

ssp

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO.1142 OF 2015

M/s.Atul Properties ...Petitioner
vs.
The Commissioner of Municipal
Corporation of city of Greater
Mumbai and others ...Respondents

Mr.Vishal Kanade a/w Vivek Patil i/b Vivek Patil and
Associates for the Petitioner
Mr.Vinod Mahadik for the BMC.

CORAM : A.S.OKA, &
REVATI MOHITE DERE, JJ.
DATE : JULY 9, 2015

P.C.:

1 Heard the learned counsel for the petitioner. One of the grievances made in the petition is regarding the failure of the Mumbai Municipal Corporation to decide the applications made by the Architect of the petitioner for grant of full Occupation Certificate. The petitioner is relying upon the applications dated 6th March 2012 and 9th March 2014. The learned Counsel for the Mumbai Municipal Corporation states that the objections raised by the Municipal Corporation were communicated to the petitioner.

2 The challenge in this petition is also to the actions sought to be taken by the Mumbai Municipal Corporation under section 353-A of the Mumbai Municipal Corporation Act, 1888. The action was

initiated as admittedly the petitioner has allowed the flats and premises in the building in question to be occupied by the purchasers though Occupation Certificate is not granted.

3 The prayer for directing the Municipal Corporation to decide the applications deserves to be accepted. However, at the instance of the petitioner who is a wrong doer, the action under section 353-A of the said Act cannot be stayed.

4 We must note here that the letter dated 7th January 2013 addressed by the Mumbai Municipal Corporation (Exhibit I to the petition) specifically records that on 5th November 2012, the Municipal Corporation declined to grant part Occupation Certificate. In fact, the said letter records that certain compliances were still not made by the petitioner. Thus, the petitioner was aware as on 5th November 2012 that even the application for grant of part Occupation Certificate was rejected.

5 Therefore, at the instance of the petitioner, the Mumbai Municipal Corporation cannot be restrained from taking action against the illegal occupation of the building.

6 Hence, we pass the following order:

(I) We direct the Mumbai Municipal Corporation to decide the application dated 9th October 2014 made by the Architect of the petitioner (Page

64 of the petition) for grant of full Occupation Certificate as expeditiously as possible and preferably within a period of two months from today;

(II) We make it clear that we decline to interfere with the action of the Mumbai Municipal Corporation commenced under section 353-A of the Mumbai Municipal Corporation Act, 1888 as the petitioner after having full knowledge of the fact that there is not even part Occupation Certificate granted has put the purchasers in possession of the premises in the building;

(III) We, however, make it clear that the Mumbai Municipal Corporation shall not take action of removal of the occupants without giving an advance notice to the occupants;

(IV) We also make it clear that this order will not prevent the occupants/purchasers from challenging the action of the Mumbai Municipal Corporation under section 353-A of the said Act of 1888;

(V) All contentions of the parties on pending applications are kept open;

(VI) Writ Petition is disposed of on above terms;

(VII) All concerned to act upon an authenticated copy of this order.

(REVATI MOHITE DERE, J.)

(A.S.OKA, J.)