

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.1873 OF 2024.

Manoj Ramesh Solanki

...Petitioner.

Versus

State of Maharashtra and Ors.

...Respondents.

*Mr. Pawan K. Pandey a/w. Ms. Suman Gupta and Mr. Ashok Gupta for the
Petitioner.*

Ms. V. R. Raje, AGP for Respondent No.1 to 3.

Mr. Madhur Surana for Respondent No.4.

*Mr. Pravin Samdani a/w. Mr. Kaizad Dalal and Mr. Omkar Chavan i/b
Wadia Ghandy & Co. for Respondent No.5.*

Coram : Sharmila U. Deshmukh, J.

Date : 23rd October, 2024.

P. C. :

1. By this petition, challenge is to the order dated 11th December 2023 passed by Respondent No.1-Grievance Redressal Committee (for short, "GRC") in Appeal No.111 of 2023 and the order dated 1st September 2022 passed by Respondent No.2-Additional Collector in Appeal No.42 of 2022.

2. The case of the Petitioner as pleaded is that Petitioner was occupier and owner of structure/hutment shown at Sr. No.19 in Annexure-II prepared by Respondent No.3 in respect of Respondent

No.4-Jai Santoshi Maa CHS (Proposed Society) on land bearing CTS No.1327A/ (Part) of Village Kandivali, Taluka-Borivali, Mumbai.

3. The said room was originally occupied by Petitioner's mother Nayana Solanki alongwith her mother and in the year 2007 after the marriage of Petitioner, he was residing in the said room with his wife exclusively. Nayana Solanki started living in another room with her husband Ramesh Solanki. Gift Deed was executed by Nayana Solanki in respect of said room in favour of the Petitioner. During the period when survey was being carried out for implementing the slum scheme, the Petitioner had gone on pilgrimage along with his wife and to avoid delay his mother provided the details for the photo pass and photo pass was issued in her name. The Petitioner had produced gift deed executed by his mother, photo pass of the structure, electricity bills, registration slips issued by Directorate of Employment and Self-Employment issued at the address of the Petitioner, RC Book, LPG connection, Ration Card, Election I-D card, Aadhar card, photographs, Electoral Roll showing the name of his mother. In Annexure-II, the said room is shown in the name of Nayana Solanki though all documents were provided by the Petitioner. The room is shown as eligible for rehabilitation scheme, however, is shown in the name of Nayana Solanki. In the year 2022, the Petitioner was provided with the photo

copy of the Annexure-II which showed the name of his mother in Annexure-II.

4. The Petitioner therefore filed Appeal before Respondent No.2 and produced the documents and Petitioner's application was also supported by his mother. The Appeal was rejected by impugned order dated 1st September 2022 passed by Respondent No.2. As against which Appeal was filed before GRC which also came to be rejected by impugned order dated 11th December 2023.

5. Heard Mr. Pawan K. Pandey for the Petitioner and Ms. V. R. Raje, AGP for Respondent No.1 to 3, Mr. Madhur Surana for Respondent No.4 and Mr. Pravin Samdani for Respondent No.5.

6. Mr. Pandey, learned counsel appearing for the Petitioner would submit that the Petitioner had produced documents showing his occupation of the said room. He submits that it was the Petitioner's specific case that his mother was the original occupier of the said room and in the year 2007, after marriage Petitioner was residing in the said room with his wife and his mother was residing in another room with her husband and gift deed was executed in his favour in respect of the said room. He further submits that during the period when the survey was carried out, the Petitioner had gone on pilgrimage with his wife and therefore to avoid delay, his mother provided her details for photo pass and photo pass was issued in her

name. He points out that Annexure-II has been issued in the year 2012 in the name of his mother. He has taken this Court through the documents which were produced for consideration of Appellate Authority and submits that Respondent No.2 has failed to consider the said documents and has come to an erroneous finding that the document do not show the transfer of room from his mother to his name. He further submits that Respondent No.2 has erroneously held that the address of the hutment is different from the electricity bill produced by the Petitioner whereas the same address is mentioned. He submits that the Appellate Authority has also failed to appreciate the documents which sufficiently establishes his occupancy of the said hutment.

7. *Per contra*, Mr. Samdani learned Senior Advocate appearing for Respondent No.5 would submit that the Petitioner's mother was a beneficiary under the slum rehabilitation scheme which was implemented in the year 1996 and had received rehab tenement and at that point of time the Petitioner was a minor. He submits that as per the Development Control Regulations of Greater Mumbai i.e. DCR-33(10) any person who is eligible under more than one slum rehabilitation scheme shall be held eligible in only one scheme. He submits that as the Petitioner's mother was held eligible in the first scheme in the year 1996, in respect of subsequent scheme,

Petitioner's mother could not have been held eligible and therefore the Petitioner has filed the present application based on gift deed of the year 2007 to get his eligibility declared in respect of the hutment under the second scheme. He submits that in the Appeal which was filed under the Slums Act before Respondent No.2, the Petitioner's case was that he was the owner and occupier and his mother's name was included in Annexure-II as during survey, he and his wife had gone on pilgrimage and in Appeal before GRC the Petitioner has pleaded that his mother was considered eligible in respect of the said room on the basis of photo pass, electricity bill and electoral roll and the question of eligibility of the mother was decided and confirmed and there was no reason for Respondent 2 to dispute eligibility of his mother as it was never in question before the Appellate Authority.

