

Shri. Divyang Ishwarlal Parmar } Petitioner
versus
The State of Maharashtra and Ors. } Respondents

Mr. V. P. Sawant for Respondent Nos. 3 to 6.

DATED :- AUGUST 5, 2015

The Petitioner has approached this Court on the footing that one Premji Bhimji Mistry was original tenant of Room No. 25, Nageshwar Bhuwan Building, 121, Sant Sena Maharaj Marg, Mumbai 400 004 (hereinafter referred to as “the old tenanted premises”).

2) The room is located in this Nageshwar Bhuwan Building and it became dilapidated according to the Petitioner. Hence, the Mumbai Building Repairs and Reconstruction Board (hereinafter referred to as “the Board”) issued the vacation notice dated 30th July, 1977. A copy of this notice is at Annexure 'A' and it is addressed to the said Premji Bhimji Mistry.

3) The Petitioner does not dispute that such a notice was addressed to Premji Bhimji Mistry but throughout the argument is that one Ishwarlal Parmar, the cousin brother of this Premji Bhimji Mistry was occupying and residing with the deceased Premji Mistry at the time of his death in the old tenanted premises. That is how all of them moved into the transit accommodation bearing No. D-22/172, Pratiksha Nagar (Transit Accommodation), Mumbai 400 022 on 5th November, 1978 and received by the deceased Premji Mistry.

4) It is stated that the transit accommodation was visited by Respondent Nos. 3 and 4 on 13th January, 1998 and they found that the Petitioner is in possession of the same.

5) Reliance is placed upon this document (inspection report), copy of which is at Annexure 'H' and according to the Petitioner's Counsel, it recites that Mr. Mistry had moved in, in pursuance of the 1978 notice but he was no more on the date of the inspection. The occupant's name is written as Divyant Ishwarlal Parmar. It is stated that he is the nephew of the old tenant. This inspection report is relied upon to urge that it reflects the date of allotment of the transit accommodation, its complete description, name of the old tenant and the old tenanted premises as well. The Petitioner was therefore called upon to satisfy the authorities as to how he is related to the said Premji

Mistry. This document could not be produced at the relevant time nor was any ration card available.

6) The Petitioner then states that on 13th September, 2000, he executed an affidavit cum indemnity bond in favour of Respondent No.4. This is in compliance with the request and requirement of the authorities.

7) The Petitioner also received a letter dated 22nd October, 2001 addressed to Premji Mistry (the deceased old tenant) through Ishwarlal Parmar informing about the lottery to be conducted on 8th November, 2001 for allotting new premises to persons whose names are mentioned in the Master List.

8) The contention of Mr. Jamdar throughout has been that if the Petitioner was an unauthorised occupant and not eligible or entitled for any allotment of premises by a public or statutory authority like Maharashtra Housing and Area Development Authority (MHADA) or the Board, this correspondence would not have been addressed to him. The Petitioner therefore has complained that though such correspondence is addressed and to him, the Master List is prepared on the assurance that the Petitioner's name would be duly incorporated therein, he has been languishing in the transit accommodation. He

apprehends that even the transit accommodation would be taken away on the basis that the Petitioner has not produced proof of the aforesaid nature. The Petitioner has averred at page 11 of the Writ Petition that the officials of Respondent Nos. 3 and 4 visited the transit camp for demolishing the same, as the building in which it is situated and located has become dilapidated. The Petitioner therefore prayed for allotment of new premises. The Petitioner was asked to give application in the prescribed format. That also has been done and the Petitioner has corresponded with the authorities from August, 2013 that he should be allotted a permanent alternate accommodation in lieu of the possession and accommodation of Room No. 25, Nageshwar Bhuwan Building, 121, Sant Sena Maharaj Marg, Mumbai 400 004 by Ishwarlal Parmar and thereafter by him.

9) Ordinarily, a dispute of this nature would not have been taken cognizance of by this Court. But, in view of this correspondence and not to cause any injustice to parties like the Petitioner that a direction was issued to file an affidavit and produce the record.

