

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

WRIT PETITION (L) NO.1349 OF 2015

Smt. Hemlata Devchand Shah & Anr. Petitioners
V/s

The Principal Secretary
Housing Department & Ors. Respondents

Mr. Zal Andhiyarujina with Mr. Haresh Meghani i/b Mr. Rohan Mahadik for Petitioners.

Mr. Milind More, Additional Government Pleader for Respondent Nos.1, 2 and 8.

Mr. G.B. Walawalkar i/b Mr. S.P. Thorat for Respondent Nos.3 to 7.

Ms. K.H. Mastakar for Respondent Nos.9 and 10 Corporation.

Mr. Parikshit Desai i/b Mr. Hiren Mehta for Respondent No.11.

WITH
WRIT PETITION (L) NO.1413 OF 2015

Mr. Dilip P. Kapadia & Anr. Petitioners
V/s

The Principal Secretary
Housing Department & Ors. Respondents

Mr. Zal Andhiyarujina with Mr. Haresh Meghani i/b Mr. Rohan Mahadik for Petitioners.

Mr. Milind More, Additional Government Pleader for Respondent Nos.1, 2 and 8.

Ms. Sharmila Deshmukh for Respondent Nos.3 to 7.

Ms. K.H. Mastakar for Respondent Nos.9 and 10 Corporation.

Mr. Parikshit Desai i/b Mr. Hiren Mehta for Respondent No.11.

CORAM : A.A. SAYED, J.
DATED : 4 AUGUST 2015

P.C.

1 The issue involved in these Petitions is that of clubbing/de-clubbing of tenancy and passages pursuant to a redevelopment

scheme under section 33(7) of the Development Control Regulations (DCR). The operative part of the impugned order dated 2 January 2015 passed by the Respondent No.1 Principal Secretary, Housing Department, State of Maharashtra reads as follows:

“By taking into consideration the aforesaid facts, I pass following order:-

As per Housing Department Government Resolution No.Loka2007/Pra.Kra.120(A)/R&R-1, dated 16th August 2010, the 14 tenancies newly created and having no documents with regard to stay of prior to dt.13.6.1996, cannot be given protection as per Rules in Redevelopment Scheme being implemented under Rule 33(7) of Development Control Regulations. However, it is necessary first to determine transparent policy in respect of distribution of area of balcony, common area, verandah, mezzanine floor of old and dilapidated buildings in Mumbai City District and after determining the policy, it would be proper to take decision in respect of objections raised by 33 Appellants, as per the provisions of Government Resolution dt. 16.8.2010 and dt.22.2.2013. For this purpose, Appeals received are returned herewith to the Chief Officer, Mumbai Building Repairs and Reconstruction Board, for action.”

(emphasis supplied)

2 It is not in dispute that the impugned order is essentially that of remand. Learned Counsel for the Respondent MHADA has supported the impugned order.

3 Having considered the submissions urged by learned Counsel for the Petitioners, in my view, interest of justice would be served if the impugned order dated 2 January 2015 passed by the Respondent No.1 Principal Secretary, Housing Department, State of Maharashtra remanding the matter back to the Respondent No.5 Chief Officer, Mumbai Building Repairs and Reconstruction Board (MBR&R Board) is modified in the following terms:

- 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.
- 4 All contentions of the parties are kept open.
- 5 The Petitions are disposed of in the aforesaid terms.

(A.A. SAYED, J.)