

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO.1993 OF 2011

Bhagwandin Haridutta Chaturvedi
& Others Petitioners

Vs.
Municipal Corporation of Greater
Bombay & Others Respondents

Mr. Omprakash Pandey i/b M/s. Pandey & Co. for
the Petitioners.

Mr. A.Y. Sakhare, Senior Counsel with Ms Shobha
Ajitkumar for Respondent Nos.1 to 3.

Mr. Amit Shastri, AGP, for Respondent Nos.4 & 5.

Mr. P.M. Shah for Respondent No.6.

CORAM: A.S. OKA &
REVATI MOHITE DERE, JJ.

DATED: AUGUST 03, 2015

P.C:

1. Heard the learned Counsel appearing for the
petitioners, the learned Senior Counsel appearing for respondent
Nos.1 to 3, the learned AGP appearing for respondent Nos.4 and
5 and the learned Counsel appearing for respondent No.6.

2. The challenge in this petition under Article 226 of the Constitution of India is to the notice dated 10-7-2010 served to the petitioners under Section 89 of the Maharashtra Regional and Town Planning Act, 1966 (for short, "MRTP Act"), the order dated 26-2-2011, passed by the Assistant Municipal Commissioner under Section 90 of the MRTP Act as well as the order passed by the State Government on 9-8-2011 under sub-section (3) of Section 90 of the MRTP Act.

3. The learned Counsel appearing for the petitioners submitted that the petitioners are not disputing the correctness of the orders of eviction which are challenged in this petition. His contention is that the petitioners are entitled to alternate accommodation in the light of the prevailing policy. He submits that the representation made by the petitioners to the Municipal Corporation for grant of alternate accommodation be ordered to be re-considered. His submission is that the petitioners are in possession of several documents which have not been taken into consideration by the Municipal Corporation. He has tendered on

record an Undertaking of all the petitioners which is affirmed on 25-7-2015. From the said Undertaking, it appears to us that the petitioners had given up their challenge to the notices issued under Section 89 of the MRTP Act, the order of eviction passed under Section 90 of the MRTP Act and the order made by the State Government on the reference under sub-section (3) of Section 90 of the MRTP Act. The contention of the petitioners appears to be that their case for allotment of alternate accommodation should be re-considered on the basis of the several documents which are in their possession. In view of the unqualified undertaking given to this Court, the petitioners are not entitled to challenge the orders of eviction under Sections 89 and 90 of the MRTP Act. As they are seeking alternate accommodation on the basis of the policy which allegedly protects them, one more opportunity deserves to be granted to the petitioners to submit the documents so that their case for grant of alternate accommodation can be examined. The learned Senior Counsel appearing for the sixth respondent has no serious objection for adopting the said course by fixing a time

bound schedule. The learned Senior Counsel representing the Municipal Corporation reiterates the contention of the Municipal Corporation that the impugned orders are legal and valid. The same is the stand of the learned AGP. Hence, we dispose of the petition by passing the following order:

ORDER

(i) We accept the undertakings which are incorporated in the Undertaking which is taken on record and marked “X” for identification;

(ii) In our view, what is stated in the undertakings, the notice dated 10-7-2010 issued by the Municipal Corporation, the order dated 26-2-2011 passed by the Assistant Municipal Commissioner of the Municipal Corporation and the order dated 9-8-2011 passed by the Principal Secretary of the Urban Development Department stand confirmed to the extent to which the orders of eviction of the petitioners from the plot in question are concerned;

(iii) We direct the petitioners or their representatives to appear before the Assistant Municipal Commissioner, K-East Ward of the Mumbai Municipal Corporation on 24-8-2015, at 11:00 a.m.. The petitioners shall produce true copies of all the relevant documents apart from the documents which were already produced by them. We make it clear that all the documents on which the petitioners rely upon will have to be produced on 24-8-2015 and no further time shall be granted to the petitioners to produce the documents;

(iv) After examining the documents and after giving an opportunity of being heard to the petitioners, the Assistant Municipal Commissioner shall decide whether under any subsisting policy the petitioners are entitled to seek alternate accommodation;

(v) Appropriate order shall be passed by the Assistant Municipal Commissioner on or before 31-10-2015. The order or separate orders which may be passed in the case of each of the

petitioners shall be served upon the petitioners;

(vi) Till the service of the order/orders on the petitioners, the ad-interim order passed by this Court on 19-9-2011 shall continue to operate;

(vii) If the order/orders be adverse to the petitioners, the order of status quo shall continue to operate for a period of fifteen days from the date of service thereof to the petitioners. We make it clear that the petitioners shall not be entitled to challenge the orders of eviction as the same have attained finality;

(viii) We make it clear that we have made no adjudication on existence of any policy, as pleaded by the petitioners, and on existence of any right of the petitioners of seeking allotment of alternate accommodation;

(ix) All the contentions are kept open;

(x) The petition is disposed of in above terms.

4. All concerned to act upon the authenticated copy of this order.

(REVATI MOHITE DERE, J.)

(A.S. OKA, J.)