

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

**WRIT PETITION NO. 1029 OF 2015
WITH
WRIT PETITION NO. 1187 OF 2014**

**Madhyavarti Samiti } Petitioner
versus
The State of Maharashtra and Ors. } Respondents**

Mr. Y. E. Mooman for the Petitioner in both
Petitions.

Ms. Madhubala Kajale – AGP for Respondent
Nos. 1 and 2 in WP/1029/2015.

Mr. Milind More – Addl. G. P. for Respondent
Nos. 1, 2 and 3 in WP/1187/2014.

Ms. P. D. Anklesaria – Senior Advocate with
Mr. P. G. Lad for Respondent Nos. 3 to 5 in
both Petitions.

Mr. Mayur Khandeparkar with Mr. Sanjay
kada,, Ms. Apeksha Sharma and Mr. Sanjeel
Kadam i/b. M/s. Kadam and Co. for
Respondent No. 7 in both Petitions.

**CORAM :- S. C. DHARMADHIKARI &
B. P. COLABAWALLA, JJ.**

DATED :- OCTOBER 6, 2015

P.C. :-

By these Writ Petitions under Article 226 of the
Constitution of India, the Petitioner has sought the following reliefs:-

“[a] This Hon'ble Court be issue a writ of certiorari or any other appropriate writ of like nature cancelling and revoking the NOC dated 24th November, 2006, Revised NOC dated 30th April, 2014 issued by the Respondent No. 5 and IOD dated 29th March, 2007 issued by the Respondent No. 6;

[b] this Hon'ble Court be pleased to issue writ of mandamus or such other appropriate writ in nature of mandamus against the Respondent Nos. 3 to 5 directing them to adopt eviction proceedings against the occupants of building Nos. 1, 2 and 3 constructed on the suit property;”

2) The Petitioner claims to be a public trust registered under the Bombay Public Trust Act, 1950. It is an association of the tenants and occupants of a building which is situate on a piece of land more particularly described in para 1 of the Petition (WP/1029/2015). The first Respondent is the State, whereas, the second Respondent is the Secretary in the Department of Urban Development. The third and fourth Respondents are the statutory authorities setup under the Maharashtra Housing and Area Development Act, 1976. The fifth Respondent is the Chief Officer of the Respondent No. 4 Board. The sixth Respondent is the Municipal Corporation of Greater Mumbai and the seventh Respondent is a Builder and Developer. It is a partnership firm registered under the Indian Partnership Act, 1932. The seventh Respondent also claims to be the owner of the property. It is seeking to redevelop the property in terms of a redevelopment scheme under the Development Control Regulations for Greater Bombay, 1991 (DCR), particularly Regulation 33(7) thereof.

3) It is the claim of the Petitioner that Respondent No. 7 purchased the subject property sometime in the year 1992. Thereafter, the proposal for redevelopment of the property under DCR 33(7) was submitted and Respondent No. 7 claims that it has irrevocable consent of the 70% members of the Petitioner association. In fact, the Petitioner, in para 4 of this Petition, makes such a statement. In pursuance to and in response to such proposal, the fifth Respondent granted a no-objection certificate (NOC) in the requisite form dated 24th November, 2006, to redevelop the property in terms of the above DCR 33(7) with a obligation to rehouse the tenants in the new building.

4) The dispute in the present Petitions is regarding compliance with the terms and conditions of this NOC. The Petitioner claims that the redevelopment is permissible with Floor Space Index (FSI) of 2.5 or the FSI required for rehabilitation of existing occupiers plus 50% incentive FSI, whichever is higher, in accordance with the modified DCR 33(7) and Appendix – III to this Regulation sanctioned by the Government of Maharashtra vide Notification dated 25th January, 1999 and thereafter certain interim orders of the Hon'ble Supreme Court of India.

5) On the basis of this NOC, the developer approached the Municipal Corporation and it has issued the requisite intimation of

disapproval dated 29th March, 2007. Annexure 'B' to the Petition is a copy of this intimation of disapproval. Though it is styled as intimation of disapproval, the parties have understood it to mean that if the terms and conditions of this negative communication or letter are abided, then, the property could be developed in accordance with law.

