

**BEFORE THE GRIEVANCE REDRESSAL COMMITTEE,
MUMBAI SUBURBAN, MUMBAI. 575.154.
[APPEAL U/S.35 (1A) OF THE MAHARASHTRA SLUM AREAS
(IMPROVEMENT, CLEARANCE AND REDEVELOPMENT) ACT, 1971].**

APPEAL NO.386 OF 2021

Mr. Suresh Subai Rajbhar.
Room no.38/11/20, Bansi Ki Chawl,
Plot no.273/274, Jawahar Road,
Ghatkopar (East), Mumbai - 400 077.

...Appellant.

V/s.

1. The Additional Collector (Enc/Rem)
& Appellate Authority, Eastern Suburbs,
L.I.C. Building, Near Churchgate,
Churchgate, Mumbai - 400 020.
2. The Assistant Municipal Commissioner
& Competent Authority, M. M. C.,
N-Ward Office, Jawahar Road,
Ghatkopar (East), Mumbai - 400 077.
3. President /Secretary,
Nalanda SRA CHSL., Plot No.273 & 274,
Damji Compound, Patel Chowk,
Ghatkopar (East), Mumbai - 400 077.
4. M/s. Everest Finap Pvt. Ltd.
Plot No.273 & 274, Patel Chowk,
Ghatkopar (East), Mumbai - 400 077.
5. Mr. Ashok Kumar Chaitar Rajbhar.
H. no.G-33, Bansi Mukadam Chawl,
Jawahar Road, Patel Chowk,
Ghatkopar (East), Mumbai - 400 077.

...Respondents.

Advocate Mr.Raman Jaybhaye present for the appellant.
Advocate Mrs.Saloni Bhise for respondent no.4.
Advocate Mr.Sahil Tarekar for respondent no.5.
None for the remaining respondents.

Hearing Date: 15.12.2022

Order Date: 05.01.2023

ORDER :-

By this appeal, the appellant challenged the impugned order dated 16.04.2018 passed by the learned Appellate

Authority i.e. Additional Collector (E&R), Eastern Suburb, in appeal No.21 of 2017 whereby said appeal has been dismissed.

1. This appeal is filed on 24.09.2021 before this Committee. Appeal was called out for hearing on 15.12.2022 wherein appellant and advocate was present and other respondents were absent in spite of due notices were served to them. Appellant's advocate advanced oral submissions in support of this appeal. After hearing the parties matter was closed for passing appropriate order.
2. Perused appellant's application and the appeal papers. The documents produced by the appellant is taken on record and perused.
3. In filing present appeal there is delay, it is therefore the appellant preferred separate application for condonation of delay. The committee issued notices to the parties for hearing of appeal and application for condonation of delay. The matter was on board dated 15.12.2022 the advocate for appellant present and none appear for the respondents. The committee considered the application for condonation of delay of 1257 days caused to appellant for filing the present appeal. The committee upon perusal of application and facts mentioned in para a. to g. of the said application, satisfied for the reasons mentioned therein and condone the delay and heard the appeal forthwith on merits. The committee heard the oral submissions of the appellant's advocate. Appeal was closed for passing order.
4. Appellant contended that, Mr.Rajbhar Chetan Farai was originally having structure bearing No.38/11/20 situated at 'Damji Compound, Patel Chowk, Ghatkopar (E), Mumbai-400077'. Mr.Rajbhar Chetan Farai and said hut No.38/11/20 shown in the Annexure-II at Sr. No.282 and declared him as Eligible on 29/05/2000 by the Respondent No.2. Further, Mr.Rajbhar Chetan

