

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION (ST.) NO. 97869 OF 2020

Anandarao Govindrao Pawar

.....*Petitioner*

: *Versus* :

State of Maharashtra through
the Office of G.P. Bombay High
Court and Ors.

....*Respondents*

Mr. Ankit Lohiya *i/b. Ms. Rukmini A. Thokal Meher, for the Petitioner.*

Mrs. Vaishali Nimbalkar, *AGP for Respondent Nos.1 and 2-State.*

Ms. Shraddha Singh, *for Respondent No.4.*

Mr Chirag Saawagi *with Mr. Shubham Shah, for Respondent No.5.*

Mr. Jagdish G. Aradwad (Reddy) *with Mr. Abhijit Patil, for Respondent No.6.*

Ms. Seema Singh, *for Respondent No.7.*

Mr. Chirag Kamdar *with Ms. Disha Shetty and Ms. Jyothi Tated i/b. Wadia Ghady & Co. for Respondent No.8.*

CORAM : SANDEEP V. MARNE, J.

DATED : 8 SEPTEMBER 2025

P.C :

1) The petition presents a unique conundrum. The dispute between the Petitioner and Respondent No.7 is about the eligibility in respect of the structures at Serial Nos.22 and 23 in Annexure-II

prepared by the Municipal Corporation for Greater Mumbai on 7 August 2019. The Petitioner claims that one Gangaprasad Buddhiram Nissessar was a servant employed by him and occupation of the two structures by Mr. Nissessar were in his capacity as Petitioner's servant creating no rights in his favour. Petitioner instituted S.C. Suit No. 6180/1992 and S.C. Suit No.7411/1992 before the City Civil Court, *inter-alia* for recovery of possession of the structures from Mr. Nissessar. The Suits came to be decreed directing Mr. Nissessar to handover possession of the premises to the Petitioner. Aggrieved by the decrees, Mr. Nissessar filed First Appeal Nos.47/2005 and 1220/1997 in this Court.

2) It appears that Respondent No.7 has allegedly purchased both the structures from Mr. Nissessar. The structures apparently became part of the Slum Scheme and accordingly Annexure-II in respect of the said structures were prepared from time to time. In one such Annexure-II prepared, Respondent No.7 was declared ineligible which led to filing of Writ Petition No. 778/2006 by her. In that petition, Respondent No.7 agreed that the issue of eligibility would depend squarely on the outcome of First Appeal Nos. 47/2005 and 1120/1997. Even in the freshly prepared Annexure-II on 7 August 2019, the impugned order dated 16 April 2020 passed by the Additional Collector and Appellate Authority records that the issue of eligibility would depend on outcome of First Appeal Nos. 47/2005 and 1220/1997. During pendency of the present petition challenging the order dated 16 April 2020, it appears that both the First Appeals came up for hearing before this Court. When First Appeal No. 47/2025 came up for

hearing on 31 January 2025, this Court was informed that S.C. Suit No.6180/1992 was only for seeking recovery of possession of the structure on the ground of occupation being in the capacity of employment of Mr. Nissessar with the Petitioner. This Court was informed that the structure became part of Slum Scheme and therefore the issue of eligibility will have to be decided by the Competent Authority under the Maharashtra Slum Areas (Improvement, Clearance & Redevelopment) Act, 1971 (**Slums Act**). This Court was therefore informed that since the Suit was confined only to the aspect of delivery of possession of the premises, the decree has become in-executable on account of the structure being demolished for execution of Slum Scheme. It was thus represented before this Court on 31 January 2025 that the issue of eligibility would be independently decided by the Authorities under the Slum Act and that the Suit had no bearing on the said issue. Similarly, when First Appeal No.1220/1997 came up for hearing on 28 April 2025, similar representation was made on behalf of Mr. Nissessar before this Court. This is how both the First Appeals came to be disposed off by order dated 31 January 2025 and 28 April 2025 observing that the issue of eligibility would be decided in proceedings before the Slum Authorities.

3) Thus, it was represented before this Court on 25 April 2006 in Writ Petition No.778/2006, as well as before the Appellate Authority on 16 April 2020 that the issue of eligibility of Respondent No.7 depended squarely on outcome of First Appeal Nos. 47/2005 and 1220/1997. As against this, the First Appellate Court was informed by

Mr. Nissessar that the Suits had nothing to do with decision of eligibility, which could be independently decided.

4) This is how the issue of eligibility is not concluded either by the Slum Authorities or by the Appellate Court. This apparently has happened on account of contradictory stands taken by Mr. Nissessar and by Respondent No.7.

5) After taking note of the findings recorded by this Court in orders dated 31 January 2025 and 28 April 2025 passed in First Appeals, the impugned order dated 16 April 2020 passed by the Appellate Authority could have been set aside and proceedings could be remanded for redetermination of issue of eligibility. However, Mr. Lohiya, the learned counsel appearing for Petitioner invites attention of this Court to order dated 25 April 2006 passed in Writ Petition No. 778 of 2006 which envisages determination of eligibility based on orders passed in the First Appeals. The circle thus appears to be complete where order dated 25 April 2006 expects the issue of eligibility to be decided in First Appeals whereas the orders passed in the First Appeals expect the issue of eligibility to be decided by Slum Authorities.

6) Faced with the above position, Mr. Lohiya, seeks time to take instructions about course of action to be adopted. In that view of the matter, hearing of the petition is deferred. List on 7 October 2025.

[SANDEEP V. MARNE, J.]

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