

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 3743 OF 2010

Tukaram Tanu Juvale, (Since deceased ...Petitioners
through legal heirs) and Ors.

Versus

The Additional Collector, Mumbai City, State ...Respondents
Of Maharashtra And Ors.

Ms. Tanaya Patankar a/w Ms. Prachiti Naik i/b Mr. Sanjay Gawade for
the Petitioners.

Ms. Savina Crasto, AGP for Respondent Nos. 1, 2 and 4.

Mr. D.R. Nalawade for Respondent No.3/SRA.

CORAM : M.M. SATHAYE, J.

DATE : 22nd JULY, 2026

P.C. :

1. Heard learned Counsel for the parties. Perused the record. During the pendency of the petition, the original Petitioner has expired and his son and daughters are brought on record as Petitioner Nos. 1A to 1C.

2. Invoking Articles 226 and 227 in the Constitution of India, the original Petitioner ('deceased Tukaram' for short) has challenged the Judgment and Order dated 31.08.2009 passed by Administrator & Divisional Commissioner, Konkan Division, Mumbai, dismissing/disallowing his Appeal/Desk/Slum-499/2006, thereby confirming the order passed by Additional Collector, Mumbai City dated 04.10.2006 ordering eviction of deceased Tukaram and his alleged tenant under provisions of Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971. ('Slum Act' for short).

SNEHA
NITIN
CHAVAN

Digitally signed
by SNEHA
NITIN CHAVAN
Date: 2026.07.22
19:47:23 +0530

BACKGROUND

3. The Petitioner, deceased Tukaram is the original allottee of slum rehabilitation tenement No. 1/507 in Sundernagar Co-operative Housing Society at Dadar, Mumbai ('subject-tenement' for short). A complaint was filed by one Mr. Suresh Gangaram Pawar in respect of the said society, alleging that unauthorized persons are occupying slum rehabilitation tenements and the original allottees have transferred them illegally. Pursuant to said complaint, Respondent No. 3 - Slum Rehabilitation Authority (SRA) conducted survey of the said society in June 2006 and on finding mother of one Mr. Nandkumar Dattatray Hegishte in the subject-tenement, concluded that Shri. Nandkumar is the tenant of deceased Tukaram inducted in breach of provisions of Slum Act.

4. An order was passed by the Respondent No.1 Additional Collector, Mumbai City on 04.10.2006. In the said order, the gist of the survey, in as much as, name of original allottee, tenement number, person found in possession, explanation offered by the allottee and conclusions were recorded in tabular form. Under Item No. 32, the details of subject-tenement can be found. It is noted in the said order that for subject-tenement allocated to deceased Tukaram, Shri. Nandkumar Dattatray Hegishte is found in possession as tenant. This conclusion is drawn after considering the reply/representation given by daughter of the Petitioner viz. Shubhangi Juvele (Petitioner No. 1C) dated 28.07.2006 urging that she is residing with her father in the subject-tenement and Shri. Nandkumar Hegishte is their relative, who has no place to stay in the Mumbai and therefore, staying with them temporarily. Holding that this amounted to breach of Regulation No. 1.18 of Appendix IV DCR 33(10) of the Development Control

Regulations for Greater Bombay, 1991, an order of eviction was passed directing removal of the person found in possession and returning it to the authority.

5. The Petitioner filed aforesaid appeal under Section 35 of Slum Act, challenging the order of eviction. In the said appeal, the Petitioner filed an affidavit sworn by Mr. Nandkumar Dattatray Hegishte in support of his contention. The Appellate Authority by impugned judgment and order has dismissed the appeal and confirmed the order of eviction.

6. In these circumstances, the petition is filed, which was admitted on 21.10.2010 and the effect of eviction order confirmed by the impugned order was stayed. As a result, admittedly, the order of eviction has not been implemented and the Petitioners have been protected.

SUBMISSIONS

7. Learned counsel for the Petitioner submitted that the conclusion drawn by the authority that Mr. Hegishte is a tenant of deceased Tukaram (allottee) is not based on any documentary evidence. She submitted that simple visit and survey cannot be held as sufficient to hold that subject-tenement has been illegally transferred. She submitted that no proof of alleged tenancy is on record to take harsh action of eviction. She further submitted that at the relevant time when eviction order was passed as also during pendency of the petition, society maintenance bills in respect of subject-tenement is being issued in the name of Petitioner or his heirs. She further submitted that the affidavit filed by Mr. Hegishte which is referred to in the impugned order, is not properly appreciated. She relied on the judgment of **Dipak**

Banerjee versus Lilabati Chakraborty, (1987) 4 SCC 161 in support of her submission that to establish any sub-tenancy, exclusive possession of sub-tenant, exchange of consideration and tenant retaining no control over the premises are all necessary. She further relied upon the judgment of **Rajendra R. Vishwakarma versus State of Maharashtra and ors (WP 3094 of 2018 Judgment dated 26.03.2019)** in support of her submission that it is only after finding documentary evidence in support of the breach, that this Court has permitted eviction.