Farai died in 'Kurihar Village, Azamgadh, State of Uttar Pradesh' on 11/05/1998, which the same has been admitted by the Respondent No.5 and other members of the family of the Deceased. Therefore, the name of the Deceased could not have been shown in the Annexure-II at sr. No.282 which was certified on 29/05/2000 which was 2 year after the death of the deceased Mr.Rajbhar Chetan Farai. The Appellant states that, structure bearing No.38/11/20, situated at 'Damji Compound, Plot No. 273/274, Bansi Ki Chawl, Jawahar Road, Ghatkopar (E), Mumbai- 400077' was sold on 17/01/2001 by Smt.Manjari widow of Late Rajbhar Chetan Farai for the consideration of Rs.1,30,000/- (Rs.One Lakh Thirty Thousand Only) to the Appellant and executed Sale Deed, Power of Attorney, Affidavit in favour of the Appellant. The copies of the said Sale Deed, Power of Attorney. The Appellant states that, Smt. Manjari Widow of Rajbhar Chetan Farai gave Affidavit Cum Declaration-Cum-NOC wherein it has been clearly mentioned that her name is also Smt.Somadevi and she is refer as Manjari also and which has been executed by her by putting thumb impression. The Appellant states that, after execution of the said document in respect of the hut No.38/11/20, said hut has been handed over to the Appellant on 17/01/2001. The Appellant states that, Respondent No.5 and his Mother and other family members were never residing in the said hut and the Appellant was the actual occupant within the meaning of Section 2(e) of the Slum Act, and occupier is protected under Slum Act, 1971 and he shall get benefits of the said Shum Rehabilitation Scheme. The Appellant states that, at the time of the execution of the said Sale Deed and other documents Smt.Manjari widow of Late Rajbhar Chetan Farai and Respondent No.5 has handed over the original Electricity Bills, Photo Pass and Rent Receipt issued by the Respondent No.2 in respect of the said Hut Premises 38-11-20 to the Appellant. The Appellant states that, after the possession of the said hut

premises the appellant has made an application to the BSES LIMITED for transfer of the Electricity Meter bearing No.1607364 in the name of the Appellant and the BSES Limited has issued receipts. The Appellant states that, BSES Limited has transferred said Meter No.1607364 in the name of the Appellant and issued Electricity bill name of the Appellant in respect of Hut No.38-11-20. The Appellant states that, he has also apply for obtaining Ration Card to concerned Authority and the said Authority has issued Ration Card bearing No.SD.771352 in the name of Appellant in respect of the Hut No.38-11-20 situated at 'Bansi Ki Chawl, Jawahar Road, Ghatkopar (E), Mumbai-400077'. The Appellant states that, at the instance of the Respondent No.3 and 4 and with the belief that the Appellant would be given permanent alternate accommodation and his name would be shown in Annexure-II at sr. No.282 wherein the name of Rajbhar Chetan Farai deceased would be deleted and the name of the Appellant would be incorporated. The Appellant states that the Developer and Society has executed Individual Agreement with Appellant and also appellant has executed consent in favour of the Respondent No.3 and 4 and various document signed by Appellant in favour of the Respondent No.3 and 4. The Appellant states that, in the year 2008 the Secretary - Slum Rehabilitation Authority has re-verify and Re-certify the said Annexure-II and preferred Annexure-II in his office without side visit of the Society and name of the dead person Late Rajbhar Chetan Farai kept as it is in the Annexure-II. If the Secretary, Slum Rehabilitation Authority conduct the site visit name of the appellant shall included in the Annexure-II at sr. No.282. The Appellant states that, on 21/08/2009 the Appellant made an application along with all required documents to office of the Respondent No.2 for delete name of the late Mr.Rajbhar Chetan Farai from the Annexure-II at Sr. No.282 and name of the Appellant included in the Annexure-II but the Respondent No.2

has not to do so and replied on 29/08/2009. The Appellant states that, the said Hut bearing No.38- 11-20 was given for smooth implementation of the said Slum Rehabilitation Scheme by the Appellant and for which the hut was demolished and appellant given amount of Rs.1,32,000/- as rent for a period of 11 months alternate temporary accommodation by way of Cheque bearing No. 000376, dated 15/01/2014 drawn upon HDFC Bank and the Appellant has signed one letter addressed to Society. The Appellant states that on 07/01/2014 the Appellant has written letter to the Respondent No.2 delete name of late Mr.Rajbhar Chetan Barai from the Annexure- II at sr. No.282 and included his name in the Annexure-II declare his as Eligible but the Respondent No.2 has not taken any steps on the said application. The Appellant states that, the Respondent No.5 has not intended to commit fraud upon the Society, Developer, SRA and also the Appellant by making false claim of permanent Rehabilitation tenements under the SR Scheme and the fraud of the respondent no.5 after giving possession and selling the structure to the appellants as on 17/01/2001, illegally claim that the Respondent No.5 should be given permanent alternate accommodation only on the basis that the name of the deceased father of the Respondent No.5 Rajbhar Chetan Farai is shown in the Annexure-II at sr. No.282 as Eligible. The Respondent No.5 is one of the witnesses to the Agreement for sale and admitted that possession was never with them. The Respondent No.5 made various claim and allegations prior to 2014 and after being aware that the structure was given by the Appellant for demolition making claim for rent when the Respondent no.5 was never entitle for alternate accommodation under the Scheme. The Appellant states that, Respondent No.5 filed petition bearing No.1033 of 2014 before the Hon'ble High Court for seeking letter of Administration only for the purpose of making claim that the Respondent No.5 is surviving legal heir of the deceased Rajbahr Cheta Farai

