

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 6745 OF 2025

Subhash Ramharsh Gupta
An Adult, Indian Inhabitant,
Age: 60 Years, Residing at Flat No. 204,
4-B Binakumari SRA Cooperative Housing
Society, Roshanlal Patra Chawl,
Mulund (E), Mumbai – 400 081.

..Petitioner

Versus

1. State of Maharashtra,
Through Government Pleader
Having office at Bombay High Court.

...Respondent

2. The Honourable Grievance Redressal
Committee Appellate Authority (Mumbai
Suburban)
Having its office at 1st Floor, Old Custom House
Shaheed Bhagat Singh Marg, Fort,
Mumbai 400 001.

3. Additional Collector and Appellate Authority
Mumbai Eastern Suburban District Industrial
Insurance Building
Opp: Churchgate Station,
Mumbai 400 020.

4. The Deputy Collector (Enc/R)
& Competent Authority Ghatkopar
S.R.A. Building, Anant Kanekar Marg,
Bandra (E), Mumbai – 400 051.

5. Chairman/Secretary
Binakumari SRA Cooperative Housing Society
Roshanlal Patra Chawl,
Mulund (E), Mumbai – 400 081.

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RAMCHANDRA
SANKPAL

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6. Developer, Shri Sunil Thomas,
M/s Omkar Builders and Developers
101, Vrundavan Society, Opp IIT Main Gate,
Mumbai – 400 076.

7. Hanuman Ramharsh Gupta,
203, New Sant Ramdas Society, Gavhanpada,
90 ft Road, Mulund (E), Mumbai – 400 081.

Mr. A.K. Upadhyay, with Mithilesh Tiwari, for the Petitioner.
Smt. S.D. Chipade, AGP, for the Respondent-State.
Adv Priyanka Bhadrashete, for Respondent No. 4.
Mr. Hitesh P Mishra, for Respondent No. 7.

CORAM: N. J. JAMADAR, J.
RESERVED ON : 2nd FEBRUARY 2026
PRONOUNCED ON : 23rd FEBRUARY 2026.

JUDGMENT:

1. Rule. Rule made returnable forthwith and, with the consent of the learned Counsel for the parties, heard finally.

2. This Petition under Article 227 of the Constitution of India assails the legality, propriety and correctness of a judgment and order dated 3rd January 2025 passed by the Grievance Redressal Committee in Appeal No. 111 of 2024, whereby the Appeal preferred by the Petitioner against an order dated 28th November 2022 passed by the Additional Collector (E/R) and Appellate Authority, under Section 35 of the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971, came to be dismissed by affirming the said order passed by the Appellate Authority.

3. A Slum Rehabilitation Scheme under the name Binakumari SRA Cooperative Housing Society (“Binakumari SRA CHSL”) was implemented on the parcel of lands bearing Survey Nos. 456, 457A, 459A, 459B, 460, 461, 463, 464, 465, 466, 469(Pt), situated at Mouje Mulund, Taluka Kurla, Mumbai. In the Annexure II certified by the Additional Collector (E&C), the name of Hanuman Ramharsh Gupta(R7), who is the brother of the Petitioner, was included as an eligible occupier.

4. The Petitioner claimed that the Petitioner has been in the occupation and exclusive possession of the hut No. 43 at the Chawl, known as Roshanlal Patra Chawl, situated on the subject lands. Petitioner’s mother, Smt. Amoladevi Gupta, was the original holder of the said hut. The occupants of Roshanlal Patra Chawl formed a cooperative housing society under the name and style of “ Binakumari SRA Cooperative Housing Society”. Eventually, the slum rehabilitation scheme was implemented on the subject lands. Amoladevi Ramharsh Gupta, the mother of the Petitioner, became the member of the society. By executing an Affidavit dated 15th Mach 2000, Amoladevi transferred her right, title and interest including the membership in, and the share certificate issued by, the society in favour of the Petitioner.

