

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

WRIT PETITION NO. 9990 OF 2024

Anant Narayan Surve	...Petitioner
Versus	
The State of Maharashtra	
Through Government Pleader And Ors.	...Respondents

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Mr. Angad Giri, for the Petitioner.

Ms. Ravleen Sabharwal a/w Ms. Aarushi Yadav, Ms. Niyati Gupta for
Respondent Nos.2, 3 & 4.

Mr. Bhagwan C. for Respondent No.5.

Ms. Leena Patil A.G.P. for the Respondent – State.

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CORAM	:	AVINASH G. GHAROTE, J.
DATE	:	22nd JULY, 2024

P.C.:

1. Heard Mr. Angad Giri, learned counsel for the petitioner.
2. The petition questions the order of the Grievance Redressal Committee on the ground of delay in having passed it, and also the delay which has occasioned in the passing of the order by the Competent Authority dated 24.09.2021 (Page- 31) on account of the same having been closed on 05.03.2020. He also submits that the written notes of arguments filed by petitioner has not been

considered and the third ground is that the provisions of Section 3(E)(1) of the Maharashtra Slum Areas (Improvement, Clearance And Redevelopment) Act, 1971 (“SRA” hereinafter for short) are not attracted.

3. The question of delay, would be a ground, to be considered if on merits, the petitioner is able to demonstrate a legal right to occupy. In the instance case it is an admitted position, that the premises in question i.e. Unit No.104, was allotted to Vasant Narayan Surve. It is the case of the petitioner, that he being the younger brother of Vasant Narayan Surve was occupying the premises along with the family of Vasant Narayan Surve. Vasant Narayan Surve is claimed to have passed away on 10.05.2012, as a result of which, his Class-I legal heirs, would be entitled to continue with the occupation. It is the case of the petitioner, that the Class-I legal heirs of late Vasant Narayan Surve had left the premises, leaving the petitioner to continue to occupy the same, on account of which the petitioner claims to have legal right to continue with the occupation. As against this respondent No.5, who is admittedly the son of Vasant Narayan Surve, claims to be entitled to continue with the occupation, along with his sister.

The premises, has on account of the undisputed relationship between the respondent No.5 and late Vasant Narayan Surve, been allotted to the respondent No.5. This would clearly indicate that the petitioner, does not have any legal right to occupy the premises in question, as such a right could flow to the petitioner only in view of a document of transfer as contemplated by law, which the petitioner does not possess.

4. It is also material to note that the petitioner had challenged the notice dated 22.06.2023, which is in pursuance to the order dated 24.09.2021 passed by the Competent Authority (Page- 31) and the dismissal of the Appeal by the First Appellate Authority by the order dated 30.11.2022 (Page-46), in Writ Petition No. 7770/2023, in which the learned Division Bench of this Court has refused to grant any interim protection, to the petitioner, on the ground, that the claim, which is being raised by the petitioner on the basis of an affidavit of 2008 was not legally sustainable as it is within the lock-in period and the original allottee Vasant Narayan Surve had no right to transfer the premises within that time, the allotment having been made to him in June-2007.

5. Section 3(E)(1) of the SRA imposes the statutory restriction on transfer of tenements and mandates that the tenements allotted to the persons under the Slum Rehabilitation Scheme shall not be transferred by the allottee thereof by way of sale, gift, exchange, lease or otherwise for a period of first ten years from the date of allotment of tenements. Since in the instant case, the allotment in favour of Vasant Narayan Survey is admittedly in June-2007, the claim of a transfer being effected in favour of the petitioner by way of an affidavit of 2008, as recorded by the learned Division Bench in Paragraph-2 of the order dated 23.06.2023 in Writ Petition No.7770 of 2023, cannot be sustained. There is no other legal right to occupy the premises, which has been pointed out. This would indicate that, the provision of Section Section 3(E)(2) r/w Section 33 of SRA would clearly be attracted, thereby entailing the auction of the petitioner from the premises in question.

6. As stated above, the petitioner, has failed to demonstrate the existence of a legal right to continue to occupy the premises in question, on account of which the prayer for stay was refused in Writ Petition No.7770/2023. In the instant case also, I find that

no different case, than what has been indicated by the learned Division Bench, has been made out, to indicate the existence of a legal right to occupy.

7. The question of delay in passing the orders, would directly relate, to existence of a legal right and prejudice to that, on account of such delay.

8. Though, the learned counsel for the petitioner relies upon the Judgment in *M/s. Vainguinim Valley Resort Vs. The Union of India and Another* in Writ Petition No.324/2021, decided on 13.12.2022 passed by the High Court of Bombay at Goa Bench, (paragraph-21) which is on the breach of principles of natural justice and non application of mind by the Assessing Officer in deciding the show cause notice, in the instant case, I find, that the plea, that the entire written notes of arguments were not taken into consideration is a plea, which is unsustainable in law for the reason that written notes of arguments are merely for the purpose of assisting the Court in support of the oral arguments advanced and not in substitution of the same. It is not in fact, conducive to the administration of justice for a petitioner to claim that the Court should go through each and every averments made in the

written notes of arguments and deal with the same as that would render decision in a matter well nigh impossible considering the time frame, I am therefore not inclined to accept the aforesaid contention.

9. The plea of the delay in decision, also would as indicated above depend upon a legal right being demonstrated to occupy the premise in question, which is apparently absent.

10. Technicalities cannot be permitted, to come in the way of substantially administering justice. In the instance case, the petitioner without any legal right has succeeded in occupying the premises after the demise of Vasant Narayan Surve, which is to the detriment to his legal heirs, in whose names the property in question, has now been transferred/allotted. This position, can no longer be permitted to continue on the technicalities of mere delay in decision making process, when there are concurrent findings in absence of a legal right. I, Therefore do not see any reason to interfere in the impugned orders. Petition is dismissed. No costs.

11. At this stage, the learned counsel for the petitioner seeks three weeks time, for challenging the impugned order. However,

considering the fact, that the learned Division Bench as well as this Court has found no legal right in the Petitioner to continue to occupy the premises, the request is declined.

(AVINASH G. GHAROTE, J.)