wherein reference of the structure which is shown to value at Rs.15,000/- has been given. The Appellant states that, the Respondent No.5 concealed material facts in the petition 1033 of 2014 filed before the Hon'ble High Court on the testamentary and intestate jurisdiction and did not intimate that the structure which shown to be value at Rs.15,000/- and shown to be in possession of the Respondent No.5 when admittedly the said structure was sold to the appellant as per the documents transfer dated 17/01/2001 and therefore the Respondent No.5 was never in possession of the said structure and could not have referred to the said structure which was never in the legal physical possession of the Respondent No.5, hence it was fraud upon the Hon'ble Court. The Appellant states that the Respondent No.5 obtained letter of administration showing that he is the legal surviving heir of the deceased Rajbhar Chetan Farai and copy of the Letter of Administration issued under the Testamentary and Intestate Jurisdiction of the Bombay High Court. The Appellant state that on 2/3/2016 the respondent no.5 has made an application to the Deputy Collector Slum rehabilitation Authority as per Circular no.152 for insert the name of the respondent no.5 in the Annexure II Sr.no 282. The Deputy Collector SRA has issued an order on 11/01/2017 in respect of the same. The Appellant states that, the Respondent No. 5 thereafter made application to the Assistant Registrar- Slum Rehabilitation Authority for claim of the Rent from the Developer in respect of the structure which has been demolished in year-2014 and the Registrar- Co-operative Society has issued Notice. The Appellant states that, the Respondent No.5 making false claim when admittedly he was never in legal and physical possession of the said hut premises and when the said hut was sold and transferred and assigned and possession given to the appellant who was in possession of the said structure since 2001 up to 2014. When said hut was given to the society and the Developer

for smooth implementation of the Slum Rehabilitation Scheme. The Appellant state that, appellant has challenged said Letter of Administration by way of Misc. Petition No.65 of 2017 and the Hon'ble High Court has granted liberty to the petitioner to approach the GRC for establishing his Eligibility. The Appellant state that, the respondent no.4 is not entitled for any claim of eligibility as the provision of clause 1.5 of the appendix IV to the annexure of D.C Regulation 33 (10) and wherein it has been clearly stated that "A certified extract of the relevant electoral roll shall be considered adequate evidence to establish the eligibility of a person provided he is found residing in the structure. This is to avoid possibility of persons who have left the structure coming back to claim free tenement under the scheme even though they have in normal course left the slum and gone away into a proper non slum area or out of brihan mumbai". This would clearly bring on record that the respondent no.5 cannot be considered as eligible under the SR scheme and his name cannot be incorporated in place of the deceased Rajbhar Chetan Farai who died in 1998 in Azamgadh U.P and prior to certification of the Annexure-II which was certified by the respondent no.2, BMC on 29.05.2000. The Appellant states that, the Respondent No.4 Developer has filed written submission along with documents before the lower Authority and supported to the Appellant and also given proper information regarding the said hut premises. The Appellant states that, the Respondent No.5 has been allotted Room No.1116 for permanent alternate accommodation in the lottery conducted by the Society but Possession of the said room premises has not been handed over to the Respondent No.5. Being aggrieved and dissatisfied with the same, the appellant preferred present appeal before this committee, praying to quash and set aside the order passed by the appellate authority and direct the competent authority to



declare the appellant as eligible by considering the documents submitted by the appellant.

5. Respondent no.5 submitted written submissions as well as also submitted list of documents wherein he has submitted ten number of documents such as in respect of suit and appeal from order which is preferred by the parties before the Hon'ble Court. Respondent specifically taken objection as the present appeal is misjoinder and non-joinder of necessary parties as well as the present appeal is misconceive of law as the appellant already filed suit before the Civil Court challenging the order in the impugned order, the appellant suppress various facts from this Court hence appeal filed by the appellant may be required to be dismissed. The respondent further contended that, the appellant claiming the right over the structure on the basis of false and fabricated documents hence appellant not entitled to get the benefit as claimed in the present appeal. Petitioner, suit were decided by the Hon'ble Court and City Civil Court. Considering this facts, the respondent no.5 pleaded that the appeal preferred by the appellant is required to be dismissed as the same is without merit.
6. This committee gone through the appeal papers and documents submitted by the appellant and after hearing the appellant, this committee is required to consider whether the impugned order passed by the appellate authority is legal or not? It is important to note here that, in the present proceeding, the appellant want to be included his name in the annexure-II instead of the dead person namely Rajbhar Chetan Farai after his demised by order of 2017 by the Deputy Collector, SRA recorded the name of respondent no.5 herein. Claim of appellant is the legal heir of Rajbhar Chetan Farai were executed documents by which they have transferred the rights and title of the structure in question to the appellant in the