10) An affidavit has been filed before us by the Deputy Chief Officer of the Mumbai Building Repairs and Reconstruction Board, a unit of MHADA. The Petitioner is stated to be an unauthorised occupier of the premises that he claims are transferred to him by the original

tenant. It is urged that the Petitioner admits that the premises originally were allotted to Mr. Premji Mistry. It is Premji Mistry who was issued notice and he shifted to the transit camp. The Petitioner relies upon an affidavit dated 16th October, 1982 and a General Power of Attorney dated 16th October, 1982 executed by the original tenant in favour of the father of the Petitioner relinquishing his right title and interest in respect of the old tenanted premises and consequently the transit accommodation. The Petitioner is the son of the cousin of the original tenant. The Petitioner is faulted for having not produced any document, by which, the heirs of the original tenant have relinquished their claim or right title and interest in the property. On the strength of this affidavit, there is inability conveyed to allot the premises and as further requested by the Petitioner.

11) However, from para 3 of this affidavit and while narrating the history, we find that the statements therein conform to the Petitioner's case and that it does not dispute and deny the correspondence with the Petitioner. However, what is asserted is that the Petitioner's case was placed before the Master List Committee in its meeting held on 21st February, 2006. The Committee noted that Premji Mistry was found to be an original tenant of the premises and that the original tenant/occupier is entitled to the new accommodation. The

General Power of Attorney extinguished with the death of the original tenant. The death of the original tenant, namely, Premji Mistry is of 11th September, 1984. Therefore, the Petitioner should be called upon to produce the succession certificate from the competent Court of law. That is how the Petitioner's name came to be removed from the master list and the Committee decided not to pursue it further.

12) However, the Petitioner once again made an application on 25th March, 2013 and a hearing was scheduled in furtherance of this application. A notice was addressed to the Petitioner of this hearing scheduled on 26th December, 2013 and a fresh notice was issued on 10th February, 2014. Since there was no response, the Petitioner came to be declared ineligible.

13) However, the affidavit in reply annexes all the documents and in relation to the same premises, namely, the old tenanted premises, the transit accommodation. It also refers to and relies upon the documents produced by the Petitioner himself. Even the allotment of another transit accommodation at the address mentioned in the cause title is undisputed.

14) It is on this basis that on the earlier occasion we had called upon the Petitioner to file an undertaking in this Court. An affidavit-

cum-undertaking has been filed in pursuance of our earlier order, by the Petitioner, which states that if the claim of the Petitioner is considered by the authority and accepted in the absence of succession certificate and other valid documents but in future any third party stakes its right to the premises which are allotted by MHADA in lieu of the old tenanted premises, then, he would work out his rights in the competent Court and shall not hold the statutory authorities, namely, MHADA and the Board responsible in any manner. If the third party obtains a declaration in his/her favour, then, if called upon by the Respondent authority to give possession of the premises to the third party, the Petitioner has undertaken to handover such possession subject to his legal rights.

15) We have heard parties in furtherance of this undertaking and Mr.Sawant states that the authority finds it difficult to proceed and allot any premises to the Petitioner. For, that would mean that all pending cases will have to be considered and dealt with accordingly. If any orders are passed by this Court relying on this affidavit and undertaking, then, in future, parties may produce such undertakings and try and seek regularisation of their occupation of the transit camp accommodation or the newly allotted premises. Any affidavit or General Power of Attorney executed allegedly in his favour during the

course of occupation of a transit accommodation will not confer a right in favour of the Petitioner.

16) Mr. Jamdar, however, submits that today the Petitioner should not be non-suited by this Court, nor the authority should take a rigid or extreme stand. If the Petitioner has executed this undertaking and which is accepted by the Court and forms part of the Court record, then, merely because a succession certificate cannot be produced should not be a reason enough to deny the Petitioner any allotment or regularisation of the occupation in the transit accommodation. This would mean that the Petitioner has been recognised by the authority and for all these years after the death of the original tenant and equally his occupation of the transit accommodation, but some policy or some rule or regulation prevents consideration of the Petitioner's entitlement.

17) We have given anxious consideration to both these contentions. We have also perused the Petition and all Annexures thereto. We have also carefully perused the affidavit and the Annexures thereto. We have also noted the stand of the Petitioner and affidavit-cum-undertaking, copy of which is taken on record. The same is treated as undertaking given to this Court.

