



IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION (L) NO. 40285 OF 2022

1. Mr. Gopal Dinkar Vanave }
2. Mr. Shekhar Gopal Vanave }
- Annexure - II Sr. No.2, }
- Both residing at }
- Rehab Building Wing-D, Room No.1508, }
- Jankalyan Co-op. Housing Society Ltd. }
- Village Kurla, Taluka Kurla, }
- Match Factory Lane, Kurla (West) }.. Petitioners

Versus

1. Apex Grievance Redressal Committee }
- Slum Rehabilitation Authority }
- having its office at Administrative Building }
- Anant Kanekar Marg, 'D' Block, }
- Bandra (East), Mumbai-400 051 }
2. Tehsildar-2 (Special Cell) }
- Slum Rehabilitation Authority }
- having its office at Administrative Building }
- Anant Kanekar Marg, 'D' Block, }
- Bandra (East), Mumbai-400 051 }

3. Assistant Registrar Co-operative Society }
(Easter/Western Suburb), }
Slum Rehabilitation Authority }
having its office at Administrative Building }
Anant Kanekar Marg, 'D' Block, }
Bandra (East), Mumbai-400 051. }
4. Sangita Balu Zimal }
Annexure - II Sr. No.44, }
Jankalyan SRA Co-op. Housing Society Ltd. }
Village Kurla, Taluka Kurla, }
Match Factory Lane, Kurla (West) }
Mumbai-400 070. }
5. Jankalyan SRA Co-op. Housing Society Ltd. }
Village Kurla, Taluka Kurla, }
Match Factory Lane, Kurla (West) }
Sion (East), Mumbai-400 022. }
6. Accord Builders }
Omkar House, Off Eastern Express Highway, }
Opp. Sion-Chunabhatti Signal, }
Mumbai-400 070. } .. Respondents

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Mr. Hamid Ahmed a/w Mr. Abdul Rehman i/b MZ & Associates
for Petitioners.

Mr. Anoop Patil for Respondent No.1-AGRC.

Mr. Jagdish G Aradwad (Reddy), for Respondent Nos. 2 & 3 -
SRA.

Mr. Chintamani K. Bhangoji, for Respondent No.4.

Mr. Shakeeb Shaikh a/w Mr. Vishal Makwana i/b Diamondwala & Co., Respondent No.6.

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CORAM : SANDEEP V. MARNE J.
RESERVED ON : 12 JANUARY, 2024.
PRONOUNCED ON : 19 JANUARY, 2024.

JUDGMENT:-

- 1. Rule.** Rule is made returnable forthwith. With the consent of the learned counsel appearing for parties, Petition is taken for final disposal.
- 2.** The Writ Petition is filed by Petitioners aggrieved by the Order dated 19 December 2022 passed by Apex Grievance Redressal Committee (**AGRC**) upholding the Order dated 13 October 2022 passed by Tahsildar-2 (Special Cell) Slum Redevelopment Authority (**Tehsildar**). Also challenged is the Order dated 18 November 2022 passed by Assistant Registrar, Co-operative Societies (SRA), by which it is held allotment of tenement No. D-1508 made in favor of Respondent No. 4-Sangita Balu Zimal is valid and the direct allotment made by the developer in respect of the same

tenement to Petitioners is invalid. On the complaint of Respondent No.4, Tehsildar passed an Order dated 13 October 2022 holding Petitioners to be an unauthorized occupant in respect of tenement No. D-1508 and has directed him to hand over the possession thereof to the estate officer of SRA. The Petitioners filed an Appeal before the AGRC, which has been rejected by Order dated 19 December 2022. Petitioners have accordingly filed the present Petition challenging the AGRC's Order dated 19 December 2022, Tehsildar's Order dated 13 October 2022 and Assistant Registrar Order's dated 18 November 2022.

3. Briefly stated, facts of the case are that SRA undertook the exercise of rehabilitation of Slum located on Plot bearing CTS No. 106, 106/1 to 5, 107, 107/1 to 9, 108, 109 (pt), 111(pt), 111/1 to 70, 77 80 to 132 and 112 (pt) of village Kurla, Mumbai. Respondent No. 6 came to be appointed as the Developer and a Letter of Intent (**LoI**) came to be issued on 9 September 2009 for implementation of the Slum Rehabilitation Scheme. It is Petitioner's case that in the original Annexure-II, his name was included in the list of eligible slum dwellers. It appears that in that Annexure - II,

name of Respondent No.4 was also included but she was held ineligible with a remark 'find production of proof prior 1.1.95'. It appears that all slum structures, including that of Petitioner and Respondent No. 4, have been demolished and rehabilitation building has been constructed and as many as 438 eligible slum dwellers have already been accommodated in the rehab building.