8. He submits that it is therefore apparent that it is only after realizing that the Petitioner's mother would not be entitled to second tenement under slum rehabilitation scheme that the Appeal has been filed by Petitioner for being declared as eligible. Pointing out to the affidavit-in-reply, he submits that Respondent No.5 has specifically pleaded that as per law, reconstructed tenement will be of joint ownership of the hutment dweller and his spouse and that being so the tenement which was received under the first scheme by the Petitioner's father will be construed to be the ownership tenement of

the Petitioner's mother also and therefore she will not be entitled to any rehab tenement under the second slum rehabilitation scheme. He submits that in respect of second scheme on 24th June 2006, Respondent No.5 has entered into an agreement for alternate accommodation with the Petitioner's mother which has not been disputed. He submits that in the year 2010 the office bearers of the proposed slum Society has been informed that the officials would be visiting for the purpose of collection of data for purpose of biometric and verification and on 14th June 2010 public notice was also issued by Respondent No.2 inviting objections. He submits that Petitioner's mother's name being reflected in Annexure-II makes it evident that the Petitioner's mother has participated in the process of preparation of Annexure-II during the period up to 6th July 2012 which has not been objected by the Petitioner. He would further submit that in the rejoinder filed by the Petitioner, a completely different stand is now sought to be taken that the grandmother of the Petitioner and Petitioner used to stay in the subject structure and after her death, his mother held the structure and as per wish of grandmother the same was transferred to him by way of gift deed and in the rejoinder the contention is that eligibility of Petitioner would not be affected by reason of his mother having room in other scheme because the Petitioner was always the actual occupier of structure No.19 and after

death of his grandmother, his mother held the structure as caretaker and guardian of the Petitioner. He would further point out that the contention in rejoinder is that name of his parents appears in the Electoral Roll, Ration Card, Electricity Bills in respect of the subject structure as he was minor and after he attained majority, gift deed was executed to transfer the structure. Pointing out to the Ration Card of the Petitioner's family he would submit that the ration card was issued at the address of the subject structure and the name of the head of the family was shown to be Petitioner's father and the name of the Petitioner appeared as family member of the family of Ramesh Solanki- who is father of the Petitioner. He submits that it is evident that only for the purpose of avoiding ineligibility of his mother in respect of subject structure in the second slum rehabilitation scheme that the Appeal has been preferred.

9. Considered the submissions and perused the record.

10. From the material produced on record it cannot be disputed that the photo pass in the respect of subject structure had been issued on 31st March, 2012 in favour of the Petitioner's mother and the number of members which have been shown in respect of the subject structure are four in number. In the year 2006 itself the Petitioner's mother had entered into an agreement with the Respondent No.5 claiming to be entitled to rehab tenement on the basis of being

occupier of subject structure. These two documents therefore indicates that at the time when the survey was being carried out for the purpose of implementation of slum rehabilitation scheme, the Petitioner's mother was found to be occupant of the said structure. The Ration Card issued at the address of the subject tenement shows the Petitioner as the member of the family of Ramesh Solanki. The eligibility of the Petitioner's mother finds place in Annexure-II which has been finalized in the year 2012 and it is the Petitioner's own case in the Appeal before the GRC that question of eligibility of his mother was decided and confirmed and that she was considered eligible on the basis of photo pass, electricity bill and electoral rolls. It is only in affidavit in rejoinder that completely new case is sought to be made out for the purpose of showing exclusive occupancy of the tenement that the Petitioner was the occupant of the said tenement along with his grandmother and that his mother held the structure as caretaker, guardian of the Petitioner. However, in the rejoinder in paragraph 8 there is clear admission that the documentation of the room remained in the name of his mother and that name of his parents appeared in the Electoral Roll and the Ration Card. The contention in the affidavit in rejoinder is that no physical survey was carried out and thus the Petitioner had no occasion to know names appearing in Annexure cannot be accepted for the simple reason that it is the

Petitioner's mother who had handed over the documents during the survey and based on the document she was held eligible and her name reflected in Annexure-II. It is the case of the Petitioner that to avoid delay his mother had provided details based on which her eligibility was confirmed. Contradictory contention is raised in paragraph 5 of the rejoinder that preparation of Annexure-II was closely guarded secret and no physical survey was carried out. It is not disputed by learned counsel for the Petitioner that upon being allotted a rehab tenement under the scheme of the year 1996 the Petitioner's mother would not have been eligible in respect of the second tenement in slum rehabilitation scheme. It is apparent that considering the said position in law, back dated gift deed has been prepared for the purpose of claiming eligibility. In the year 2012 Annexure-II was prepared which showed Petitioner's mother eligible in the scheme and the Appeal has been preferred in the year 2022 without any explanation as regards the delay. The documents which are produced on record did not show the possession and occupation of the Petitioner to the exclusion of his mother and therefore the same has not rightly considered by the authority. The Appellate Authority has rightly held that the Petitioner has based his claim on gift deed of the year 2007 whereas the Annexure-II was prepared in the year 2012 and that only on the basis of gift deed without showing possession and

supporting documents, the eligibility of the Petitioner cannot be considered.

11. GRC has further considered that the Appellate Authority has rendered finding as regards inconsistencies in the transfer documents and Electricity bills and issue of delay in preferring the Appeal and has upheld the said finding.

12. The documents produced on record were duly considered by both the authorities who have concurrently rejected the Petitioner's claim to exclusive occupation of the subject tenement and this Court in exercise of powers under Article 227 the Constitution of India is not inclined to interfere with the concurrent findings.

13. In light of the above, petition is devoid of merits and stands dismissed. In view of disposal of petition, Interim/Civil Applications, if any, do not survive for consideration and stand disposed of.

[Sharmila U. Deshmukh, J.]