5. Initially, the Petitioner was allowed temporary alternate accommodation by the Developer (R6). Subsequently, the permanent

alternate accommodation i.e., Room No. 204 in rehab Building No.4. was allotted to the Petitioner.

6. The Petitioner claimed that he has been in the continuous use and occupation of the said permanent alternate accommodation and the Petitioner has all the documents to demonstrate that he had been in the possession of Room No. 43 in the Roshanlal Patra Chawl. However, in the Annexure II at Sr. No. 43, the name of his brother Hanuman Ramharsh Gupta (R7) has been wrongly inserted. Hence, the Petitioner filed an Appeal before the Appellate Authority to determine the eligibility of the Petitioner.

7. Respondent No. 7 contested the claim of the Petitioner. It was *inter alia* contended that the Respondent No..7's name has been rightly included in the Annexure II. Reliance was placed on the documents like Voters Id Card, Aadhar Card, Ration card and Voters list to substantiate the claim of Respondent No. 7 that he had been in possession of the said hut.

8. In the intervening period, Respondent No. 7 had filed a suit being SC Suit No. 3715 of 2007 for declaration and perpetual injunction against the Petitioner, the Developer (R6), the society (R5) and the SRA in the City Civil Court alleging that, the Developer (D1 therein) had forcibly evicted Respondent No.7 from the said hut and demolished the

structure. Respondent No. 7 had also sought a declaration that he was entitled to permanent alternate accommodation, in lieu of the said hut.

9. By a judgment and order dated 30th April 2010, the said Suit was dismissed holding *inter alia* that Respondent No.7-Plaintiff failed to prove that the father of Respondent No. 7 and the Petitioner was the holder of two rooms in Roshanlal Patra Chawl and he was forcibly dispossessed of one of the rooms and that the Petitioner herein had fraudulently got the name of Respondent No. 7 removed from Annexure II, and obtained the benefits under the SR scheme.

10. Being aggrieved, Respondent No. 7 has preferred a First Appeal before this Court, which is sub judice.

11. By an order dated 28th November 2022, the Appellate Authority dismissed the Appeal preferred by the Petitioner, holding that since in the Annexure II, certified by the Competent Authority on 25th October 1996, the name of Respondent No. 7 was included at Sr. No. 43, the claim of the Petitioner based on the transfer of the right, title and interest in the said hut by his mother, Amoladevi, after the Annexure II came to be certified, was unsustainable. The Appellate Authority was of the view that though an Appeal preferred by Respondent No.7 against the judgment and decree in SC Suit No. 3715 of 2007 was sub-judice before the High Court, yet, the Petitioner had preferred an Appeal before the Appellate Authority, with a view to mislead the Authority.

12. Being aggrieved, the Petitioner preferred an Appeal before the Grievance Redressal Committee (“GRC”). The GRC concurred with the Appellate Authority on the point that, since Respondent No.7 was found in possession of the subject hut during the survey and declared eligible in the Annexure II, the transfer of the subject hut to the Petitioner by Amoladevi was invalid. It was *inter alia* observed that the Petitioner failed to produce any proof to establish the existence of independent hut/structure before 1st January 2000 and that he was in the occupation thereof.

13. Being further aggrieved the Petitioner has invoked the writ jurisdiction.

14. I have heard Mr. A.K. Upadhyay, the learned Counsel for the Petitioner, Mr. Hitesh Mishra, the learned Counsel for the Respondent No.7, Ms. Sulbha Chipade, the learned AGP for Respondent-State and Ms. Priyanka Bhadrashete, the learned Counsel for Deputy Collector (Enc/R) (R4). The learned Counsel took the Court through the pleadings and material on record.

15. Mr. Upadhyay, the learned Counsel for the Petitioner, submitted that the Appellate Authority as well as GRC have decided the Appeals in a mechanical manner. The Authorities have not at all considered the documents placed on record which indicate that the Petitioner and his mother, Amoladevi, have been in the occupation of the subject hut since

prior to 1st January 2000. All material documents placed on record by the Petitioner were conveniently discarded by the Appellate Authority as well as GRC.

