

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 10760 OF 2015

Rohitkumar G. Desai	..	Petitioner
VS.		
Municipal Corporation of Greater Mumbai & Anr.	..	Respondents

Mr. R. S. Apte - Senior Advocate i/b. Mr. Sujit Pathak for Petitioner.
Mrs. Geeta Joglekar for Respondents.

CORAM : M. S. SONAK, J.
DATE: 20 NOVEMBER 2015

P.C. :-

1] Rule. With the consent of and at the request of the learned counsel for the parties, Rule is made returnable forthwith.

2] The challenge in this petition is to the order dated 19 October 2015, in terms of which, the Petitioner has been held to be ineligible for availing alternate accommodation.

3] There is no apparent dispute that the structure of the Petitioner is situate on 90 feet wide D. P. Road. As a result of the location of the structure, there is a bottleneck caused in so far as smooth flow of traffic is concerned. In such circumstances, there can obviously be no restraint upon the Respondents taking appropriate measures for removal of the Petitioner's structure. That

part of the impugned order, which directs the removal of the impugned structure is therefore not interfered with.

4] The next question which arises is whether the structure of the Petitioner was in the present position prior to the cut off date i.e. 1 January 1995 or 1 January 2000. In the event, the structure was in its present location prior to the prescribed cut off date, the Petitioner claims that he shall be entitled to alternate accommodation. In this regard, the Petitioner had produced on record almost 19 documents, the list of which has in fact been referred to in the impugned order dated 19 October 2015.

5] Mr. Apte, the learned Senior Advocate for the Petitioner submits that the documents produced, are in fact, the ones which are prescribed for establishing the existence of the structure prior to the cut off date.

6] The impugned order however states that the documents are scrutinized and verified and it is concluded that the Petitioner has not submitted any authentic document prior to 1 January 2000 and therefore the Petitioner is ineligible for alternate accommodation. Perusal of the impugned order would indicate that on this aspect, the Assistant Commissioner has merely recorded a final conclusion,

without, any reasons in support thereof. The impugned order, which has the effect of denying the Petitioner alternate accommodation, is certainly an order which visits the Petitioner with serious civil consequences. In these circumstances, record of reasons, was necessary. The Assistant Commissioner was required to set out the reasons on basis of which the conclusion was arrived at that the documents submitted by the Petitioner were not authentic. On this limited ground, the impugned order, to the extent, it denies the Petitioner alternate accommodation, is hereby set aside.

7] The Assistant Commissioner is directed to once again consider the documents submitted by the Petitioner and afford the Petitioner opportunity of hearing in the matter and thereafter decide the issue as to whether the Petitioner is eligible for alternate accommodation. In case, the Petitioner desires to file any additional documents, the Petitioner shall be at liberty to do so within a period of two weeks from today. The Assistant Commissioner to dispose of the issue of eligibility as expeditiously as possible and in any case within a period of eight weeks from the date of production of authenticated copy of this order. The Petitioner to remain present before the Assistant Commissioner on 11 December 2015 at 11 a.m. and produce authenticated copy of this order.

8] It is made clear that the portion of the impugned order, which directs the removal of the structure, if necessary, with the assistance of the Police, is not interfered with. However, the impugned order, in so far as it holds the Petitioner to be ineligible to obtain alternate accommodation is set aside and the matter is remanded to the Assistant Commissioner for fresh decision on the issue of eligibility.

9] Rule is made absolute to the aforesaid extent. There shall be no order as to costs.

10] All concerned to act on basis of authenticated copy of this order.

(M. S. SONAK, J.)

Chandka