

AGK

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.9247 OF 2016

Chhaya Kashinath Shinde,

Age 55 years, Occu.: Housewife,

Residing at Flat No.408, 4th Floor,

Kushinara CHS Ltd., Chuim Village,

Dr. Ambedkar Road, Khar (West),

Mumbai 400 052 through her

Constituted Power of Attorney Nitin P. Patel

... **Petitioner**

Vs.

1. The State of Maharashtra, through
the Additional Collector (ENC & R),
Administrative Building, 7th Floor,
Bandra (East), Mumbai 400 051

2. The Deputy Collector,
SRA Grihanirman Bhawan,
Room No.68, Kalanagar,
Bandra (East), Mumbai 400 051

3. Hiteshi Dinesh Tank,
Adult, Flat No.408, 4th Floor,
Kushinara CHS Ltd., Chuim Village,
Dr. Ambedkar Road, Khar (West),
Mumbai – 400 052

4. Sushant Gajanan Ruke,
Age 41 years, Occu.: Service,
Residing at Amrut Nagar,
Khairwadi Road, Bandra (East),
Mumbai – 400 051

... **Respondents**

Mr. Mahesh Tiwari with Mr. Hitesh Gupta for the
petitioner.

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Smt. S.D. Chipade, AGP for respondent No.1-State.

Ms. Tanaya Goswami for respondent No.2-SRA.

Mr. Habibur Rehman Ansari for respondent No.3.

Mr. Vinod P. Sangvikar with Mr. Shubham Sonawale,
Ms. Saima S. Shaikh and Ms. Sanika R. Said for
respondent No.4.

CORAM : AMIT BORKAR, J.

RESERVED ON : JULY 27, 2026.

PRONOUNCED ON : JULY 31, 2026

JUDGMENT:

1. By the present writ petition under Articles 226 and 227 of the Constitution of India, the petitioner is challenging legality and validity of the impugned order dated 18 June 2016 passed by respondent No.1 in Appeal No.405 of 2015.

2. Facts and circumstances giving rise to the filing of the present writ petition, as narrated by the petitioner, are as under. On 24 March 1971, Shivram Ruke, who was the grandfather of respondent No. 4, expired. In the year 1976, a photopass was issued in the name of Vithabhai Shivram Ruke, who was the original occupant. On 16 September 1981, Vithabhai Shivram Ruke, the grandmother of respondent No. 4, expired. In the year 1994, the petitioner's name came to be shown as an eligible person at Serial No. 34 in Annexure II. On 30 May 2000, Gajanan Shivram Ruke, who was the father of respondent No. 4, expired.

3. On 25 September 2002, a revised Annexure II was prepared, in which the petitioner's name was shown as an eligible person at

Serial No. 35. In the year 2008, Flat No. 408 on the 4th floor of Kushinara CHS, Chuim Village, Khar (West), Mumbai 400 052, situated on CTS Nos. D 998, D 1078 and D 1013, was allotted to the petitioner. On 6 July 2008, respondent No. 4 filed an application under the Right to Information Act asking for the document on the basis of which the petitioner was shown as the nominee of the original occupant. On 10 September 2009, the concerned authority replied that no such record was available.

4. After that, on 10 September 2009 the petitioner executed a Power of Attorney in favour of Nitin Patel. Under the said document, possession of the flat was also given to Nitin Patel so that he could stay there along with his family. On 23 December 2009, the Deputy Collector sent a letter to the petitioner asking for the original documents. However, the letter was returned with the remark "LEFT NOT KNOWN." On 3 February 2015, respondent No. 3 started staying in the petitioner's flat as a tenant. On 11 May 2015, Sunita Gajanan Ruke, who is the mother of respondent No. 4, along with respondent No. 4, made complaints alleging that the petitioner had transferred the flat in breach of the law. On 30 July 2015, the Inspection Officer submitted a report recording the statement of respondent No. 3 that she was residing in the flat on rent.

5. On the same day, respondent No. 2 passed an order in Application No. 12 of 2015 directing that the flat should be vacated within ten days. Thereafter, Nitin Patel, acting as the Power of Attorney holder of the petitioner, filed Appeal No. 407 of 2015 before respondent No. 1 challenging the order dated 30 July

2015 passed in Application No. 12 of 2015.

6. On 18 June 2016, respondent No. 1 rejected Appeal No. 407 of 2015 by the impugned order. On 3 August 2016, respondent No. 2 again visited the flat and issued a letter directing that vacant possession should be handed over.

