
(2004) 06 BOM CK 0075
In the Bombay High Court
Case No : Writ Petition No. 318 of 2004

Vaibhav Vasant Pawar

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 23-06-2004

Acts Referred:

Citation : (2005) 2 BomCR 939 : (2004) 4 MhLj 298

Hon'ble Judges : D.Y. Chandrachud, J

Bench : Single Bench

Advocate : A.R. Joshi, D.S. Sakhalkar, for the Appellant; G.D. Utangale, for respondent Nos. 3 and 6, K.R. Belosery and S.M. Dixit for respondent Nos. 1, 4 and 5, R.S. Apte, for the Respondent

Judgement

D.Y. Chandrachud, J.—Rule, returnable forthwith. Counsel appearing on behalf of the respective respondents waive service. Respondent No. 7 has been served. By consent taken up for hearing and final disposal.

2. The petitioner has stated before the Court that he was in occupation of a room bearing No. HEX 12-2/7 situated at A. R. Singh Compound, Dhobi Ghat, Vakola, Santacruz (East), Mumbai 400055. The aforesaid room is situated on land bearing Survey No. 376, CTS No. 116, Plot No. 6 and 4 admeasuring 2773 sq. mtrs situated at village Kole Kalyan Pakhadi, Vakola, Santacruz (East), Mumbai 400055. The aforesaid land is privately owned property. The occupants residing on the property formed a society by the name of Shivkrupa Co-operative Housing Society Limited consisting of 95 occupants/members. On 17th January, 1992 the society acquired leasehold rights in respect of the land under a lease agreement which was entered into with the original owners. A development agreement was entered into on 24th February, 1994 by the society with respondent No. 8 by which the developer agreed to provide residential tenements to each of the erstwhile occupiers. According to the petitioner, the IInd Schedule to the development agreement consists the names of 95 structure holders at which Sr. No. 63 is one Pandurang S. Pawar (the uncle of the petitioner) and at Sr. No. 64

and at Sr. No. 71 is the name of the petitioner's father Vasant Pawar. A census was carried out of the slum dwellers residing upon the aforesaid property. Three Pitch Holder Cards were issued in respect of three separate rooms viz. (i) Card No. 336090 in respect of Room 12-2/7 was issued in the name of Pandurang Sakharam Pawar, (ii) Card No. 336091 in respect of Room No. 12-3/7 was issued in the name of Vasant Sakharam Pawar, (iii) Card No. 336076 in respect of Room No. 10-4/4 was issued in the name of Lalu Shivaji Kokam.

3. Lalu Kokam who was the occupant of Room 10-4/4 assigned and transferred his rights in respect of the said room on 23rd January, 1979 in the name of the petitioner's father Vasant Sakharam Pawar. Consequently, the petitioner's father acquired rights in respect of two rooms; Room No. 12-3/7 and Room No. 10-4/4. The petitioner's father Vasant and his uncle Pandurang exchanged their respective rooms on 24th October, 1991 by executing a deed of exchange. The petitioner's father thereupon acquired rights in respect of Room No. 12-2/7 represented by Pitch Holders Card No. 336090 and 12-3/7 represented by Pitch Holders Card No. 336091. The petitioner's father was admitted as a member of the co-operative society in respect of both the aforesaid rooms. On 19th February, 1994, which was prior to the cut off date of 1st January, 1995, the petitioner's father transferred his interest in respect of Room No. 12-2/7 by executing a writing in favour of the petitioner. Subsequently the electricity meter was also transferred in the name of the petitioner by BSES Limited on 16th September, 1994. The electoral identity card that was issued by the Election Commission of India shows the address of the petitioner as Room No. 12-2/7.

4. Both the petitioner's father and uncle have been held eligible for being rehabilitated in the construction which is to be carried out by respondent No. 8 on the property in question. They have been provided with transit accommodation. The question as regards the eligibility of the petitioner to the allotment of alternate accommodation in the slum rehabilitation scheme has been decided by the Slum Rehabilitation Authority by the impugned order dated 17th October, 2002. The claim of the petitioner has been rejected. The Slum Rehabilitation Authority has taken due cognizance of the fact that the name of the father of the petitioner is shown in the certificate dated 3rd August, 1988 of the co-operative housing society in two places viz. at Sr. No. 64 and 71. The name of the petitioner, it has been stated, was not included because on 3rd August, 1988 the petitioner was a minor. The Slum Rehabilitation Authority has taken due note of the fact that the father of the petitioner had acquired the room bearing No. 10-4/4 on 23rd January, 1979 and that he had as a result two separate huts. The exchange by the petitioner's father with his own brother Pandurang is also noted. There is thereafter a reference to the fact that the petitioner's father had on 19th February, 1994 transferred one of the two huts to the petitioner. Having said this the authority has rejected the claim of the petitioner on the ground that the petitioner was originally a part of the joint family of his father as is evident from the ration card dated 28th April, 1983. The name of the petitioner is said to have been deleted sometime in 1997. In the

circumstances, it has been held that since there was one joint family, the entire family would be entitled to only one room. In the present case, a compilation of documents has been placed on the record by the petitioner's advocate. The compilation of documents shows that there are three censuses structures viz. Room No. 12-2/7, Room 12-3/7 and Room No. 10-4/4. The third room was acquired by the petitioner's father from the original Pitch Holder. Undoubtedly on the date when the society was formed, the petitioner was a minor and hence the name of the petitioner's father was shown as a member holding two censuses structures. However, what is material is that prior to 1st January, 1995 which is the cut off date, one of the structures is transferred by the petitioner's father to the petitioner who had by then obtained majority. In these circumstances, there is no reason why the petitioner should not be allowed the benefit of obtaining alternative accommodation in his own right in lieu of Room No. 12-2/7 which is also a censuses structure. The observation of the authority that the name of the petitioner is shown in the voters list of 1993 of the joint family is erroneous because the voters list does not refer to the status of the family either being joint or otherwise. Once it is accepted that there are three separate censuses structures, the claim of the petitioner in respect of one of those structures cannot be ignored. The petitioner's father and his uncle have already been held to be eligible.

5. The learned counsel appearing on behalf of the developer has stated that the developer would submit to the orders of the Court. In the circumstances, the impugned order dated 17th October, 2002 passed by the Slum Rehabilitation Authority is quashed and set aside. The petitioner, in the circumstances, shall be regarded as being eligible for the allotment of alternative accommodation in lieu of the censuses structure bearing No. 12-2/7. The petition is accordingly disposed of. There shall be no order as to costs.

Certified copy expedited.