  
Age: 31 years, Occupation: Business,  
R/o: Room No. 8, Ramsurat Yadav,  
Western Express Highway, Subhash  
Nagar, Bandra (E), Mumbai – 400 051.

**... PETITIONERS**

**~ VERSUS ~**

1. **THE STATE OF MAHARASHTRA,**  
Through its Secretary

Department of Housing,  
Maharashtra State,  
Mantralaya, Mumbai-32.

2. **ADDITIONAL CHIEF SECRETARY,**  
Department of Housing,  
Maharashtra State, Mantralaya,  
Mumbai-32.

3. **THE CHIEF EXECUTIVE  
OFFICER SLUM  
REHABILITATION AUTHORITY,**  
New Administrative Building,  
AK Marg, Bandra (E),  
Mumbai-400051.

**... RESPONDENTS**

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**APPEARANCES**

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| <b>FOR THE PETITIONERS</b>       | <b>Mr Mayur Khandeparkar, with<br/>Divyesh Jain i/b Nitin G Patil.</b> |
| <b>FOR RESPONDENT NO 3</b>       | <b>Mr Jagdish G Aradwad (Reddy).</b>                                   |
| <b>FOR RESPONDENT-<br/>STATE</b> | <b>Ms Rupali Adhate, AGP.</b>                                          |

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**CORAM : G.S. Patel &  
Kamal Khata, JJ.**

**DATED : 6th March 2024**

**ORAL JUDGMENT (Per GS Patel J):-**

1. Rule, returnable forthwith.
2. The Petition deserves to be allowed immediately. The challenge is to a Government Circular dated 12th January 2024

apparently under Section 35(1) of the Maharashtra Slum Areas (Improvement, Clearance And Redevelopment) Act, 1971 (“**Slum Act**”). Section 35 of the Slums Act reads thus:

**“Section 35. Appeals**

- (1) Except as otherwise expressly provided in this Act, any person aggrieved by any notice, order or direction issued or given by the Competent Authority may appeal to the Administrator within a period of thirty days from the date of issue of such notice, order or direction.
- (2) Every appeal under this Act shall be made by petition in writing accompanied by a copy of the notice, order or direction appealed against.
- (3) On the admission of an appeal, all proceedings to enforce the notice, order or direction and all prosecutions for any contravention thereof shall be held in abeyance pending the decision of the appeal; and if the notice, order or direction is set aside on appeal, disobedience thereto shall not be deemed to be an offence.
- (4) No appeal shall be decided under this section unless the appellant has been heard or has had a reasonable opportunity of being heard in person-or through a legal practitioner.
- (5) The decision of the Administrator on appeal shall be final and shall not be questioned in any court.”

3. The Impugned Circular at clause 3 at page 93 suggests that if eligibility is decided in appeal, the Appellate Authority cannot direct the issuance of and cannot itself issue a supplementary Annexure II but this must be sent back to the first authority for ‘reverification’ of documents and for issuance of a supplementary Annexure II.

4. This is plainly unsustainable. It is also contrary to a SRA Circular of 9th September 2004, a copy of which is in the Rejoinder from page 122. This sets out the procedure to be followed in such cases and correctly notes that once eligibility is decided in appeal, a supplementary Annexure II must follow. In fact, the 2004 SRA Circular sets out the format for the supplementary Annexure II.

5. The submission on behalf of the SRA before us is that the Government believes that after eligibility is decided in appeal, documents must then be verified. This is very much like putting the proverbial cart before the legendary horse. We will take another example with which all are perhaps more familiar. A first appellate court can itself, while assessing an appeal on facts and law or set aside the decree or set aside the refusal to grant a decree and itself decree the suit or dismiss it. There is never a question of the first appellate court sending the matter back to the trial court to pass the decree that the first appellate court wants to pass or believes should be passed. It is another matter where there is a simpliciter remand (for taking additional evidence, for instance) but remands in first appeals are always an exception and such remands are rare. A first appellate court generally does not have the option of simpliciter remanding a first appeal and certainly not by consent. Apart from anything else, the salutary underlying principle is that there must be finality to litigation and controversy. Equally, everyone must have one opportunity of an appeal.

6. Now if the Impugned Government Notification is followed there will be an endless cycle of appeals and reverification because

even if eligibility is decided affirmatively in appeal, on this so called alleged or purported reverification, a completely different result may come about and that will go back in appeal again; and this cycle will continue indefinitely. That is not in the public interest.

7. Conversely, if this so called procedure of reverification is an idle formality then it is not required at all.

8. Finally, we are wholly unable to conceive of a single situation in which eligibility can be decided in appeal without verification of those very documents that are the subject matter of the application. There is no question of the lower authority revisiting that very same documentation.

9. Prayer clause (a) is perhaps overbroad. We dispose of the Petition by holding that notwithstanding the Impugned Government Circular of 12th January 2024, the Appellate Authority under Section 35 of the Slums Act is empowered and is always empowered and authorized to issue a supplementary Annexure II depending on the outcome of the Appeal.

10. The Petition is disposed of in these terms with no orders as to costs.

**(Kamal Khata, J)**

**(G. S. Patel, J)**