7. On 4 August 2016, the present Writ Petition came to be filed by Nitin Patel, acting as the Power of Attorney holder of the petitioner, challenging the impugned order dated 18 June 2016. At some point of time, though the exact date is not available on record, Kushinara CHS issued a No Objection Certificate stating that Nitin Patel had been residing in the petitioner's flat for many years.

8. Learned Advocate for the petitioner submitted that the Appellate Authority failed to properly consider that the original occupant had been allotted the flat in place of her old premises after verification of the relevant documents and after following the prescribed procedure. It was submitted that this important aspect was not given due consideration while passing the impugned order. It was further submitted that the Appellate Authority failed to appreciate that the Society, in its reply dated 3 April 2015, had stated that the petitioner had not sold the flat. According to the petitioner, this showed that there was no transfer of the flat by way of sale.

9. Learned Advocate further submitted that it was the duty of the office of respondent No. 2 to conduct a proper and fair inquiry without any bias or predetermined view and to place a correct

report before the competent authority. It was argued that, in such circumstances, the Appellate Authority ought not to have passed the impugned order without properly considering the report submitted by the Trial Authority. It was also argued that the Appellate Authority did not correctly appreciate the provisions of Section 3E of the Act. According to the petitioner, the said provision only prohibits an allottee from transferring the tenement by way of sale, gift, exchange, lease or otherwise for a period of five years. It was submitted that neither the investigating authority nor respondent No. 4 had produced any document to show that the petitioner had transferred the flat to respondent No. 3 or to any other person by any such mode. Therefore, according to the petitioner, the provisions of Section 3E were wrongly applied.

10. The petitioner further submitted that the Appellate Authority ought to have called for and considered the investigation report of respondent No. 2 before deciding the appeal. It was argued that no such report was called for, though it was necessary for deciding the dispute properly. It was also submitted that the Appellate Authority failed to consider the report of the Society, which, according to the petitioner, supported the petitioner's case. Learned Advocate further argued that the impugned order does not discuss or deal with the various defences raised by the petitioner. According to the petitioner, the Appellate Authority was required to consider each of those defences before arriving at its conclusion. Lastly, it was submitted that respondent No. 2 failed to appreciate that, in the absence of any document showing sale, gift, lease, exchange or any other recognised mode of transfer, no right, title or interest in

the flat could have passed in favour of respondent No. 3 or any other person. It was therefore argued that the finding that there was an illegal transfer of the flat was not supported by any documentary material.

11. Learned Advocate for respondent No. 4 submitted that the original occupant of the hut situated at Dhanda, Chuim Village, Khar (West), was his grandmother, Smt. Vithabai Shivram Ruke. It was submitted that in the year 1976, the Tahsildar (Encroachment), Andheri No. 1, had issued Photopass No. 35020 in her favour. Thereafter, after completion of the necessary process, a supplementary Photopass bearing No. 56230 was also issued in her name. It was further submitted that the petitioner, by playing fraud upon the authorities, got her name entered in Annexure II and thereafter obtained possession of Room No. 408, as described in the cause title, sometime in the year 2003. According to respondent No. 4, the petitioner's name was wrongly included in the rehabilitation records and the allotment of the flat was obtained on the basis of such fraudulent entry. Learned Advocate further submitted that on 5 May 2015, the inspecting officer inspected Room No. 408 and found that respondent No. 3, Ms. Hiteshi Dinesh Tank, was residing in the said premises. It was submitted that during the inspection, respondent No. 3 did not furnish any further information regarding her occupation of the flat. On the basis of the inspection, the Assistant Registrar (S.R.A.) submitted a report to the Deputy Collector (S.R.A.) by letter dated 11 May 2015. It was lastly submitted that, after considering the inspection report, the Deputy Collector (S.R.A.) forwarded his

report to the Deputy Collector (Encroachment/Removal) stating that the original allottee was not residing in the allotted premises. On that basis, it was recommended that proceedings for eviction under Section 3E(2) of the Act be initiated against the concerned persons by communication dated 1 June 2015.

FINDING AND REASONS:

12. I have carefully gone through the pleadings, documents placed on record, impugned orders, submissions advanced by the learned Advocates for all parties and the judgments relied upon by them. From the material, it appears that the dispute before this Court is not regarding ownership or title of the flat. The limited issue which requires consideration is whether the authorities were justified in holding that the petitioner had transferred the rehabilitation tenement in breach of Section 3E of the Maharashtra Slum Areas (Improvement, Clearance, and Redevelopment) Act, 1971 and whether the impugned orders suffer from any legal error calling for interference.

