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

WRIT PETITION No. 2812 OF 2014

Jyoti Khubchandani	...Petitioner
Vs.	
Municipal Corporation of Greater Bombay and Ors.	...Respondents

Ms.Jyoti Khubchandani for Petitioner
Mr.M.M. Malvankar for BMC- Respondent No.1
Ms. Uma Palsuledesai -AGP for Respondent No.2
Mr. Avinash Fatangare for Respondent No.3
Mr.C.G. Ketkar – Court Commissioner present

CORAM : V. M. KANADE &
A.R. JOSHI, J.J.

DATE : APRIL 28, 2015

P.C. :

1. Pursuant to the order passed by this Court on 24th February, 2015, the Prothonotary and Senior Master has appointed the officer of this Court as Commissioner to take inspection of the first floor of Mangal Aadesh Cooperative Housing Society, Santacruz, Mumbai -55. This Court had also given direction to the Court Commissioner to take inspection and find out :-

- (i) Whether Flat No.101-A is in existence and also state who is occupying the said flat;
- (ii) Whether flat No. 105 is in existence or not.
- (iii) The Court Commissioner shall also take photograph and if

possible to take assistance of an Architect for the purpose of carrying out measurements of the flats on the first floor.

2. Accordingly the report has been submitted. In this report it is stated that the flat No.101-A is occupied by the Petitioner. Flat No.105 is not in existence and internal measurements of all the flats have been taken. The measurements of Flat No.101-A, which is occupied by the Petitioner, is 208.62 sq.ft. The measurements of other flats are also annexed at Exhibit 'H' to the said report.

3. The grievance of the Petitioner is that the BMC is not correcting their records properly. Flat No.1-1A is not shown in the BMC record though the society's record shows that this flat is in existence.

4. So far as prayer clause (a) is concerned, which reads as under:
“(a) That Respondent No.1, BMC be ordered to correct their records and properly indicate the identity of petitioners permanent public address flat no.101-A on the 1st floor and to reaffirm and confirm the same in their records and produce copies of sanctioned plan showing petitioners flat and area.”

In our view, the Commissioner's report clearly indicates that the said flat is in existence and admeasuring 208.62 sq.ft.. In view of the report, it does appear that the flat No.101-A is in existence on the first floor and the Society's record also indicates the same. In view of this, the prayer clause (a) is granted. The BMC is directed to correct their record.

5. Prayer clause (b) reads as under:

“(b) The Respondents and their agents be restrained from amalgamating, including or joining the petitioners flat no.101-A with any other authorized / unauthorized, non existent flat/flats in the society and that the location after redevelopment be the same.”

In our view, since flat No.101-A is a separate self-contained flat, the Respondents cannot amalgamate with any other flat and in view of the redevelopment of the society, the Petitioner is entitled to get separate flat in the reconstructed building.

6. So far as prayer clause (c) is concerned, which reads as under:

“(c) to restrain Respondent No.2 & 3 from deducting any illegitimate amount without providing petitioner with a certified copy of written statement of accounts from corpus fund of the petitioner as being bad in law.”

It is submitted that the Society has been adding the legal charges arbitrarily in her monthly bill. She has invited our attention to the bill for the months of April to June, 2013. Bill No.102, Serial No.6 (nature of charges) shows the legal charges of Rs.16,500/-, which are sought to be recovered from the Petitioner. Similar charges which are shown in bill for the months of January to March, 2014 is Rs.5,118.00. Legal charges for the months of July to September, 2014 is of Rs.40,000/-.

7. In our view, the Society is not justified in recovering the legal charges without giving any explanation to the Petitioner. We,

therefore, direct the Respondent-Society that the said amount of legal charges and expenditure incurred by the Society shall not be recovered from the Petitioner. The prayer clause (c) to the extent of the recovery of the legal charges for the aforesaid months, therefore, cannot be recovered from the Petitioner.

8. So far as the prayer clause (d) for expediting the hearing of the dispute in the Co-operative Court filed by the Petitioner is concerned, the Petitioner is a senior citizen and the cases are pending for more than three years. We, therefore, direct the Co-operative Court to decide the pending dispute of the Petitioner expeditiously.

9. So far as prayer clause (e) is concerned, since the Petitioner has an alternate efficacious remedy of approaching the competent Court for her grievance, we are, therefore, not inclined to grant the prayer clause (e), reserving the said of the petitioner to challenge her grievance before the competent court.

10. So far as prayer clause (f) is concerned, which reads as under:
“(f) To order Respondent No.2 & 3 to not raise demand notice for payment of salary of legal advisor and manager of society with immediate effect from petitioner as being against natural justice & to refund the amounts collected from petitioner for contribution to the salaries of legal advisor and managers since 2009 and the unlawful fines and interest.”

In our view, the Petitioner has an alternate efficacious remedy of approaching the competent Forum. Hence, we cannot grant prayer clause (f) as claimed by the Petitioner. Rest of the reliefs cannot be

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granted by this Court while exercising our writ jurisdiction under Article 226 of the Constitution of India. The Petitioner is at liberty to agitate these reliefs before the Competent Court. Fees of the Architect shall be borne by the Petitioner. The writ petition is accordingly disposed of in the aforesaid terms.

[A.R. JOSHI, J.]

[V. M. KANADE, J.]