6) The Petitioner's grievance is that the tenants and occupants of certain chawls, namely, chawl Nos. 5, 7, 8, 9, 13, 14 and half of chawl No. 12 handed over premises to Respondent No. 7 in 2007. Respondent No. 7 has not constructed transit accommodations but paid compensation in lieu thereof. It has also executed certain agreements for permanent alternate accommodation with the members of the Petitioner dated 18th March, 2005 and 25th March, 2006.

7) The only grievance now is that Respondent No. 7 has constructed three building Nos. 1, 2 and 3, which are styled as rehabilitation buildings. However, the tenements/flats therein do not admeasure 300 square feet carpet area. The Petitioners rely upon a Notification dated 21st May, 2011 modifying Regulation 33(7) and clause 10(a), which provides for allotment of 300 square feet carpet area.

8) It is then urged that the applicability of this Regulation was in issue before this Court and this Court has passed an order in a Writ Petition being Writ Petition No. 2457 of 2011 dated 20th March, 2013 and what the Petitioner is then urging is that in terms of this Judgment, the Maharashtra Housing and Area Development Authority has granted a revised NOC with permissible FSI of 3 and that revised NOC also enumerates certain conditions, which, according to the Petitioner, are mandatory.

9) It is now urged by Mr. Mooman appearing for the Petitioner that there is provision of 300 square feet carpet area flat/tenement for the old tenants/occupants and that is how the NOC of the Maharashtra Housing and Area Development Authority/its unit, namely, the Mumbai Repairs and Reconstruction Board. Thus, this revised NOC ensuring 300 square feet carpet area having not been abided by the Respondent No. 7 that the authority must proceed to take the requisite steps including to cancel the said NOC.

10) On the earlier occasion and from the orders passed by this Court, it is apparent that the anxiety of this Court was to resolve the dispute and therefore, on 6th August, 2015, this Court appointed a Commissioner to carry out measurement of the constructed flats. Since the Petitioner claims that the construction of the flat is less than 300

square feet carpet area, this Court directed the Prothonotary and Senior Master to appoint a structural engineer or an architect as Commissioner from the panel of architects and structural engineers of this Court to take measurements of the flats in question and submit a report, after going through the plans which have been submitted by the Developer and also all other relevant documents. The measurements were to be carried out after the site inspection and in presence of the concerned Respondents and the Petitioner's representative. That is how the architect has acted and submitted its report dated 1st September, 2015. We have ensured that all the parties are furnished with a copy of this report. It further appears that after this report was submitted, the Advocates for Respondent No. 7 had addressed a letter dated 24th September, 2015 to the architect. After referring to the report and the remarks of the architect, it is claimed by this Respondent No. 7 that the architect should have taken into consideration the amended plans and as they confirm with the prevailing law. The occupation certificate is yet to be obtained. It relies upon the plans submitted by their architect post the order passed in the Civil Writ Petition No. 2457 of 2013 and claims that these plans have been approved. Since they have been approved, the construction at site is in accordance with law.

11) We have found from the arguments canvassed today that there is a dispute as to whether the construction meets the requirements and in terms of the NOC and the revised NOC. The architect's report has been accepted in principle by the Petitioner and the Respondent Nos. 3 to 5. However, Respondent No. 7 Developer relies upon the DCRs as amended and the action of the Municipal Corporation of Greater Mumbai. According to it, the revised plans have been approved and post the amendment to the Regulation in question.

12) Ordinarily, for this Court to resolve such dispute, it would have to consider certain facts. The facts pertain to applicability of the Regulation in question, the terms and conditions of the NOC and the revised NOC, the compliance therewith at site and whether the architect's report takes into consideration all the relevant and applicable materials. Such a dispute, therefore, cannot be resolved in our limited jurisdiction though parties may desire the Court to resolve it.

