

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 255 OF 2016
WITH
CONTEMPT PETITION (ST.) NO. 1097 OF 2016

Mrs.Vasanti Jayaram Shetty and others. ... Petitioners.
V/s.
Kalyan Dombivli Municipal Corporation
and others. ... Respondents.

S.G.Deshmukh i/b. Ramdas A. Shelke for the petitioners in both.
PK.Dhakephalkar, Sr.Advocate i/b. A.S.Rao for respondent No.1 in WP
A.I.Patel, AGP for the State.
Uzair Kazi i/b. Umesh A. Breed for respondent Nos.4 to 6 in WP

CORAM : A.S. OKA AND C.V.BHADANG, JJ

DATED : 12th February 2016.

PC. :

Heard the learned counsel appearing for the petitioners in writ petition who are also the contempt petitioners. We have heard the learned senior counsel representing the Kalyan Dombivli Municipal Corporation as well as the learned counsel representing the fourth to sixth respondents in the writ petition. The learned AGP represents the State.

2. The learned senior counsel appearing for the Municipal Corporation, on instructions, states that the notice dated 23rd December

2015 under section 211 of the Maharashtra Municipal Corporations Act, 1949 has been withdrawn by the Municipal Corporation, but the Municipal Corporation intends to take proceeding in accordance with law for the purpose of road widening.

3. On instructions, the learned senior counsel representing the Municipal Corporation states that as far as the demolished portion of premises in possession of the petitioners is concerned, the Valuer appointed by the Municipal Corporation has valued the loss caused to the petitioners at the sum of Rs.1,75,000/-. He states that the said amount will be paid by the Municipal Corporation to the petitioners within a period of two weeks from today. We accept the statement.

4. The learned counsel appearing for the petitioners submitted that the petitioners may be permitted to carry out necessary repairs to the remaining portions of the structures so that they can recommence their business. The learned senior counsel appearing for the Municipal Corporation states that a permission cannot be granted to extend the premises. However, if permission is sought for carrying out repairs, which will not amount to extension, the Municipal Corporation will consider the applications made by the petitioners in accordance with law, subject to the right of the Municipal Corporation to adopt an appropriate proceeding as stated earlier.

5. The contempt petition was filed by the writ petitioners with the allegation that notwithstanding the ad-interim order granted by this

Court on 7th January 2016, the demolition work was carried out by the Municipal Corporation. The learned counsel appearing for the petitioners states that the petitioners are willing to accept the compensation of Rs.1,75,000/- offered by the Municipal Corporation without prejudice to their rights and contentions and their remedy to seek adequate compensation. According to the petitioners, the compensation offered by the Municipal Corporation is not at all adequate.

6. It will be always open for the petitioners to accept the compensation offered by the Municipal Corporation without prejudice to their right of seeking higher amount by filing an appropriate proceeding in accordance with law.

7. Now, when the Municipal Corporation has offered to pay the compensation, we are of the view that it is not necessary to entertain the contempt petition. Hence, we pass the following order:

ORDER

(i) We accept the statement made by the learned senior counsel appearing for the Municipal Corporation that the notice dated 23rd December 2015 issued under section 211 of the Maharashtra Municipal Corporations Act, 1949 has been withdrawn. It will be open for the Municipal Corporation to take an appropriate proceeding in accordance with law for taking over the premises in possession of the petitioners for road widening. Needless to state that no action shall be taken by the

Municipal Corporation without giving an adequate opportunity of being heard to the petitioners as well as fourth to sixth respondents;

(ii) The Municipal Corporation shall pay the compensation of Rs.1,75,000/- to the writ petitioners within a period of two weeks from today. The petitioners will be entitled to accept the same without prejudice to their rights and contentions. It will be open for the petitioners to file an appropriate proceeding in accordance with law for claiming higher amount towards compensation. All contentions in that behalf are kept open;

(iii) It will be open for the petitioners to make applications to the Municipal Corporation for carrying out repairs to the premises which are the subject matters of the writ petition. If such applications are made, the Municipal Corporation shall decide the same in accordance with law as expeditiously as possible and, in any event, within a period of two weeks from the date of filing of such applications. The Municipal Corporation shall consider the fact that the work of demolition has been carried out on the basis of the notice which has been withdrawn. Needless to state that considering the peculiar facts of the case, the Municipal Corporation shall consider of granting necessary repair permissions without prejudice to the right of the Municipal Corporation to take further proceedings for acquisition of the property or for taking over of the property for road widening, provided the petitioners are not seeking to extend the existing premises;

(iv) Both, the writ petition as well the contempt petition are disposed of in the above terms;

(v) Notwithstanding the disposal of the writ petition and the

contempt petition, it will be open for the petitioners and the fourth to sixth respondents to arrive at an amicable solution after having necessary discussion with the Municipal Corporation so that an appropriate arrangement can be made for taking over the premises which are the subject matters of the writ petitions for the purpose of road widening. If the parties arrive at a workable arrangement, they are free to move this Court to record the arrangement in the writ petition. Though the contempt petition is disposed of, the contentions raised by the petitioners in the said petition are kept open which can be raised in the proceedings which may be filed by the contempt petitioners for seeking higher compensation.

(C.V. BHADANG, J)

(A.S.OKA, J)