4. It appears that Respondent No.6-Developer had four vacant rehab tenements for being allotted to eligible slum dwellers. The Order passed by the Assistant Registrar on 18 November 2022 records that as against four available rehab tenements, 21 eligible slum dwellers were waiting for allotment.
5. In the above background, it appears that Petitioner was left out in the process of allotment of rehab tenement. Respondent No.6-developer sent a proposal dated 22 July 2021 to the Assistant Registrar Co-operative Societies (SRA), stating that one rehab tenement in D-wing of the building was available for allotment and Petitioners were eligible for allotment of the same. The Developer therefore requested the Assistant Registrar to depute an Officer for

allotment of the said tenement by lottery system. It appears that no decision was taken on the letter dated 22 July 2021. During pendency of that proposal, it appears that the Developer sent letter dated 1 March 2022, in reply to Assistant Registrar's letter, stating that four rehab tenements were reserved for four eligible slum dwellers viz. Kisan Sonba Kondhalkar, Sangita Balu Zimal (Respondent No. 4), Pandurang Gulabrao Atkari and Chandrakant Sopan More/ Bhiva Ananda Varkhade. The Developer further stated that the said four slum dwellers were included in the eligibility list but their cases remained pending for re-verification and therefore their names were not included in the list of allotment. The developer further submitted that after re-verification of eligibility, the four reserved tenements would be allotted to the aforementioned four slum dwellers. Despite assurance given in letter dated 1 March 2022 and in the absence of any decision being taken by the Assistant Registrar on previous proposal dated 21 July 2021, Respondent No.6-Developer, on his own, allotted tenement No. D-1508 to Petitioner and an intimation to that effect was given to the Assistant Registrar vide letter dated 24 March 2022.

6. On 28 March 2022, the Assistant Registrar issued Form No. 1 stating that two slum dwellers viz Manoranjan Dattaram Khandekar and Rakhi Vikas Shinde were due for conduct of lottery in respect of two out of four reserved tenements and that issue of verification of eligibility of Respondent No.4 and Chandrakant Sopan More was pending and their lottery would be conducted after receipt decision on their eligibility. In Form No. 1, the Assistant Registrar clearly stated that unilateral allotment of tenement No. D-1508 in the name of Petitioners by the Developer was invalid and the tenement would be allotted by lottery system. It appears that a decision with regard to the eligibility of Respondent No.4 was received by way of supplementary Annexure-II vide letter dated 25 May 2022 and accordingly, the Assistant Registrar conducted a lottery on 24 June 2022 and allotted tenement No. D-1508 in the name of Respondent No.4 vide allotment letter dated 24 June 2022. Respondent No. 4 noticed that Tenement D-1508 was allotted to Petitioners and therefore made a complaint before Tehsildar, (SRA). Tahsildar issued notice to the Petitioners and after hearing both sides, passed an Order dated 13 October 2022 directing Petitioners to vacate

tenement No. D-1508. In the meantime, the Assistant Registrar also conducted hearing on Petitioners' application and rendered a decision on 18 November 2022 holding allotment of tenement No. D-1508 in favor of Respondent No. 4 to be valid and consequently allotment made by the developer in Petitioner's name as invalid. Petitioners preferred Appeal before AGRC challenging Tehsildar's decision of eviction. The AGRC however rejected the Appeal by Order dated 19 December 2022, which is subject matter of challenge in the present Petition.

7. I have heard Mr. Hamid Ahmed, the learned counsel appearing for the Petitioners. He would submit that the allotment of tenement No. D-1508 made in the name of Petitioners is valid. That the proposal for allotment of the tenement to Petitioners was made at a prior point of time by the developer on 22 July 2021. That as on 22 July 2021, Respondent No. 4 was not even declared eligible. That the Assistant Registrar sat over the proposal dated 22 July 2021 and did not take any decision thereon. Therefore, the developer was left with no choice but to allot the tenement to Petitioners who were awaiting such allotment for several

years and gave an intimation of such allotment to the Assistant Registrar by letter dated 24 March 2022. That the Assistant Registrar cannot be permitted to take benefit of his own wrong by declaring Petitioners' allotment as invalid. That there is no dispute about the eligibility of Petitioners to receive rehab tenement. That since eligibility of Respondent No.4 is declared subsequent to sending of the proposal in respect of Petitioners, the allotment made in favor of Petitioners cannot be declared invalid. That Petitioners have been residing in the tenement No. D-1508 since March 2022 and it would be arbitrary to direct Petitioners eviction for the purpose of accommodating the subsequent allotment of Respondent No. 4. That Respondent No.4 can always be allotted other rehab tenement in the vicinity and Petitioners' ouster from tenement No. D-1508 is not at all warranted. He would therefore pray for setting aside the Orders passed by the Assistant Registrar, Tehsildar, and AGRC.

