

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO.1658 OF 2015

Nilesh R. Modi

.... Petitioner

Vs.

The Principal Secretary,
Housing Department,
State of Maharashtra

.... Respondent

Mr. F. D'Vetre, Senior Counsel with Mr. Cyrus Ardeshir
alongwith Mr. Farhan Dubash i/by M.V. Federal & Rashmikanth,
Advocate for the Petitioner.

Mr. V.M. Parashurami, Advocate for respondents no. 3 to 7.
Mr. R.A. Thorat, Senior Counsel alongwith Mr. Kasar Pandit and
Ms. K.H. Mustakar, Advocate for respondents no.9 and 10,

Mr. Hiran Mehta, Advocate for respondent no.11.

Coram : **Smt. R.P. SondurBaldota, J.**

Date : 16th September, 2015

P.C. :

1 The Petitioner is the tenant of respondent no.11 in
respect of six rooms on the ground floor of building no.194, V.P.
Road, Mumbai. The dispute raised by him in the present petition
is about the permanent alternate accommodation to be made
available to him on reconstruction of the building, in which the
demised premises are situate. The respondents to the petition

are Maharashtra Housing and Area Development Authority (MHADA) and its officers, Mumbai Municipal Corporation (MMC), State of Maharashtra and Mumbai Building Repairs and Re-Construction Board (MBR&RB).

2 The petition as filed originally was inter alia to challenge the order dtd.2nd January, 2015 passed by respondent no.1, the order dtd.6th May, 2013 of respondent no.3 and the letter of respondent no.5. It was later amended to include therein challenge to the order dtd.9th July, 2015 passed by Executive Engineer of respondent no.10.

3 The petitioner had by his letter dtd.16th August, 2011 demanded that area of mezzanine/common passage/wall thickness, height of tenement and door, window sill be included in the carpet area of the premises in his occupation. The Chief Officer of MBR&RB rejected the request for mezzanine floor on the ground that the same is not reflected in the inspection report of MMC of the year 1995-1996. As regards the common passage, the petitioner was informed that the same would be distributed proportionately amongst all the residents. The height of the premises and the portion covered by the walls is not covered by the meaning of the carpet area and that the door-sill was already taken into account. Being aggrieved by the decision, the petitioner appealed to respondent no.3. His appeal was rejected by the order dt. 6th May, 2013 holding that inclusion

of mezzanine floor was possible only if the same existed prior to 1997 and ought to have been regularised prior to 1997. The order was carried further in appeal described as second appeal to respondent no.1.

4 Respondent no.1 by it's order dtd. 2nd January, 2015 disposed off the second appeal by remanding the matter for fresh consideration to respondent no.3 as it was of the opinion that MBR&RB did not have a clear policy about distribution of area of balcony, common area, verandah and mezzanine floor in the old and dilapidated buildings in Mumbai. According to it, the appeal could be decided only on formation of policy in that regard.

5 The challenge of the petitioner to the order on the second appeal is that the same incorrectly records that there is no policy in regard to inclusion of mezzanine floors in the permanent alternate premises. It allegedly ignores Government of Maharashtra Notification dtd.10th August, 2010, by which if a mezzanine floor constructed prior to 1996 and regularised by Municipal Corporation is included in the Inspection Extract, then area of the mezzanine floor may be included in the area of the tenement.

6 Since the mezzanine floors of the petitioner are not regularised by MMC, a statement was made on his behalf on 7th

May, 2015 that he would make the necessary application to MMC for regularisation. By the order passed on that day, the MMC was directed to decide the application within specified time. Respondent no.10, the officer of MMC rejected the application of the petitioner for regularisation by his order dtd.9th July, 2015. The petitioner then amended this petition to include therein the challenge to that order.