13. Learned Advocate for the petitioner submitted that there is no registered document showing any sale, gift, exchange, or lease in favour of respondent No. 3 or any other person. It was further argued that even the Society, in its reply dated 3 April 2015, admitted that the petitioner had not sold the flat. It was also submitted that the inquiry conducted by the authorities was not proper, and the Appellate Authority passed the impugned order without independently considering the investigation report, the Society's report and the various defences raised by the petitioner.

According to the petitioner, unless there is documentary material showing transfer, Section 3E could not have been applied.

14. These submissions, in my view, cannot be thrown away at the beginning. The record does show that no registered deed of sale, gift, exchange, or lease has been produced before the authorities. The Society's reply also records that the flat was not sold by the petitioner. Therefore, to that limited extent, the submission of the petitioner that there is no completed transfer by any registered document does receive some support from the record. However, that is not enough for deciding the controversy. Section 3E does not stop only with the words "sale, gift, exchange, lease". The Legislature has further used the expression "or otherwise". Therefore, while deciding the issue, the meaning and effect of these additional words is also required to be understood.

15. Section 3E of The Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971 reads as under:

“3E. Restrictions on transfer of tenements. - [(1) The tenements allotted to the persons under the Slum Rehabilitation Scheme shall not be transferred by the allottee thereof by way of sale, gift, exchange, lease or otherwise for a period of first five years commencing from the date of allotment of the tenement. After the expiry of the said period of five years, the allottee may, with the permission of the Slum Rehabilitation Authority, transfer such tenement in accordance with the prescribed procedure.

(2) If the tenement is transferred by the allottee in contravention of the provisions of sub-section (1), the Competent Authority shall, by order, direct the eviction of the person in possession of such tenement in such manner

and within such time as may be specified in the order, and for the purpose of eviction, the Competent Authority may use or cause to be used such force as may be necessary: Provided that, before issuing any order under this sub-section, the Competent Authority shall give a reasonable, opportunity to such person to show cause why he should not be evicted therefrom.”

16. Section 3E of the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971 appears to have been brought on the statute for a particular object. From reading the scheme of the Act, it seems that the Legislature wanted the rehabilitation tenements given under the Slum Rehabilitation Scheme to remain with the actual beneficiaries for whom the Scheme was made. These tenements are not like flats available in the open market where a person can purchase or sell them according to his wish. They are given under a welfare scheme to provide accommodation to slum dwellers who lose their houses because of redevelopment. Therefore, the benefit of such allotment appears to be meant for the allottee and his family and not for making money by transferring the premises to somebody else. If the allottee is allowed to hand over the rehabilitation tenement soon after getting possession, then with passage of time the object of the rehabilitation scheme may become meaningless. The original beneficiary may no longer stay there and another person, who was never found eligible under the Scheme, may begin to enjoy the same benefit. Such practice may convert rehabilitation tenements into commercial properties. It therefore appears that Section 3E has been inserted so that rehabilitation tenements continue with the persons for whom they were originally meant

and the statutory benefit is not diverted through different kinds of arrangements.

17. Sub-section (1) places a statutory restriction upon every allottee of a rehabilitation tenement. It provides that such tenement cannot be transferred during the first five years from the date of allotment. This restriction is not confined only to sale. The Legislature has used wider language by providing that the tenement shall not be transferred "by way of sale, gift, exchange, lease or otherwise." These additional words cannot be ignored because every word used by the Legislature is presumed to carry some meaning. If the Legislature intended only to prohibit sale or lease, then there was no necessity of adding the words "or otherwise". Their inclusion indicates that the prohibition is intended to cover not only legal methods of transfer but also other arrangements through which the allottee may part with possession or enjoyment of the rehabilitation tenement. Therefore, while interpreting this provision, the Court cannot confine itself to registered sale deeds or lease deeds. The Court is required to see the effect of the transaction and whether another person has been allowed to enjoy the tenement. The restriction continues during the first five years because the Legislature wanted the allottee to remain in occupation and receive the benefit of rehabilitation. Even after completion of five years, the allottee does not get an unrestricted right to transfer the premises. Permission of the Slum Rehabilitation Authority is still necessary, and the prescribed procedure has to be followed. This indicates that the Legislature intended to maintain supervision over transfers even after expiry

of the lock-in period so that the object of the rehabilitation scheme is not defeated.

18. Sub-section (2) provides for the consequence if the restriction contained in sub-section (1) is violated. If the Competent Authority, after considering the available material, comes to the conclusion that the allottee has transferred the rehabilitation tenement contrary to the prohibition, it is empowered to direct eviction of the person found in possession. Such consequence is serious because it may result in loss of possession of the rehabilitation premises. At the same time, the Competent Authority cannot pass an eviction order merely because a complaint has been received or because some suspicion has arisen. Before taking such action, the statute requires that a reasonable opportunity must be given to the concerned person to show cause. The authority has to consider the explanation, examine the documents and other material produced by both sides and satisfy itself whether there has been a prohibited transfer. After such satisfaction can an eviction order be passed. Thus, while the Act gives powers to protect the rehabilitation scheme, it requires that those powers should be exercised after following the principles of natural justice.