- 8.** Mr. Bhangoji, the learned counsel for Respondent No.4 would oppose the Petition and submit that the allotment unilaterally made by the developer in favor of Petitioners is void and no rights ensue in favor of Petitioners on the basis

of such void allotment. He would submit that the developer has no right to make unilateral allotment, which can only be made by the Assistant Registrar, SRA. That the allotment in favor of Respondent No.4 is validly made by the Assistant Registrar. Inviting my attention to Clause 42 of the LoI, Mr. Bhangoji would submit that the developer was under obligation to allot tenements by drawl of lots in the presence of representative of Assistant Registrar. That the allotment rehab tenement is to be made strictly in accordance with seniority list prepared with reference to the date of demolition of huts. That the hut of Respondent No.4 is demolished on 9 August 2008 and she has a prior claim of allotment over Petitioners.

9. Mr. Aradwad (Reddy), the learned counsel appearing for Respondent Nos. 2 and 3-SRA would also oppose the Petition and submit that the allotment unilaterally made by the developer in favor of Petitioners is *ab initio void* and cannot be taken cognizance of. He would submit that only Assistant Registrar is competent to make allotment by drawl of lots and that no other tenement is available in the rehab buildings for allotment either to Petitioners or to Respondent No.4. He would further submit that Petitioners

can be allotted PAP tenements in the vicinity. Drawing my attention to the Affidavit filed on 30 October 2023 by Assistant Registrar, he would submit that 442 PAP tenements are available in the Eastern Suburb of Mumbai City and that Petitioners can choose any of the such 442 PAP tenements for allotment.

10. Mr. Anoop Patil, the learned counsel appearing for AGRC would also oppose the Petition and support the Order passed by AGRC. He would draw my attention to the finding record by the Assistant Registrar that 21 eligible Slum Dwellers were awaiting allotment as against only four vacant rehab tenements. That Petitioners cannot score march over their senior counterparts by seeking a direct illegal allotment from the developer. That developer has no authority to make such direct allotment.

11. Mr. Shakeeb Shaikh, the learned counsel appearing for Respondent No. 6-Developer would however justify the action of the developer in allotting rehab tenement No. D-1508 in favor of Petitioners. He would submit that mentioning of tenement No. D-1508 as reserved for Respondent No. 4 in the letter dated 1 March 2022 was a

mistake on the part of Respondent No.6. That the mistake was corrected by sending a letter dated 24 March 2022 to the Assistant Registrar mentioning the details of only the balance three tenements after allotment of tenement No. D-1508 in the name of Petitioner No.1. That the decision of eligibility of Respondent No. 4 was received only in the form supplementary Annexure-II vide letter dated 25 May 2022 by which time, the concerned tenement was already allotted to Petitioners. This is how Respondent No. 6 justifies the allotment of tenement No. D-1508 in favor of Petitioners.

12. Rival contentions of the parties now fall for my consideration.

13. There is no dispute to the position that both Petitioners and Respondent No. 4 are eligible to receive permanent alternate accommodation in the form of tenement in rehab building. Unfortunately, requisite numbers of tenements are not available for allotment to all eligible slum dwellers in the rehab building constructed by Respondent No.6. This is the reason why Petitioners and Respondent No.6 have locked horns over allotment of tenement No. D-1508.

- 14.** Conditions in the LoI issued to Respondent No. 6 prescribe that allotment of rehab tenements is to be done by drawl of lots conducted in the presence of a representative of Assistant Registrar, SRA. In this regard it would be apposite to reproduce Para-42 of the LoI issued to the developer on 9 September 2009 which reads thus:

“42. That the allotment of rehabilitation tenements to the eligible slum dwellers in the scheme, shall be made by drawing lots in present of the representative of the Assistant Registrar of Societies (SRA) and statement of rehab tenements allotted to the eligible slum families in the rehabilitation building with corresponding tenements no. in rehab / composite building and Sr. No. In Annexure - II etc. Duly certified by the concerned society of slum dwellers and assistant Registrar (SRA) shall be submitted before requesting for occupation permission of respective rehab tenements.”

- 15.** Thus the Respondent No.6-developer did not have authority to unilaterally make allotment of any tenement to any slum dweller. By the time the question of making allotment to Petitioner came up, as many as 438 rehab tenements to eligible slum dwellers had taken place and the developer was thus well versed with the procedure of allotment. This is the reason why Respondent No.6 sent a proposal to the Assistant Registrar by letter dated 22 July 2021 requesting for deputation official of SRA for allotment of one tenement in D-Wing by drawl of lots. In that letter,