16. Mr. Upadhyay would further submit that the fact that Respondent No. 7 had instituted the Suit and, after a full-pledged trial, the said Suit was dismissed by the City Civil Court was not properly appreciated by the Authorities under the Slum Act. The learned Judge, City Civil Court, has recorded categorical findings that the Petitioner failed to prove that there were two rooms and he was dispossessed from one of the rooms. There is no stay to the judgment and decree passed in SC Suit No. 3715 of 2007. In the face of these judicial findings, the Authorities under the Slum Act could not have over-reached their jurisdiction, submitted Mr. Upadhyay.

17. Per contract, Mr. Hitesh Mishra, the learned Counsel for Respondent No. 8 stoutly supported the impugned order. It was submitted that the Competent Authority had correctly included the name of Respondent No. 7 in Annexure II on the basis of the documents which indicated that Respondent No. 7 had been in the occupation of the subject hut. Since the Annexure II was certified much prior to the purported transfer of the right, title and interest in the subject hut by Amoladevi, the mother of Petitioner and Respondent No. 7, in favour of the Petitioner, the Authorities were within their rights in holding that

the said transfer, that too by way of an Affidavit, was of no legal consequence. Though the name of Respondent No. 7 was shown in the Annexure II, the Petitioner had got the permanent alternate accommodation allotted in his name despite not being eligible for the benefit under Binakumari SRA Scheme.

18. Mr. Mishra would submit that, the Appeal preferred by Respondent No. 7 against the judgment and decree passed in SC Suit awaits adjudication before this Court and, therefore, the Petitioner cannot be permitted to take any mileage from the dismissal of the said suit.

19. To start with, few uncontroverted facts deserve to be noted. Incontrovertibly, in the Annexure II, certified by the Competent Authority, the name of Respondent No. 7 was shown at Sr. No. 43. The area of the hut was shown 26.81 sq mtrs and it was shown to be a protected structure. Indisputably, the residents of Roshanlal Patra Chawl formed a Cooperative Housing Society. Eventually Binakumari SRA Scheme was implemented. The subject hut was demolished on 24th February 2007. It appears, the temporary alternate accommodation and permanent alternate accommodation were allotted to the Petitioner. It is not in dispute that the Respondent No.7 had instituted SC Suit No. 3715 of 2007 for declaration and perpetual injunction and the said Suit was

dismissed by judgment and order dated 30th April 2010. An Appeal thereagainst is sub judice before the High Court.

20. It is also imperative to note the context in which the dispute has arisen. The Petitioner is the brother of Respondent No. 7. It is the claim of the Petitioner that the mother of the Petitioner, Amoladevi was the original occupier and he has been residing in the subject hut along with Amoladevi. In contrast, as emerges from the judgment in SC Suit No. 3715 of 2007, Respondent No. 7 claimed that the subject hut initially stood in the name of the father of Petitioner and Respondent No. 7. After the demise of their father, the said hut was divided in two parts separated by a common wall.

21. Evidently, both the Petitioner and Respondent No. 7 claimed occupation over the subject hut through mother and father, respectively. It is not a case where a party is claiming exclusive occupation over the subject premises in his own right.

22. It is in the aforesaid context, the controversy is required to be appreciated. It is true, the name of Respondent No. 7 was included in the Annexure II prepared by the Competent Authority. However, apart from the said document, it appears, till the subject hut came to be demolished, the rest of the documents leading to implementation of the SR Scheme were executed in favour of Amoladevi, the mother of Petitioner and Respondent No. 7. The Share Certificate was issued by

Binakumari SRA CHSL in favour of Amoladevi in the month of March 1995. The Agreement between the slum dweller and the developer was executed in the name of Amoladevi on 6th January 2003. Temporary alternate accommodation Agreement was executed between the developer, the cooperative housing society and the Petitioner, on 21st June 2007. Incontrovertibly, the permanent alternate accommodation was also executed in favour of the Petitioner and the Room No. 204 came to be allotted in rehab Building No.4.

