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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION (L) NO.1599 OF 2015

Dattaram Dhondu Tanawade &
Sunil Dhondu Tanawade & Ors.

..Petitioners.

V/s.

The State of Maharashtra & Ors.

..Respondents.

Ms.Madhavi Tavanandi with Bina P. Rao i/b. Bina Rao & Co. for the
Petitioners.

Smt. Madhubala Kajale, AGP for the Respondent-State.

Ms.T.H. Puranik for Respondent-BMC.

Mr.Prabhakar Jadhav i/b. V.P. Sawant for Respondent No.3.

Mr.Virag Tulzapurkar, Senior Advocate with Ms.Soumya S., Mr.
Dhawal Mehta, Mr.Denzil Arambhan, Ms.Shruti Manglik, Mr. Sidhant
Kaushik i/b. Wadia Gandhi & Co. for Respondent Nos.4 to 6.

Mr.Yadunath Chaudhari with Kejal Kamdar i/b. Mr.Omkar Kulkarni
for Respondent Nos.7 & 8.

**CORAM : MOHIT S. SHAH, C.J. &
A.K. MENON, J.**

DATED : 18 JUNE, 2015

PC. :-

We have learned counsel for the parties.

2. Learned counsel for the 72 Petitioners expresses certain apprehensions being entertained by the Petitioners. Learned counsel for the Respondents have responded to those apprehensions and explained that it is not possible to give the Petitioners rehab alternate accommodation with carpet area of 405 sq. ft. because Respondent No.4 is paying for fungible FSI towards providing 51 sq. ft. carpet area over and above the required 300 sq. ft. and that the balance portion of the fungible FSI for the rehab buildings would be used for construction of certain common areas such as staircase, lift, lobbies, etc. in the rehab component to be constructed for the tenants / occupants.

Learned counsel for Respondent No.4 further states that the permanent alternate accommodation to be provided to the Petitioners and other occupants in the Scheme as and by way of rehabilitation would be on ownership basis as against the present tenancy basis.

3. As regards the submission of learned counsel for the Petitioners that the Petitioners want transit accommodation on

site, learned counsel for Respondent No.4 has submitted that it is not possible to provide alternate accommodation on site and, therefore, as against the monthly rental of Rs.6,000/- per month initially suggested, Respondent No.4 undertakes to issue 36 post dated cheques to each of the Petitioners for the rent payable by them for temporary transit accommodation for a period of three years from the date of handing over of possession of their respective premises as follows:-

- (i) Rs.18,000/- per month for the first year;
- (ii) Rs.19,000/- per month for the second year; and
- (iii) Rs.20,000/- per month for the third year.

Learned counsel further undertakes to this Court on behalf of Respondent No.4 and under the instructions of Mr. Balmukund Gaggar, Director of Respondent No.4 Company that Respondent No.4 shall honour all the aforesaid cheques when presented for payment.

4. Learned counsel for Respondent No.4 further undertakes on behalf of Respondent No.4 under the instructions of

abovenamed Director that Respondent No.4 shall execute and register the agreements for permanent alternative accommodation with Petitioners in two parts, the first part to remain with Respondent No.4 and the counterpart to be given to each of the Petitioners in respect of their respective premises. Learned counsel for Respondent No.4 further states that the agreements will contain the same terms and conditions as are contained in the agreements executed and registered with the other occupants. Respondent No.4 further states that it will bear all costs related to preparation of the agreements, payment of stamp duty and registration fees.

5. Learned counsel for Respondent No.4 shall provide a copy of the draft agreement to be executed by the Petitioners to learned counsel for the Petitioners within ten days from today (by keeping blank the name of the Petitioner and the flat number).

6. Learned counsel for Respondent No.4 further undertakes on behalf of Respondent No.4 under the instructions of the abovenamed Director that Respondent No.4 shall complete the construction of rehab buildings within three years from the date of

issuance of the commencement certificate for the rehab buildings by the Mumbai Municipal Corporation and that in case the Occupation Certificate is not received in respect of the rehab building within 36 months from the date of handing over possession of the respective premises by the Petitioners, Respondent No.4 shall continue to pay monthly rent to the concerned Petitioners till the Occupation Certificate is issued and till the possession of the permanent alternate accommodation is offered in writing to the respective Petitioners.

7. Learned counsel for Respondent No.4 submits that the above undertakings are given on behalf of Respondent No.4 on the basis that all the Petitioners shall hand over vacant and peaceful possession of the respective premises in their occupation to Respondent No.4 within twenty-four hours of registration of the agreements and receipt of the post dated 36 cheques as indicated above.

8. In view of the above undertakings given on behalf of Respondent No.4, learned counsel for the Petitioners on instructions undertakes on behalf of all the 72 Petitioners that:-

- (a) the Petitioners will sign and execute the agreements as and when they receive the intimation with two days notice from Respondent No.4 to appear before the Registrar and / or Sub-Registrar for registration of the documents;
- (b) within twenty-four hours of presentation of the agreements for registration and receipt by each of the Petitioners of the 36 post dated cheques as above, the Petitioners will hand over vacant and peaceful possession of the respective premises in their occupation to Respondent No.4.

9. It is made clear that the learned counsel for the Petitioners has given the undertaking under the instructions of the Petitioners Mr.Sadanand Salian and Mr.Praveen Naik, who are present in the Court.

10. It is clarified that the above arrangement is only for the benefit of those Petitioners whose names are included in the list of certified tenants issued on 6 April 2013 by MHADA.

11. As regards the other Petitioners, if any, whose names are not included in the above list, they shall have to vacate the premises in accordance with the directions of MHADA and the petition shall be treated as dismissed in so far as they are concerned.

12. The Petition is accordingly disposed of in terms of the above arrangement.

13. Liberty to apply in case of any difficulty.

(CHIEF JUSTICE)

(A.K.MENON, J.)