the developer expressed the intention of allotting the said tenement in the name of Petitioner. The fact that the developer requested the deputation of an officer of Assistant Registrar (SRA) for allotment of the tenements through lottery would imply full knowledge on its part that it did not have any authority to unilaterally make allotment of said tenement in D-Wing to Petitioners. No doubt, the Assistant Registrar did not act on the letter dated 22 July 2021. The Assistant Registrar ought to have informed Respondent No. 6 that allotment in favor of Petitioner No.1 alone was not warranted in the light of several other slum dwellers awaiting allotment of tenements. As a matter of fact, letter dated 24 March 2022 sent by the developer to the Assistant Registrar indicates that as many as 17 slum dwellers were awaiting allotment of rehab tenements, whose list was available in order of dates of demolition of their huts. On the contrary, the Order of the Assistant Registrar dated 18 November 2022 would indicate that 21 eligible Slum Dwellers are awaiting allotment of rehab tenements. In such circumstances the developer could not have selectively sent a proposal for allotment of tenement in D-Wing in the name of Petitioners alone.

16. Be that as it may. It is common ground that the Assistant Registrar did not act on developer's proposal dated 22 July 2021. Neither any officer was appointed for conduct of lottery, nor such lottery was ever conducted. It appears that the developer unilaterally put Petitioners in possession of tenement No. D-1508. The exact date on which possession was granted by the developer to Petitioners is not known as the letter dated 24 March 2022 states that allotment has been made. The letter dated 24 March 2022 was sent to the Assistant Registrar by the developer merely to inform that the allotment was already made. This shows that the allotment was made and possession was handed over prior to 24 March 2022.

17. In my view, such action on the part of Respondent No.6-developer is totally illegal and *ab initio* void. The Assistant Registrar has rightly treated such allotment to be invalid. It has no existence in the eyes of the law.

18. Another glaring and arbitrary action on the part of the developer is noticed in the light of the developer addressing letter dated 1 March 2022 representing to the Assistant Registrar about the reservation of four tenements for four

slum dwellers including Respondent No.4 and in clandestinely allotting one of the four tenements to Petitioner on 24 March 2022. If one of the four tenements was reserved for Respondent No.4 as undertaken in the letter dated 1 March 2022, it is unfathomable as to how Respondent No. 6 could have allotted tenement No. D-1508 to Petitioners on 24 March 2022. Respondent No. 6 has attempted to wriggle out of consequences arising out of its arbitrary action by contending in the Affidavit in reply as under:

“However, inadvertently, this Respondent vide its Letter dated 2 March 2022 addressed to Assistant Registrar SRA, mentioned that Tenement D-1508 is reserved for the allotment to the Respondent No.4.”

Here it is clarified that the letter dated 1 March 2022 is the same as is referred to in para 12 of the Affidavit in reply of Respondent No. 6 as the letter was received by Assistant Registrar on 2 March 2022. Having committed illegality in unilaterally allotting tenement No. D-1508 to Petitioners contrary to the assurance given in the letter dated 1 / 2 March 2022 to the Assistant Registrar about reservation of the same for Respondent No.4, the Developer is now

attempting to contend that representation of reservation of tenement for Respondent No. 4 was a mistake on its part.

19. After considering overall conspectus of the case, I am of the view that unilateral allotment of tenement No. D-1508 by Respondent No. 6-developer in the name of Petitioners is invalid. No error therefore can be traced in the Orders passed by the Assistant Registrar, Tehsildar and AGRC. Petitioners must vacate the tenement as the same has been validly allotted in the name of Respondent No.4 by the Assistant Registrar-SRA by conducting a lottery on 24 June 2022.

20. I am aware of the fact that Petitioners will have to suffer on account of mistakes and illegalities committed on the part of Respondent No. 6-developer. However mere allotment and occupation of tenement No. D-1508 by Petitioners for sometime cannot be a ground to legitimate unauthorized allotment. It must be borne in mind that Respondent No. 4 is made to suffer for the last one and half years as she is unable to take possession of the tenement allotted to her. Upon vacation of tenement No. D-1508 by

Petitioners, they need to be allotted another PAP tenement by SRA in an expeditious manner. For inconvenience and loss suffered by Petitioners on account of vacation of tenement No. D-1508, Respondent No.6-developer is required to be saddled with exemplary costs for unauthorized allotment made by it to Petitioners.

21. I accordingly proceed to pass the following Order:

ORDER

- I. The impugned Orders passed by the Assistant Registrar, Tehsildar and AGRC are upheld.
- II. Petitioners shall vacate tenement No. D-1508 and hand over its possession to the Estate Officer of SRA within four weeks from today.
- III. Petitioners shall forthwith choose one PAP tenement made available by SRA for allotment and upon such choice being exercised through a written application, SRA shall make allotment of such PAP tenement to Petitioners within two weeks of receipt of such written application.

- IV. Respondent No. 6 shall pay the costs of Rs. 1,00,000 to Petitioners within four weeks from today.
- 22.** With the above directions, Writ Petition is dismissed. Rule is discharged. There shall be no Orders as to Costs.

[SANDEEP V. MARNE J.]