

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

WRIT PETITION NO.2978 OF 2024

Kailashkumar R. Prajapati

...Petitioner

V/s.

Apex Grievance Redressal Committee,
Slum Rehabilitation Authority,
Bandra, Mumbai and Ors.

...Respondents

Mr. Akhlak Khan *for the Petitioner.*

Mr. B.B. Dahiphale, *AGP for Respondent -State.*

Mr. Kedar Nhavkar *i /b. Mr. Vishwanath Patil for Respondent No.1-AGRC*

CORAM : SANDEEP V. MARNE, J.

Dated : 3 January 2025.

P.C. :

1) Petition challenges order dated 2 August 2023 passed by the Apex Grievance Redressal Committee (AGRC) partly allowing application filed by the Petitioner and directing Respondent No. 4-Developer to pay transit rent to him from the date of his eligibility. The present Petition is filed to the limited extent of denial of transit rent in respect of period prior to declaration of eligibility of the Petitioner.

2) I have heard Mr. Khan, the learned counsel appearing for the Petitioner, Mr. Nhavkar, the learned counsel appearing for Respondent No.1-AGRC and Mr. Dahiphale, the learned AGP appearing for Respondent No.5 -State. Despite service of notice,

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Respondent No.4- Developer has not appeared in the Petition. In that view of the matter, Petition is being decided in absence of any representation on the part of Respondent No.4.

3) It appears that Petitioner was initially declared ineligible in Certified Annexure-II prepared on 9 September 2010 on the ground that he had purchased the structure from the original hutment dweller. Though declared ineligible, the Respondent No.4-Developer obtained possession of the structure from Petitioner on 24 July 2012, by executing possession receipt. After securing possession of the structure from Petitioner, the Developer started paying transit rent to him despite being aware of the position that he was declared ineligible in the Certified Annexure-II dated 9 September 2010. Such transit rent is apparently paid by Respondent No.4-Developer to the Petitioner from 1 July 2012 to 30 June 2015. After 1 July 2015, apparently Respondent No.4-Developer stopped paying transit rent. It appears that the rehab component building was constructed by the year 2015 and part Occupancy Certificate in respect thereof was issued on 9 March 2017. Since Petitioner continued to remain ineligible in the year 2017, he was apparently not provided Permanent Alternate Accommodation (**PAA**) in the rehab building.

4) It appears that Petitioner was subsequently declared eligible on 18 September 2018 possibly on account of Circular issued by the State Government permitting transfer of structures on payment of transfer fees to the concerned authority. After declaration of his eligibility on 18 September 2018, Respondent No.4-Developer once again started paying transit rent to the Petitioner from 1 October 2018 and continued paying the same till 30 November 2021.

5) Aggrieved by stoppage of payment of transit rent, Petitioner filed application before the Assistant Registrar, Co-operative Societies (SRA) seeking direction for payment of transit rent. The Application was rejected holding that the Petitioner is not entitled to transit rent during the period of his non-eligibility. Petitioner preferred application before the AGRC, which has also held that he is not entitled to transit rent during the period of his ineligibility. AGRC instead directed Respondent No.4-Developer to pay rent to the Petitioner from the date of his eligibility.

6) There is no dispute to the position that Petitioner is declared eligible on 18 September 2018. His eligibility entitles him for rehab tenement and till grant of possession of rehab tenement, he is entitled for rent. Mere delay in declaration of his eligibility cannot be a reason for non-payment of transit rent. The Developer in the present case secured possession of structure of the Petitioner on 24 July 2012 and went on paying transit rent to him till 30 June 2015. The only issue now remains is about short period of 1 July 2015 to 30 September 2018, when Petitioner remained ineligible and for which period transit rent is denied to him. Considering the peculiar facts and circumstances of the present case, where Petitioner is paid rent even during the ineligibility period from 1 July 2012 to 30 June 2015, there is no reason why he can be denied transit rent from 1 July 2015 to 30 September 2018. Similar view is taken by learned Single Judge of this Court (*His Lordship Justice Ujjal Bhuyan as he then was*) in ***Smt. Kusum Subhash Baisane V/s. State of Maharashtra and Ors.***¹ in which, following issue was formulated:

3. Short point for consideration in this writ petition is entitlement of the petitioner to transit rent as an eligible slum dweller from the date of demo-

1 Writ Petition (L) No.3219 of 2019, decided on 13 January 2020.

lition of her structure i.e. 17th November, 2014 or from the date of determination of her eligibility i.e. 27th November, 2017.

7) This Court answered the issue by recording following findings:

18. In circular No.153 of SRA dated 6th June, 2015, the procedure to provide rent to the slum dweller by the developer is provided. It is stated that the said procedure has been laid down so that the eligible slum dweller can get the rent without any hurdle from the date of demolition of the structure till he gets possession of the rehabilitation tenement. What is of relevance is the date of demolition. If on the date of demolition the slum dweller is construed to be eligible, then he would be entitled to the transit rent from the date of demolition.

19. From the factual narration what is evident is that on the date of demolition petitioner was held to be non- eligible. Subsequently, the competent authority declared the petitioner to be eligible slum dweller entitled to rehabilitation and transit rent in lieu of transit accommodation in the interregnum.

20. In the considered opinion of the court, both the competent authority as well as AGRC had fallen into error in taking the aforesaid view that entitlement of the petitioner to transit rent would be from the date of declaration of eligibility i.e., 27th November, 2017 and not from the date of demolition of the structure i.e. 17th November, 2014. Though the petitioner was adjudicated as eligible by the competent authority on 27th November, 2017, eligibility of the petitioner would relate back to the first certified Annexure-II list dated 14th June, 2010 as she was found to be residing in the demolished structure prior to 1st January, 2000 and therefore, on the date of demolition of her structure i.e. 17th November, 2014, petitioner would be construed to be an eligible slum dweller.

8) The ratio of judgment in ***Kusum Subhash Baisane*** (supra) is squarely applicable in the present case.

9) Writ Petition accordingly succeeds. Order dated 2 August 2023 passed by the AGRC to the extent of denial of transit rent during the period from 1 July 2015 to 30 September 2018 is set aside. Petitioner is held eligible for payment of transit rent even in respect of period from 1 July 2015 to 30 September 2018. However, considering the peculiar facts and circumstances of the present case, Petitioner shall not be entitled to interest on transit rent. So far as the period

after 18 September 2018 is concerned as the order of the AGRC has already directed payment of transit rent in that period as well. Entire arrears of transit rent shall be paid by Respondent No.4- Developer to the Petitioner within a period of six weeks from the date of communication of this Order by the Petitioner to it, failing which Respondent No. 4 shall pay simple interest @ 8% per annum on the arrears of transit rent after expiry of period of six weeks.

10) With the above directions, the Writ Petition is allowed and disposed of.

[SANDEEP V. MARNE, J.]