

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION STAMP NO.1635 OF 2015
ALONG WITH
WRIT PETITION STAMP NO.1636 OF 2015

WP(L) NO.1635 OF 2015

Razia Salim Merchant. .. Petitioner
Vs
Municipal Corporation of Greater Mumbai
and another. .. Respondents
—

WP(L) NO.1636 OF 2015

Mohammed Aasif Mohammed Hussain Meghani. .. Petitioner
Vs
Municipal Corporation of Greater Mumbai
and another. .. Respondents
—

Shri Y.E. Mooman i/by Ms. Manisha B. Gawde for the Petitioner.
Shri A.Y. Sakhare, Senior Counsel along with Shri Vinod Mahadik and
Mrs. Shobha Ajitkumar for the BMC.
Ms. Asma Shaikh i/by Shri Sajjad Husain Ali Patel for Respondent No.2-
landlord.
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CORAM : A.S. OKA &
REVATI MOHITE DERE, JJ
DATED : 7TH AUGUST 2015

P.C.

. The consent terms between the Petitioner and the second
Respondent are taken on record and marked “X” for identification in
each Petition. The consent terms have been signed by the Petitioners

and the second Respondent and their respective Advocates. A separate undertaking in terms of the Clause (1) of the consent terms is also tendered across the bar which is marked as “Y” for identification.

2. In view of the consent terms and the undertakings, the learned counsel appearing for the Petitioners prays for grant of time to vacate the premises till 2nd October 2015. The said prayer is opposed by the learned senior counsel appearing for the first Respondent Mumbai Municipal Corporation by contending that the Petitioners are occupying the tenements in a building owned by the Mumbai Municipal Corporation which is in dilapidated and dangerous condition. His submission is that in the event of collapse of the building, the municipal officers will be prosecuted. He, therefore, submits that such a long time cannot be granted. He urges that in the event of any accidental collapse of the building or any part thereof resulting into loss of any third party, the municipal officers will suffer.

3. We have considered the said submissions. The Mumbai Municipal Corporation has adopted the due process of law by initiating proceedings under Section 105B of the Mumbai Municipal Corporation Act, 1888. Admittedly, no order of eviction has been passed in the said proceedings. The next date fixed in the said proceedings is Monday, the 10th August 2015. The said date is fixed for recording of evidence

of the Petitioners. Only after an order of eviction is passed against the Petitioners that the Municipal Corporation could have evicted the Petitioners. Moreover, the order of eviction could have been challenged by the Petitioners in accordance with law.

4. In view of the private settlement between the Petitioner and the second Respondent, the Petitioners on their own have volunteered to vacate the premises in their possession on or before 2nd October 2015. Thus, even before the due process of law is taken to its logical conclusion by the Municipal Corporation, the Petitioners on their own have agreed to vacate the premises in their possession. Therefore, the submission of the learned senior counsel appearing for the Municipal Corporation cannot be accepted.

5. The second Respondent has been appointed as the Developer by the Mumbai Municipal Corporation. The Developer has paid certain amount to the Petitioners in both the Petitions. The Petitioners are residing in the premises along with their respective families and, therefore, when on their own they have decided to vacate the premises in their possession, a reasonable time is required to be granted to the Petitioners to vacate the premises as obtaining another accommodation in the City of Mumbai is not easy. Accordingly, we dispose of both the Petitions by passing the following order:-

ORDER :

- (a) The undertakings of the Petitioner in both the Petitions are accepted;
- (b) In view of the undertakings, we restrain the Mumbai Municipal Corporation from evicting the Petitioners till 2nd October 2015;
- (c) In view of the undertakings, the proceedings under Section 105B of the Mumbai Municipal Corporations Act, 1888 will not survive;
- (d) Between the Petitioners and the second Respondent, the Petition are disposed of in terms of the consent terms marked “X” for identification;
- (e) On the failure of the Petitioners to vacate the premises in their respective possession or or before 2nd October 2015, it will be open for the Mumbai Municipal Corporation to immediately take over the possession of the premises occupied by the Petitioners;

(f) Needless to state that the Inquiry Officer holding the proceedings under Section 105B of the Mumbai Municipal Corporations Act, 1888 shall be informed about this order;

(g) The Petitions are disposed of on above terms;

(REVATI MOHITE DERE, J)

(A.S. OKA, J)