18) We have found that the Petitioner has been in possession of the premises to which Premji Mistry was directed to shift and occupy as a transit accommodation. That is a transit accommodation belonging to MHADA/Board. That is ordinarily occupied by those who are required to be shifted by the authorities/Board from old and dilapidated buildings and structures for they have been rendered unsafe for human habitation. The property may be private property and land and building may be belonging to private entities and persons, however, MHADA is collecting cess through this Board. If the structure is a cessed building, then, the MHADA ensures compliance with the statutory obligation by the landlord and on failure of the landlord, the MHADA takes it upon itself to protect the occupants of such structures. Pending further measures in terms of the Maharashtra Housing and Area Development Act, 1976, temporary accommodation or residence is made available to such occupants. Premji Mistry was the occupant of Room No. 25, Nageshwar Bhuwan Building, 121, Sant Sena Maharaj Marg, Mumbai 400 004. This building and its existence is established from the records of the MHADA and the Board itself. The only question is after the notice to vacate these premises or this room was given to Premji Mistry, it is the said Premji Mistry who shifted to the transit accommodation. During the occupation of such transit accommodation by Shri. Mistry, according to the Board and MHADA, some transaction has taken place

as between him and the father of the Petitioner Ishwarlal Parmar. That is sought to be evidenced by the affidavit executed by Premji Mistry and the General Power of Attorney of 1982. Mr. Jamdar has said and on instructions that Ishwarlal was occupying the old tenanted premises along with Premji Mistry and was residing therein at the time of the receipt of the vacation notice by Premji Mistry. It is he who shifted along with Premji Mistry to the transit accommodation and thereafter continued to reside with him in this transit accommodation till the death of Premji Mistry. The Petitioner is the son of Ishwarlal Parmar and therefore entitled to the premises presently in occupation, namely, the transit accommodation. It is he who is entitled to the permanent alternate accommodation in terms of the policy of MHADA and therefore his name should be retained in the master list or incorporated therein.

19) Once we note such assertion of the Petitioner, then, we are of the view that interest of justice would be served if we direct the Respondent Nos. 3 to 6 not to disturb the Petitioner's occupation and possession of the transit accommodation at Pratiksha Nagar, Sion, Mumbai or at the premises which are described in the cause title by the Petitioner. The Petitioner, however, is given three months' time to produce before the Respondent Nos. 4 to 6 proof in the form of rent

receipts or other documents issued by the landlord/owner of the old tenanted premises recognising the occupation and possession of Ishwarlal Parmar in respect of the same. If the Petitioner has any other document of this nature, he is free to produce the same before the authorities. The Petitioner shall be given a personal hearing and the authority then shall also take a decision with regard to regularisation of the Petitioner's occupation in respect of the transit accommodation and to incorporate his name in the Master List so as to enable him to obtain permanent alternate accommodation as per the scheme and procedure of MHADA/Board.

20) We clarify that if the Petitioner produces proof of this nature, then, the authorities shall not insist on production of succession certificate. More so, in the event the Petitioner produces before the authority a no-objection certificate from the heirs and successors in interest of Premji Mitry. If they have no-objection to the Petitioner's recognition as a lawful occupant of the transit accommodation and from the time it has been noted in the records of the authority, then, we are of the view that a hyper-technical or rigid stand should not be adopted by the authority. In that event, on the strength of such certificate and the undertaking given to this Court, the authority may take an appropriate decision and in accordance with law so as to regularise the

occupation of the Petitioner in respect of the transit accommodation so also proceed to include his name in any list of persons eligible for permanent alternate accommodation. We are of the view that considering the benevolent schemes which are framed and implemented by such authorities so as to take care of the dis-housed or occupants of old cessed buildings and dilapidated structures, then, benefit must be given by appropriate relaxation and concession in deserving cases and to occupants like the Petitioner. However, we hasten to clarify that our order and direction is restricted to the facts and circumstances peculiar to this case. The same shall not be treated as precedent in future cases and pending with the authorities. On failure of the Petitioner to produce proof of above nature, all consequences in law shall follow.

21) The Writ Petition is disposed of in the above terms.

(G.S.KULKARNI, J.)

(S.C.DHARMADHIKARI, J.)