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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 11057 OF 2023**

Rekha Ramji Dharod,
having shop at Shop No. 321, Shree Ram
Nagar Co-operative Housing Society, Ahilyabai
Holkar Marg, Vikroli(W), Mumbai – 400 083. ... Petitioner

vs.

1. The Apex Grievance Redressal Committee,
Slum Rehabilitation Authority, Bandra(East),
Mumbai.
2. The Tehsildar(Special Cell) SRA
5th floor, 'B' Wing, Administrative Building,
Slum Rehabilitation Authority, Anant
Kanekar Marg, Bandra(E),
Mumbai – 400 051.
3. M/s. Heer Mehta Landmark
Developers Pvt. Ltd
having Office at: Akash Marble House
411/413, Charat Singh Colony,
Front of Solitier Park,
A.G. Link Road, Chakala,
Andheri (East), Mumbai – 400 093.
4. Secretary/Chief Promoter

Shri Ram Nagar S.R.A.
Co-operative Housing Society Ltd,
Having Office at: Shri Ram Nagar,
Ahilyabai Holkar Raod,
Cross LBS Road, Village – Haryali,
Tal: Kurla, Vikhroli (West),
Mumbai – 400 083.

... Respondents

Mr. Pradeep J. Thorat i/b. Ms. Aditi Nikare, for Petitioner.

Mr. Sakhre i/b. Anil Mishra and Ms. Sneha Dedliya for Respondent
no.3.

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

Mr. Nikhil Chavan i/b. Jagdish G. Aradwad(Reddy) for Respondent
no.2.

CORAM : GAURI GODSE, J.

DATED : 6th FEBRUARY, 2024

P.C. :-

1. This petition takes exception to the order dated 30th June 2023 passed by the Apex Grievance Redressal Committee ('AGRC'), passed in the appeal filed by the petitioner under section 35 of the Maharashtra Slum Areas (Improvement, Clearance And Redevelopment) Act, 1971('Slum Act'). The said appeal was preferred being aggrieved by the order passed by the Competent

Authority under section 33 read with section 38 of the Slum Act. By order dated 2nd January 2023, the Competent Authority directed the petitioner to vacate her structure from the plot which is the subject matter of the project i.e. the Slum Rehabilitation Project undertaken by respondent no.3. The appeal preferred by the petitioner is disposed of by impugned order and order dated 12th January 2023, passed by the Competent Authority is upheld and the developer is directed to pay rent to the petitioner from the date of demolition of her structure.

2. Learned counsel for the petitioner submits that the petitioner purchased the said structure on 23rd December 2006. He further submits that respondent no.4 society was declared as a Slum on 21st February 2011 and in Annexure II, the petitioner was held as an ineligible occupant. He submits that on 9th September 2015, respondent no.3 entered into an agreement with the petitioner and agreed to hand over a total of 650 square feet out of which an area of 225 square feet was eligible in the SRA scheme, and 425 square feet saleable area without any construction.

3. Learned counsel for the petitioner further submits that subsequently on 5th January 2023, the petitioner's structure was held eligible in the revised Annexure II. He submits that notice under

section 33 read with section 38 of the Slum Act was issued against the petitioner for vacating said structure. He submitted that since the developer had entered into an agreement with him, notice was replied by stating that it was not proper to evict the petitioner in the absence of a registered agreement executed in her favour by the developer. He submitted that though the developer had agreed to hand over the area of 425 square feet in the saleable component, he refused to abide by the agreement and hence, the competent authority ought to have directed the developer to comply with the terms and conditions of the agreement. He submitted that the competent authority passed a common order deciding the notice issued to all the slum dwellers without taking into consideration an agreement executed in favour of the petitioner.

4. The learned counsel for the petitioner submits that even AGRC has not considered the agreement executed in favour of the petitioner. He further relies upon the order passed by the AGRC deciding the appeal of a similarly situated slum dweller, where directions were issued to the developer to register an agreement executed with the slum dweller and also directed to hand over permanent alternate accommodation. He however submitted that so far as the petitioner is concerned, the aspect of agreement in favour

of the petitioner was not taken into consideration by AGRC though the petitioner was similarly placed. He further submitted that thus, in view of the agreement executed by the developer, the petitioner is entitled to the agreed area as per the agreement and directions were required to be issued against the developer to comply with the agreement to enable the petitioner to vacate the said structure.