19. On careful reading of Section 3E, it appears that the scheme proceeds in three separate stages. At the first stage, the Competent Authority has to examine the material available on record and determine whether there has in fact been a transfer prohibited under Section 3E(1). Such satisfaction must be based on material from which it can be inferred that the allottee has parted with

possession of the rehabilitation tenement. At the second stage, before recording any adverse finding, the affected person has to be given a reasonable opportunity of hearing. At the third stage, after considering the explanation and recording satisfaction that there has been a prohibited transfer, the Competent Authority may exercise its power of eviction against the person found in possession.

20. The object of Section 3E is not confined only to preventing direct transfers through registered sale deeds, gift deeds or lease deeds. The Legislature has adopted wider language so that indirect methods of transferring the rehabilitation tenement also do not escape the prohibition. It is for this reason that the expression "or otherwise" has been used after mentioning sale, gift, exchange and lease. These words enlarge the scope of the provision and require the Court to examine the real nature of the transaction. A person may not execute a registered sale deed and yet may hand over possession of the rehabilitation tenement to another person through some arrangement. If such arrangements are excluded from the scope of Section 3E because no registered conveyance exists, then the purpose of the provision may be defeated. Therefore, while considering an alleged breach of Section 3E, the Court has to see the effect of the arrangement. If the allottee has parted with possession of the tenement during the lock-in period, such arrangement may still come within the prohibition even though it may not amount to a formal sale, gift, exchange, or lease. Any narrow interpretation of the words "or otherwise" would make those additional words unnecessary and would permit

parties to achieve indirectly what the statute prohibits. Such an interpretation would defeat the object of the Act and, therefore, cannot be accepted. Therefore, the expression "or otherwise" needs to receive a purposive interpretation so that the legislative purpose behind Section 3E is protected, and the benefit intended for allottees is not diverted.

21. The Supreme Court in *Lila Vati Bai v. State of Bombay* (1957) 1 SCC 411 considered the expression "or otherwise". The argument that these words should be given a narrow meaning was not accepted. The Supreme Court observed:

"Those words are not words of limitation but of extension so as to cover all possible ways..."

22. The Supreme Court further observed:

"The Legislature... intended to cover all possible cases... due to any reasons whatsoever."

23. These observations show that the words "or otherwise" have been used in a wide manner. They are not meant only for transactions similar to sale, lease or assignment. The intention of the Legislature appears to be that every possible method by which the statutory restriction can be avoided should also come within the provision. This Court in *Vinayakrao v. State of Maharashtra*, AIR 1976 Bom 10 applied the same principle while interpreting Section 31 of the Bombay Prevention of Fragmentation and Consolidation of Holdings Act. The Court did not accept the argument that only a sale or similar transaction would attract the provision. It held that the instances mentioned in the statute "are not exhaustive" and "the word 'otherwise' has been used". The

Court observed that the expression has "an extended meaning" and would include even those transactions which may not amount to sale, mortgage, lease, gift, or exchange but which result in transfer of the holding.

24. Again, the Coordinate Bench in *Nagimbhai Lallubhai Patel v. Union Territory of Dadra and Nagar Haveli* (2003) 3 Mah LJ 678 held that the word "otherwise" "is not a word of limitation but extension" and that it has been used "to plug all avenues of escape". The Court held that the Legislature intended to include every possible mode by which occupancy rights may effectively pass to another person even though such transaction may not strictly answer the description of sale, mortgage, lease or exchange.

25. Therefore, all the above judgments lay down one principle. Whenever the Legislature uses the expression "or otherwise" after mentioning recognised modes of transfer, the Court cannot restrict the provision only to registered documents. The Court is required to see the real nature and effect of the transaction and whether, in substance, the allottee has parted with possession of the premises in such manner that the object of the statute gets defeated. For this reason, I am unable to accept the submission of the petitioner that merely because no registered conveyance has been executed, Section 3E becomes inapplicable. If such interpretation is accepted, the words "or otherwise" used by the Legislature would become meaningless. Every word used by the Legislature has to be given its proper effect and no part of the statutory provision can be ignored while interpreting its intention.

