

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.13741 OF 2024

Shahnaz Gulam Khan

....Petitioner

Versus

Grievance Redressal Committee,
Mumbai Suburban & Ors.

....Respondents

Mr. Nitesh Acharya a/w. *Akash S. Bhogil, Advocates for
Petitioner.*

Mr. Abhijit Patil, *Advocate for Respondent No.5.*

Mr. Pankaj Das, *Advocate for Respondent No.6.*

CORAM: SOMASEKHAR SUNDARESAN, J.

DATE : NOVEMBER 17, 2025

ORAL JUDGMENT :

1. Rule. Rule is made returnable forthwith by consent of the parties and the Petition is heard finally.
2. The grievance of the Petitioner is that the Respondent No.2, the First Appellate Authority, has treated an Appeal filed by Respondent No.6, Shabbir Bashir Memon ("**Memon**") as a complaint and even while sitting in the jurisdiction of an Appellate Authority has chosen to remand the purported complaint to Respondent No.3, the Competent

Authority, to examine the veracity of the Annexure II drawn up in favour of the Petitioner.

3. A brief factual overview necessary for the purposes of these proceedings is set out below:

A] The Petitioner was listed in Annexure II, way back on January 3, 2006, having been found in the actual occupation of the unit in dispute. However, since it was found that the Petitioner was said to not have purchased the slum structure prior to the cut-off date of January 1, 2000, the Petitioner was declared as non-eligible. This meant that the Petitioner was actually in occupation and possession of the unit in question but was not eligible only because of the cut-off date;

B] Thereafter, pursuant to a Government Resolution dated May 16, 2015, subject to payment of Rs.40,000/-, ineligibility of the Petitioner, on the basis of the cut-off date was effaced. Thereafter the Petitioner filed an application on May 16, 2015. seeking declaration that the Petitioner is eligible;

C] The premises was said to have been demolished in 2008. The Competent Authority has declared the Petitioner as eligible on December 21, 2022. An appeal against this decision was filed by Memon evidently after the 30-day deadline stipulated in Section 35 of The Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971; and

D] The grievance of the Petitioner is that there is no application for condonation of delay. That apart, it is submitted that the matter was heard in her absence with the proceedings having been adjourned to a date when the Appellate Authority did not sit and a new date having been given behind her back without the Petitioner having had an opportunity of being heard.

4. It is apparent that the hearing was scheduled on March 20, 2023 on which date the matter stood adjourned to April 10, 2023. However, it appears that on March 29, 2023, the matter was mentioned by Memon before the Appellate Authority and a new date of April 11, 2023 was fixed without notice to the Petitioner. It is the Petitioner's case that the Petitioner appeared on April 10, 2023 and was informed that the matter was not listed on that date and the new date would be

informed. However, on April 26, 2023, the Petitioner learnt that on April 11, 2023 the matter had been heard and reserved *ex-parte* which led to the order dated July 28, 2023 being passed.

5. The Second Appellate Authority has essentially noticed that all that the Appellate Authority has done is to examine the matter afresh and therefore did not interfere with the order dated July 28, 2023. Both these orders are impugned.

6. Having read the order dated July 28, 2023, it is apparent that the Appellate Authority has explicitly stated that the matter is not being treated as an appeal, and that it is being treated as a “complaint”. This is inexplicable. Whether the matter was being treated as an appeal or as a complaint, the least that could have been done was to give the Petitioner a hearing. Without the appeal being treated as an appeal, and that too when the appeal had not been filed within limitation and that too without any explanation of the delay, the Appellate Authority purportedly converting the appeal into a complaint has resulted in it being a backdoor means of allowing the appeal. The remand of the proceedings to the Competent Authority for appropriate adjudication afresh, to verify competing claims is not tenable, when at the relevant time, it appears that the Petitioner had indeed been found to be in

occupation and possession with the only disqualification being non-compliance with the cut-off date.

7. This approach does not lend itself to approval. *First*, the role of the Appellate Authority is a quasi-judicial one. There has been a delay in filing of the appeal, and the appeal being a creature of statute, that facet ought to have been dealt with. *Second*, a quasi-judicial jurisdiction ought to be exercised judicially with reasons after hearing all parties and giving an opportunity to the Petitioner to respond to the appeal. The sequence of events leading up to the *ex parte* order does not inspire confidence about the due process meant to be followed. Evidently, the Petitioner had not been heard at all. If the Petitioner had been heard, all these contentions could have been considered within the appellate jurisdiction and an informed decision could have been taken. *Third*, the second Appellate Authority too has dealt with the matter with a non-judicial approach and simply let reconsideration take place upon remand, thereby upholding the appellate order.

8. In these circumstances, it is felt appropriate to set aside the Impugned Order dated April 30, 2024 and the order dated July 28, 2023, since due process is the only protection that would be available to the parties concerned and the Petitioner has not been given the protection of a due process being adopted. The matter is remanded to

First Appellate Authority who shall hear the parties on all facets of the matter including delay. Being a first appeal, that Appellate Authority would be entitled to examine various facets of the matter and then come to a decision, should a case for condonation of delay be made out.

9. Should there be any other submissions that the parties would need to make, including explanation of the delay, the parties would be free to bring on record such other documents before the Appellate Authority. Considering that the Petitioner had been found to be in occupation of the property in question when the survey was actually conducted, if the outcome of the appeal were to be adverse to the Petitioner, the same shall not be given effect to for a period of four weeks to enable the Petitioner to examine his prospects to challenge such adverse order.

10. With the aforesaid directions, the Petition is hereby ***finally disposed of.***

11. The parties are directed to appear before the First Appellate Authority on ***December 1, 2025 at 12 noon*** who shall then issue appropriate directions to them on how to carry the matter forward.

12. All actions required to be taken pursuant to this order shall be taken upon receipt of a downloaded copy as available on this Court's website.

[SOMASEKHAR SUNDARESAN, J.]