13) What we have found is if the MHADA and the Board have issued the requisite certificates, then, they have duties in law to ensure that the terms and conditions thereof are abided by the parties. Equally, the planning authority, namely, the Municipal Corporation of Greater Mumbai has to play this role (See Chapter VIII of the Maharashtra Housing and Area Development Act, 1976). In these circumstances, we

record the statement made by Ms. Anklesaria, the learned Senior Counsel appearing for Respondent Nos. 3 to 5 that the authorities will issue a fresh show cause notice calling upon the Builder and Developer/owner to satisfy them as to why the NOC initially issued and revised later on should not be cancelled or other requisite steps taken in accordance with law. She further states that after such show cause notice is issued and duly served, the Chief Officer of the Respondent No. 4 Board, who is also the Respondent No. 5, will grant a personal hearing to both, the Developer and Builder and the Petitioner or such authorised representative of the tenants and occupants and thereafter pass a speaking order. She states that all this would be done as expeditiously as possible and within a period of three months from today. We accept the statements made by Ms. Anklesaria, on instructions, as undertakings given to this Court. These statements are made in the presence of the competent officers of Respondent Nos. 3 to 5. We clarify that we have expressed no opinion on the rival contentions. We have not taken any view of the matter and particularly because a Commissioner is appointed by this Court, which is to merely elicit and elucidate certain details. Beyond that, this Court has not put its seal of approval on the contents of the report or otherwise. It would be for the Respondent No. 5 to take a decision and in accordance with law. It would be open for the Chief Officer to call for the records from

the custody of the Municipal Corporation and its subject Ward pertaining to the construction at site including any plans and drawings submitted, any approvals granted and the maps and layouts. Equally, it would be open for Respondent No. 7 to place such records as are in its custody during the course of personal hearing.

14) We would expect the Respondent No. 5 not to influence himself by any stand taken by the Maharashtra Housing and Area Development Authority, Mumbai Repairs and Reconstruction Board in the affidavit in reply, but duly consider the rival contentions and pass a speaking order in accordance with law. The Chief Officer should not be influenced by any statements made in the affidavit in reply but pass an order strictly in accordance with law and after considering all the relevant materials. The Petitioner as also Respondent No. 7 can raise all contentions and we do not in any manner foreclose any of them. It would be open for them to place before Respondent No. 5 such documents including any affidavits, reports and Annexures, which are on the file of these Petitions.

15) With the aforesaid directions, the Writ Petitions are disposed of.

16) At this stage, Mr. Mooman raises a grievance that the members of the Petitioner Committee have been residing on their own but they find it very difficult to make payments of rent/compensation month to month. He states that after November, 2013, the Builder and Developer/owner has not made any provision for payment of monthly compensation and determined by parties in lieu of provision of transit accommodation. Mr. Khandeparkar appearing for Respondent No. 7, on instructions, states that this stand of the Petitioner is not bonafide. On their own saying and as stated in the Petitions, three rehab buildings are ready. The members of the Petitioner are not willing to occupy the tenements/flats in these buildings even under protest and without prejudice to their rights and contentions. There are several persons who are residing therein. Mr. Mooman states that none of the tenants/occupants have moved in, but those who are in occupation are persons claiming through the Builder and Developer. Such being the nature of the dispute and though the tenements are stated to be lying vacant, we cannot pass any order, save and except directing Respondent No. 7 to deposit the sum of monthly compensation from 1st December, 2013 till 30th November, 2015, as calculated and computed in a table/chart duly signed by Respondent No. 7, within a period of two weeks from the date of receipt of copy of this order. These amounts can be deposited under protest and without prejudice to the rights and

contentions of the parties. With regard to the disbursement of the amount and in the event of any emergency or otherwise, the individuals/occupants either by themselves or through duly authorised representative may approach and make an application in this Court, which shall be decided on its own merits and in accordance with law.

(B.P.COLABAWALLA, J.)

(S.C.DHARMADHIKARI, J.)

CERTIFICATE

Certified to be true and correct copy of the original signed judgment/order.