5. Learned senior counsel appearing for respondent no.3, submitted that there is an affidavit-in-reply filed on behalf of the developer raising a dispute to the agreement relied upon by the petitioner. He submits that the said agreement was executed and signed by one of the Ex-Director in favour of the petitioner and hence, respondent no.3 has contended that the same is not binding upon respondent no.3. He further submits that even otherwise, the relief claimed by the petitioner is beyond the scope and jurisdiction of the Competent Authority under section 33 read with section 38 of the Slum Act. He submits that if the petitioner has any grievance concerning the agreement, she is free to adopt appropriate proceedings and that she cannot stall the entire project based on the agreement. He submits that under the scheme, the petitioner is only entitled to the area of 225 square feet which shall be handed over to the petitioner as per the applicable rules.

6. Learned senior counsel for respondent no. 3 relies upon certain photographs attached to the affidavit-in-reply to contend that the structure of the petitioner is causing a hurdle in access to the constructed residential building under the SRA scheme. He submits that the competent authority has rightly issued a notice directing the petitioner to vacate the premises. He submits that respondent no.3 is under obligation to complete the project and provide proper access to the newly constructed building.

7. Perused the record. Considered the submissions made by both parties. It is not in dispute that under the scheme the petitioner is entitled to only 225 square feet. So far as the claim of the petitioner based on the agreement is concerned, the same cannot be made the subject matter of the proceedings under Section 33 of the Slum Act. So far as the agreement is concerned, according to respondent no. 3 it was executed by one of the Ex-Directors of the respondent no.3 developer and it is disputed by respondent no.3. It is not disputed that the agreement was executed when the petitioner was held to be an ineligible occupant. Subsequently, the petitioner's structure is held eligible in the revised Annexure II, and the petitioner's eligibility for an area of 225 square feet is not disputed. It is also submitted on behalf of respondent no. 3 that the petitioner's

entitlement of 225 square feet shall be handed over as per the prescribed procedure. AGRC has also issued directions for payment of transit rent. I, therefore, find no justifiable reason on the part of the petitioner to not comply with the notice issued by the competent authority for vacating the slum structure which is causing hindrance to access to the constructed residential building under the SRA scheme. The grievance of the petitioner and her claim for the additional area is based on the agreement that can be agitated by the petitioner by initiating appropriate proceedings as permissible in law. Based on the agreement the petitioner cannot cause hindrance to the access to the residential building and cause prejudice to the rights of the other occupants.

8. With reference to the reliance placed by the petitioner on another order passed by the AGRC in favour of a similarly situated slum dweller is concerned, learned senior counsel appearing for respondent no.3 submits that the same was subsequently modified. He submits that it was modified on the application for the speaking to the minutes. However, it was challenged before this court. He further submits that this court has set aside the order modifying the earlier order. However, the order of this court is challenged by respondent no.3 in the Hon'ble Supreme Court and the same is still

pending. Even otherwise the order passed by the AGRC in respect of a similarly situated structure cannot be a ground for interfering in the present matter as the claim made by the petitioner is beyond the scope of section 33 read with section 38 of the Slum Act. So far as the petitioner's claim to be eligible under Annexure II is concerned, the same will be complied with in due course as submitted by respondent no. 3. I do not find any infirmity or any illegality in the reasons recorded in the impugned orders. There is no case made out to exercise the powers under Article 227 of the Constitution of India.

9. There is no merit in the present petition. Hence, for the reasons stated above the petition is dismissed.

10. It is clarified that the petitioner would be at liberty to claim additional area by adopting appropriate remedy as permissible in law.

11. At this stage, learned counsel for the petitioner requests to continue the interim protection granted by this court for a limited period of four weeks. The issue concerns the slum rehabilitation scheme and as the petitioner's structure is causing hindrance to the access to the slum rehabilitation residential building, the Competent Authority has directed it to be vacated. Thus, I do not find it proper

to continue the interim order. Hence, the prayer is rejected.

(GAURI GODSE, J.)