23. Moreover, the Court finds that, apart from the aforesaid material, the Petitioner had placed on record documents like Ration card, Voter Id Card and the Voters list which indicated that the Petitioner was residing in the subject hut.

24. If it was a case of appraisal of the proof of documents in terms of the Government Resolution dated 16th May 2015, the Authorities would have been justified in determining the controversy on the basis of the documents placed on record by the rival parties. However, as noted above, the context could not have been lost sight of. Neither the Petitioner nor the Resolution No. 7 claimed occupation over the subject hut in their independent right. The Petitioner claimed the occupation through his mother, whereas Respondent No. 7 asserted that, after the demise of their father, the subject hut was divided into two parts and he was in the occupation of one of those parts and the Petitioner the other.

25. In the aforesaid context, the judgment delivered by the City Civil Court in SC Suit No. 3715 of 2007 assumes significance. The learned Judge, City Civil Court has recorded categorical findings that Respondent No. 7 failed to establish that he was dispossessed of the part of the subject hut, as claimed. The learned Judge has further recorded that it was an admitted position that there was only room in Roshanlal patra chawl which after the death of the father of the Petitioner and Respondent No. 7 was divided into two parts by erecting a common wall by the Plaintiff (R7) and Defendant No. 4-Petitioner herein. Thus, it cannot be said that there were two different rooms and both the brothers were independently entitled to permanent alternate accommodation by incorporation of their names in the slum rehabilitation scheme.

26. In the face of the aforesaid findings, the Appellate Authority was in error in holding that the Appeal filed by the Petitioner seeking insertion of his name in the Annexure II, during the pendency of the Appeal against the said judgment and decree in SC Suit No. 3715 of 2007, was an attempt to mislead the Authority. On the contrary, the judgment in SC Suit No. 3715 of 2007 *prima facie* demolished the claim of Respondent No. 7 that he had been in exclusive possession and enjoyment of the subject hut and he alone was entitled to the benefit under the slum rehabilitation scheme.

27. The GRC has also failed to examine the controversy that arose for consideration in a correct perspective.

28. Resultantly, the impugned order dated 3rd January 2025 passed by the GRC as well as the order dated 28th November 2022 passed by the Competent Authority, without adverting to the relevant factors, especially the import of the judgment of City Civil Court in SC Suit No. 3715 of 2007, cannot be sustained. Thus, those orders are required to be quashed and set aside and Appeal No. 56 of 2022 remitted back to the Appellate Authority for afresh consideration in the light of the factors which are adverted to by this Court hereinabove.

29. Hence, the following order:

: O R D E R :

- (i) Petition stands partly allowed.
- (ii) The impugned order dated 3rd January 2025 passed by the GRC in Appeal No. 111 of 2024 as well as the order dated 28th November 2022 passed by the Appellate Authority in Appeal No. 56 of 2022, stand quashed and set aside.
- (iii) Consequently, all the notices and actions initiated by the SRA for the eviction of the Petitioner from the subject premises i.e., Flat No. 204, Building No. 4, Binakumari SRA CHSL, also stand quashed and set aside.

(iv) Appeal No. 56 of 2022 stands remitted back to the Appellate Authority for afresh decision in accordance with law after considering the factors which are adverted to in this judgment.

(v) The Appellate Authority is requested to hear and decide the Appeal afresh, as expeditiously as possible and, preferably, within a period of six months from the date of communication of this order.

(vi) All contentions of all the parties are kept open for consideration by the Appellate Authority.

(vii) Rule made absolute in the aforesaid terms.

No costs.

[N. J. JAMADAR, J.]