8. On the other hand, learned Counsel for Respondent no. 3 submitted that the survey was initiated on receiving complaint about illegal transfer of tenements. He submitted that when the survey was conducted, none of the allottee or his family members were found in the tenement and admittedly mother of third person Mr. Hegishte was found, who has answered some queries. He submitted that even in the affidavit of Mr.Hegishte, he has admitted that his mother was occupying the premises at the time of survey. He submitted that SRA and actions of rehabilitation taken thereunder being outcome of a beneficial legislation, illegal transfers of rehabilitation tenements should not be permitted and the action of its officers and impugned order are justified. Relying on Section 3E of the said Act, he submitted that the restriction on transfer of tenement covers transfer by sale, gift, exchange, lease or otherwise and therefore, the present case is duly covered by 'lease/otherwise' transfer.

9. None appeared for Respondent Society to oppose the petition.

REASONS AND CONCLUSION

10. I have considered the rival submissions carefully and perused

the record including impugned order and other material.

11. At the outset, it is necessary to note that the restriction stated in Section 3E is against transfer of tenement by the allottee. Therefore, whether the tenement is transferred or not is the key aspect that will have to be seen, before considering its effect i.e. eviction. Perusal of the impugned order indicates that the affidavit of Mr. Hegishte dated 28.07.2006 was considered by the Appellate authority. In the said affidavit, Mr. Hegishte has stated on oath that since he or his family have no place to stay in Mumbai, at the relevant time, he was residing with his relative - deceased Tukaram/allottee in the subject-tenement without paying any rent. He has stated that at the time of survey, the Petitioner was taken to Doctor by his family members and he was out due to service and his illiterate mother was at home, who was asked certain questions. In short, Mr. Hegishte has asserted that he is not a tenant.

12. The Appellate authority has noted in the impugned order that when Mr. Hegishte's mother was found in the tenement at the time of survey, she could not reply many questions asked during survey and Mr. Hegishte was recorded as tenant by the concerned Officer.

13. Learned Counsel for the Petitioner has pointed out that in May 2006 itself wife of deceased Tukaram had expired and therefore, when survey was conducted in June 2006, Petitioner's wife was no more. Learned Counsel for the Petitioner also relied on the maintenance receipt issued by the Society dated 05.01.2007.

14. It is the case of the Petitioner, supported by affidavit of Mr.

Hegishte that on the date of survey, Petitioner was not well and was taken to doctor. It cannot be found either from the eviction order or the impugned order, what documentary evidence was available on record to even indicate that the subject-tenement 'has been transferred' in favour of Mr. Hegishte. No documentary proof of tenancy or any other transfer, is on record.

15. In **Dipak Banerjee (supra)**, a judgment arising out of Rent Control Legislation, while dealing with the aspect of sub-letting, the well established principles are reiterated by the Hon'ble Supreme Court that for subtenancy to be held as proved, exclusive possession on the part of subtenant, lack of control of tenant over premises and exchange of consideration are necessary to be established. In the present case, the concerned Housing society has not appeared to oppose the petition. The Society has issued maintenance receipt for July 2006 in favour of the Petitioner. It is not brought on record that the maintenance receipt is being issued in somebody else's name. No exchange of consideration between deceased Tukaram and Mr. Hegishte is brought on record. There is nothing on record to show that Mr. Hegishte was or is paying anything to the Petitioner or his family members. Hence, it is difficult to accept that the deceased Tukaram as original allottee had lost control over the said tenement at relevant time.

16. In the judgment of **Rajendra R. Vishwakarma (supra)** this Court was dealing with similar situation of an allotted tenement under SRA, being transferred and exploited for commercial purpose resulting into breach. It is recorded in the said judgment that the Grievance Redressal Committee had on record documents which were produced by the Authority which indicated clearly that the allottee had sold the

same in favour of third person and the third person had amalgamated the tenement and was exploiting it for commercial purpose. In the teeth of concrete documentary evidence, the order of eviction was maintained. Learned Counsel for the Petitioner is right in her submission that the breach of Section 3E of the said Act will be concluded if there is documentary evidence to substantiate the basic ingredient of transfer. In the present case, since there is no such document on record to even remotely suggest that tenancy is created in favour of Mr. Hegishte, in my view, the direction of eviction could not have been sustained.

17. It has come on record that the complaint which was received triggering the survey, was subsequently withdrawn. This fact is recorded in the impugned order itself.

18. In the aforesaid facts and circumstances, the impugned order confirming eviction, cannot be sustained and the petition deserves to succeed.

19. **Accordingly, the writ petition is allowed and Rule is made absolute**, thereby setting aside the impugned order dated 31.08.2009. The Petitioner's Appeal No. 499 of 2006 is allowed and impugned order dated 04.10.2006, so far as it relates to the subject-tenement, is set aside. No order as to costs.

20. All concerned to act on duly authenticated or digitally signed copy of this order.

(M.M. SATHAYE, J.)