26. At the same time, merely because the expression "or otherwise" has a wider meaning, it cannot be said that the authorities are free from proving the necessary facts. The authorities are still required to place material showing that there was in fact a prohibited transfer within the meaning of Section 3E. Mere assumption cannot take the place of proof. Though the expression "or otherwise" extends the category of prohibited transactions, the basic facts showing that the allottee had parted with possession are required to be established from the record.

27. Respondent No. 4 relied upon the background relating to the original occupant. According to respondent No. 4, his grandmother Vithabai Shivram Ruke was the original occupant and Photopass holder. It was further alleged that the petitioner, by playing fraud upon the authorities, got her name entered in Annexure II and thereafter secured allotment of the rehabilitation tenement. These allegations are serious. However, the present proceedings arise out of action taken under Section 3E. The scope of inquiry under Section 3E is confined to the question whether the allotted rehabilitation tenement has been transferred in breach of the statutory restriction. It is not a proceeding for deciding rival claims regarding eligibility or allegations of fraud while preparing Annexure II. Such questions may have relevance in separate proceedings, but they cannot conclude the issue arising under Section 3E. Therefore, these allegations cannot decide the present controversy.

28. Respondent No. 4 also relied upon the inspection carried out on 5 May 2015. The inspection report records that respondent No.

3 was residing in the flat. Thereafter, the Assistant Registrar submitted his report to the Deputy Collector and the Deputy Collector recommended initiation of proceedings under Section 3E(2) after recording that the original allottee was not residing in the rehabilitation tenement. The inspection report is, in my opinion, an important piece of material. It records that respondent No. 3 was found occupying the premises during inspection. The Inspection Officer also recorded her statement that she was residing in the flat on rent. This circumstance cannot be ignored because it relates to the issue whether the original allottee continued to occupy the allotted rehabilitation tenement.

29. The petitioner attempted to explain this circumstance by relying upon the Power of Attorney executed in favour of Nitin Patel. According to the petitioner, possession was permitted under that arrangement and no ownership rights were transferred in favour of Nitin Patel. A Power of Attorney by may not amount to transfer of property. At the same time, the Court cannot merely go by the title of the document. The real effect of the arrangement is required to be seen. The document authorised Nitin Patel to remain in possession with his family. Thereafter, during inspection, respondent No. 3 was found residing in the premises as a tenant.

30. The record further shows that respondent No. 3 informed the Inspection Officer that she was residing in the flat on rent. Nothing has been placed before this Court to show that such statement was later withdrawn. No material has been produced to establish that the authorities wrongly noted the said statement.

31. The No Objection Certificate issued by the Society stating that Nitin Patel had been residing in the flat for many years does not support the petitioner's case. At the highest, it indicates that Nitin Patel remained in occupation for a considerable period. It does not explain how respondent No. 3 thereafter came into possession as a tenant. It also does not show that the original allottee herself remained in occupation of the rehabilitation tenement.

32. After considering the material placed on record, I find that absence of a registered sale deed or lease deed is not sufficient because Section 3E prohibits transfer "by way of sale, gift, exchange, lease or otherwise". The judgments of the Supreme Court as well as this Court hold that the words "or otherwise" are required to receive a wider meaning so that indirect methods of transfer may come within the statutory prohibition. Therefore, where actual possession of the rehabilitation tenement has been parted with in favour of another person during the prohibited period, such arrangement may attract Section 3E even though no formal conveyance has been executed.

33. The circumstances appearing from the record show that the original allottee was not found residing in the rehabilitation tenement. A Power of Attorney had been executed placing another person in possession. Thereafter, during inspection, respondent No. 3 was found occupying the premises as a tenant. The recommendation made by the competent officers was also founded upon these circumstances. When all these circumstances are read together, they provide sufficient material for the authorities to

form an opinion that the allottee had transferred the rehabilitation tenement in a manner prohibited under Section 3E.

34. The material available on record, when appreciated as a whole and in the light of the interpretation placed upon the expression "or otherwise" by the Supreme Court and this Court, supports the conclusion that the prohibition contained in Section 3E stood attracted. Therefore, I do not find any perversity, jurisdictional error or other legal infirmity in the impugned orders requiring interference under Article 226 of the Constitution.

35. In view of the foregoing discussion, and upon overall assessment of the material record, the following order is passed:

- (i) The Writ Petition is dismissed;
- (ii) The impugned order passed by the Competent Authority under Section 3E of the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971 and the order passed by the Appellate Authority are upheld;
- (iii) Rule is discharged.
- (iv) In the facts and circumstances of the case, there shall be no order as to costs.
- (v) Pending Interim Applications, if any, do not survive and stand disposed of accordingly.

(AMIT BORKAR, J.)