7 Mr. Thorat, the learned Senior Counsel for respondents no.9 and 10 submits that the challenge in the petition to the order dtd.9th July, 2015 cannot be maintained since there is an alternate efficacious remedy available to the petitioner to challenge the order by way of appeal provided under Section 47 of MRTP Act. He argues that the application for regularisation of the mezzanine floor would be an application for permission for development post facto under Section 44 of MRTP Act, which the planning authority may grant or reject in view of Section 45 of the MRTP Act. The grant or refusal can be challenged by preferring appeal under Section 47 to the State Government. This position is not contested on behalf of the petitioner.

8 Since the petitioner has an efficacious alternate remedy provided to him by way of appeal under Section 47 of the Maharashtra Regional and Town Planning Act, 1966 (M.R.T.P. Act), the present petition filed under Article 226 of Constitution

of India would not be maintainable. Besides, there would also, obviously be disputed questions of facts arising as regards the existence and age of mezzanine floor, which can best be decided in appeal proceedings. Therefore, the challenge by the petitioner to the order, of the authorities on regularisation of the mezzanine floor cannot be considered in this petition.

9 Mr. D'Vetre, the learned Senior Counsel for the petitioner expresses an anxiety that the appeal if preferred by the petitioner may be dismissed as barred by the limitation, provided under the Section. Undoubtedly the limitation of 40 days from communication of the order to the petitioner is over. But for that reason alone, the present petition cannot be entertained. The petitioner needs to prefer the appeal and make an appropriate application in accordance with law along with the appeal. It cannot be lost sight of the fact that despite the provision, the petitioner had chosen to amend the present petition to challenge the order.

10 As regards clubbing/de-clubbing of tenancies and the passage area into the area of the demised premises, Mr. D'Vetre submits that the identical issue raised by the other tenants in the building, in Writ Petition (L) No.1349 of 2015 and Writ Petition (L) No.1413 of 2015 has been remanded to the concerned officer i.e. to respondent no.5 herein for fresh consideration. In that circumstances, the petitioner cannot be discriminated

against in that respect and must be given the same opportunity as the other tenants in the building. Therefore, the petition is disposed off with following order.

11 The petition is partly allowed. The order dtd. 2nd January, 2015 passed by respondent no.1, Principal Secretary, Housing Department, State of Maharashtra is set aside. The matter is remanded to respondent no.5, Chief Officer, Mumbai Building Repairs and Re-Construction Board, with the identical directions as in Writ Petition (L) No.1349 of 2015 and Writ Petition (L) No.1413 of 2015 i.e.

(I) The Chief Officer, MBR&R Board (Respondent no.5) shall reconsider the issue of clubbing of the separate tenancies of the Petitioners in light of the Government Resolution dated 22 February, 2013 and decide the issue afresh and pass an order after considering all the documents produced before him.

(II) The Petitioners are at liberty and shall within a period of two weeks from today produce all relevant documents in support of their claim for de-clubbing of the tenancy in accordance with Government Resolution dated 22 February, 2013.

(III) The Chief Officer shall take a decision on the issue of de-clubbing of the Petitioners tenancy and pass a separate speaking order in accordance with law within a period of four weeks thereafter without being influenced by all earlier orders.

(IV) In the event, the Petitioners are aggrieved by the decision of the Chief Officer, MBR&R Board, they may prefer an Appeal to the Vice-President and Chief Executive Officer, MHADA (Respondent No.3) within a period of three weeks from the date of communication of the order of the Chief Officer, MBR&R Board.

(V) The Appeal filed by the Petitioners, if any, shall be decided by the Vice-President and Chief Executive Officer, MHADA (Respondent No.3) within a period of four weeks from the date of filing of the Appeal by passing separate speaking orders on merits.

(VI) The Chief Officer, MBR&R Board (Respondent no.5) and the Vice President and Chief Executive Officer, MHADA (Respondent no.3) shall consider the provisions of Government Resolution dated 22 February, 2013 and other Government Resolutions, if any, while passing the orders.

(VII) All contentions of the parties are kept open.

(Smt. R.P. SondurBaldota, J.)

CERTIFICATE

Certified to be true and correct copy of the original
signed Order.