

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
NOTICE OF MOTION NO.97 OF 2012
WITH
NOTICE OF MOTION (LODG.) NO.758 OF 2014
IN
PUBLIC INTEREST LITIGATION NO.100 OF 2010

NM NO.97 OF 2012 & PIL No.100 of 2012

Joshi Shivshankar Jatashankar.	..	Petitioner.
Vs		
The Slum Rehabilitation Authority, Mumbai and Others.	..	Respondents
—		

NM (L) NO.758 OF 2014

Vital Developers Pvt. Ltd.	..	Applicant
Vs		
Joshi Shivshankar Jatashankar	..	Petitioner
Versus		
The Slum Rehabilitation Authority, Mumbai and Others.	..	Respondents
--		

The Petitioner in person.
Shri G.D. Utangale along with Shri Akhil Kupade i/by M/s. Utangale &
Co.for the Respondent No.1.
Shri J.S. Saluja, AGP for Respondent No.3.
Mrs. K.R. Punjabi for BMC.
Shri P.K. Dhakephalkar, Senior Counsel along with Shri D.H.Mehta and
ShriDhawal Mehta for Respondent No.4 in PIL and the Applicant in
NM(L) No.758 of 2014.

—

CORAM : A.S. OKA & A.K.MENON, JJ
DATED : 17TH FEBRUARY 2015

P.C.

. On 4th February 2015, the Petitioner appearing in person was present. In his presence, the Petition and the Notice of Motions were adjourned till 9th February 2015. However, on 9th February 2015 and 10th February 2015, the Petitioner appearing in person did not remain present.

2. One of the main contentions raised by the Petitioner appearing in person is as regards the non-compliance by the Fourth Respondent of the condition incorporated in the Letter of Intent issued by the Slum Rehabilitation Authority (SRA) regarding handing over possession of the D.P. Road/Set Back area to the Mumbai Municipal Corporation free of costs and free of encumbrances by transferring the ownership thereof in the name of the Municipal Corporation of Greater Mumbai. The SRA has granted commencement certificate dated 23rd September 2009 to the Fourth Respondent. On 25th June 2013, the commencement certificate is further extended from the basement upto 11th upper floors for rehab wing-A and from basement to 6th upper floors for sale wing-B. Today, an undertaking is filed by Shri Jatin Mehta, Director of the Fourth Respondent on behalf of the Fourth Respondent. Paragraphs 3 to 5 of the said undertaking dated 17th February 2015 read thus:

- “3. The Applicant has already demolished the only structure that was located on the Road Set Back Land on 9th February, 2015 and have also vide its Architect Letter dated 10th February, 2015 and 13th February 2015 submitted Application with necessary documents to MCGM to its D.P. Department and D.P. Maintenance Department in connection with handing over of the Road Set-Back Land. A copy of the Letter is annexed as ANNEXURE-1 hereto.
4. The Applicant hereby undertakes to this Hon'ble Court to provisionally handover the vacant and peaceful possession of the Road Set Back Area of the property admeasuring 70.30 sq. meters as per Demarcation dated 20th June 2009 done by the Assistant Engineer (Survey), Building Proposal (E.S.) of MCGM to the Municipal Corporation of Greater Mumbai on 18th February, 2015.
5. The Application further undertakes to this Hon'ble Court that the Applicant shall comply with all the specifications in connection with the handing over of the Road Set-Back Area to MCGM and get the name of the MCGM mutated in Property Card as regards the Road Set-Back Area as per LOI dated 2nd May 2009 road with Revised LOI dated 19th October 2012 before seeking extension of the Commencement Certificate beyond the limit already extended on 25th June 2013 and shall not carry out the construction beyond such permitted limit.”

3. We accept the said undertakings. The submission of the learned counsel appearing for the Mumbai Municipal Corporation is that there is no final demarcation of the area which is required to be handed over by the Fourth Respondent to the Municipal Corporation through the City Survey Department. She submits that after the

demarcation, the title of the said area which today vests in the Second Respondent Maharashtra Housing and Area Development Authority will have to be transferred to the Municipal Corporation.

4. In the undertaking, the Fourth Respondent has undertaken to hand over an area of 70.30 sq. meters as per the demarcation done by the Assistant Engineer (Survey), Building Proposal (E.S.) of the Mumbai Municipal Corporation. It is obvious that even if the possession is taken over by the Municipal Corporation from the Fourth Respondent in terms of the said undertaking, it will be subject to final demarcation carried out by the City Survey Officer and the subject to transfer of the title by the Second Respondent to the Mumbai Municipal Corporation. If the possession handed over in terms of the undertakings is not of the area as may be demarcated by the City Survey Officer, the possession of the land as per the demarcation made by the City Survey Officer will have to be handed over by the Fourth Respondent to the Mumbai Municipal Corporation.

5. The ad-interim relief was granted as the Fourth Respondent was proceeding with the construction without handing over the possession of the D.P. Road/Set Back Land. In view of the undertakings, subject to the Fourth Respondent complying with the undertakings, the ad-interim relief will have to be vacated. However,

further commencement certificate cannot be issued by the SRA to the Fourth Respondent unless the possession of the said Set Back area is handed over to the Municipal Corporation in terms of the conditions incorporated in the Letter of Intent (LOI) and Intimation of Approval (IOA). It is obvious that a complete compliance with the conditions can be said to have been made only if the possession is handed over as per the demarcation made by the City Survey Officer to the Municipal Corporation and only if the title is transferred by the MHADA by executing a requisite document. If the Municipal Corporation is satisfied that all other formalities have been completed by the Fourth Respondent, at the request made by the Mumbai Municipal Corporation and/or by the Fourth Respondent, the Second Respondent shall execute necessary document for transferring the title to the Mumbai Municipal Corporation.

6. This issue arises as the SRA has issued LOI and IOA without insisting on the Developers handing over the possession of the area covered by the D.P Road/Set Back Land before commencement of the construction. If the SRA wants to ensure that the Municipal Authorities get the possession of the D.P Road/Set Back lands, the SRA will have to impose conditions both in the LOI as well as IOA requiring the Developers to first hand over the possession to the Municipal Authorities before commencement of the construction.

7. We direct the appropriate officer of the Mumbai Municipal Corporation to remain present at the site tomorrow i.e. 18th February 2015 at 11.00 a.m for taking over possession of the said D.P Road/Set Back land in terms of the undertakings of the fourth Respondent and in terms of what is observed above.

8. On the Fourth Respondent handing over possession in terms of the undertakings tomorrow i.e. the 18th February 2015 at 11.00 a.m to the Mumbai Municipal Corporation, the concerned officer of the Municipal Corporation shall file an affidavit regarding delivery of the possession within a period of one week from today.

9. The ad-interim relief granted by this Court on 10th December 2014 shall stand vacated on such affidavit being filed by the Mumbai Municipal Corporation in this Court.

10. We make it clear that unless there is a complete compliance with the condition regarding handing over of D.P. Road/Set Back land in terms of the conditions incorporated in the LOI as well IOA as stated above, no further commencement certificate shall be granted to the Fourth Respondent.

11. The prayer for interim relief is disposed of accordingly.
Both the Notices of Motion are also disposed of accordingly.

13. The City Survey Officer, Ghatkopar, having his office at Topiwala College Compound, Mulund (West), Mumbai, shall act upon the letter dated 16th February 2015 addressed to him by the Assistant Engineer (Development Plan) N-Ward by carrying out a joint measurement and survey for demarcation.

(A.K.MENON, J)

(A.S. OKA, J)