year, 2001. Since that date, the appellant is using and occupying the said structure. The appellant further contended that after taking the possession of he said structure, appellant got noted his name at various places were to show the appellant was using the said structure. The developer also executed individual agreement as per the slum policy with the appellant. The respondent no.5 claims to be the legal heir of Rajbhar Chetan Farai got testimony order from the Hon'ble Bombay High Court. Said order was challenged by the appellant by filing appropriate proceeding before the Hon'ble Bombay High Court. The Hon'ble Bombay High Court by order dated 08.08.2017 directed the parties to establish their claims before the Grievance Redressal Committee and appropriate authority by filing appropriate proceeding and contentions of the parties were kept open. Thereafter, the present appeal seems to be filed by the appellant before this committee. The respondent no.5 strongly objected in the present appeal by filing written say and various documents such as copy of civil suit, copy of office of orders since civil suits orders passed by the Hon'ble Bombay High Court in appeal their orders etc.

7. It is important to note here that, Hon'ble City Civil Court rejected the notice of motion of the appellant on the ground the suit is hit by the provisions of the section 42 of the slum Act hence as the issue which is pending before the Hon'ble City Civil Court and Hon'ble Bombay High Court is completely different as issue of eligibility is required to be decided by the competent authority as per the provisions of the slum Act and the said issue cannot be decided by the Civil Court. It is further important to note here that, since the instructions, the documents which is claimed by the appellant which is executed by the respondent no.5 and legal heir of Rajbhar Chetan Farai executed in the year, 2001 was not challenged by any of the party /respondent in the present

appeal before any of the Civil Court which establishes the right of appellant over the said structure. The appellant produced ample of documents wherein after purchased of the said structure, he got included his name in the electricity record, voter identity card etc. in respect of said structure.

8. It is further important to note here that, the respondent no.4 is the developer of the said property has filed reply before the appellate authority as well as before this committee and contended that, the appellant herein is occupying the said structure from the date of purchase and the respondent no.5 or other legal heir of Rajbhar Chetan Farai were not residing since that date. The respondent no.4 further filed letter of possession showing the permanent alternate accommodation was handed over to respondent no.4 as per order dated 11.01.2017 passed by the Deputy Collector, SRA. In the present appeal the issue of eligibility is required to be considered from the documents submitted by the parties. As the appellate authority, this committee is not having mechanism to verify the documents which were submitted by both the parties in the present appeal as same is required to be verified by the competent authority from the concern department. As such, this committee is of the view that, the documents which were produced by the parties are various in numbers and those documents are required to be verify in proper prospective as the issue of hutment right of the parties is required to be decided and the same cannot be decided in hastily or hurriedly manner.
9. It is therefore, this committee is of the view that the orders passed by the appellate authority is required to be quashed and set aside and matter is required to be remanded back before the competent authority for deciding the claim of appellant freshly. Hence, following order is passed.

ORDER

1. The appeal No.386 of 2021 is partly allowed.
2. The order dated 16.04.2018 passed by the appellate authority in appeal No.21 of 2017 is hereby quash and set aside.
3. The matter is remanded back before the competent authority for taking fresh decision.
4. No order as to costs.
5. Order shall communicated to all concern.

Sd/-

(Ramdas Khedkar)
(Addl. Collector, Mumbai City)
Chairperson,
Grievance Redressal Committee,
Mumbai Suburb.

Sd/-

(Vishal Deshmukh)
Jt. Chief Officer, MHADA,
Member,
Grievance Redressal Committee,
Mumbai Suburb.

sd/-

(Sanjog Kabare)
Dy. Municipal Commissioner, MCGM.
Member,
Grievance Redressal Committee
Mumbai Suburb.

सत्य प्रत
प्रबंधक, 28/03/23
तक्रार निवारण समिती,
(मुंबई उपनगरे)