

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**ORDINARY ORIGINAL CIVIL JURISDICTION****WRIT PETITION (L) NO. 874 OF 2016**

Smt.Gunvanti Kanjibhai Babar

...Petitioner

vs.

The State of Maharashtra & Ors.

...Respondents

Mr.Anand H. Singh for Petitioner.

Mr.R.J. Mane, AGP for State.

Mr.Sanjay Jain i/b. Tushar Goradia for Respondent No.4.

CORAM : S.C. GUPTE, J.**7 APRIL 2016****P.C. :**

Heard learned Counsel for the parties.

2. The petition is disposed of in terms of the following order :

(1) This matter is peculiar as to several of its aspects. It is on account of these peculiar circumstances some of which are indicated hereafter that the present order is being passed in exercise of powers of this Court under Article 226 of the Constitution of India.

(2) The Petitioner's case is that she is a widow and senior citizen. The Petitioner's husband was held initially eligible for commercial rehab-premises admeasuring 120 square feet carpet area in Annexure II issued by the competent authority. In an application of the Petitioner for being held eligible for a separate residential premises under clause 5.2 of Appendix IV read with Development Control Regulations, 1991 instead of dealing with it as

a separate application, the competent authority by an order dated 27 July 2011 held the Petitioner eligible at Serial No.391 of Annexure II for a rehab of residential-cum-commercial premises, in place and stead of only commercial premises as certified earlier. Thus, the Petitioner's claim for a separate residential premises admeasuring 269 square feet in addition to commercial premises of 120 square feet was not adjudicated upon.

(3) As per the eligibility of residential-cum-commercial premises, the Petitioner would have been entitled to 269 square feet carpet area of residential-cum-commercial premises. As per the eligibility of commercial premises, the Petitioner would have been entitled to 120 square feet carpet area of commercial premises.

(4) The Petitioner has adopted proceedings by filing appeals before the competent authorities and has also filed writ petition bearing (Lodging) No.2064 of 2015 in this Court in connection with her eligibility. In the meantime, in the proceedings under sections 33 and 38 of the Slum Act, finally an order for eviction was passed on 22 February 2016 by the Addl. District Collector (Ench/Rem) Eastern Suburbs.

(5) During the course of arguments, the Counsel for the Petitioner indicated that the Petitioner was willing to accept 180 square feet of commercial premises on ground floor of proposed Rehab Building No.2 and give up her entitlement to another 89 square feet (269-180) of residential-cum-commercial premises as well as give up her claim for a separate residential premises. Thus, the Petitioner is willing to reduce her entitlement by 89 square feet, provided the Petitioner is held entitled to 180 square feet commercial premises on ground floor of Rehab Building No.2. The Petitioner is present in Court. On query by the Court, the Petitioner has confirmed the statement made by her Counsel.

(6) The Petitioner has been litigating in courts and before various authorities since 2011. The Petitioner is a widow. The Petitioner is also a senior citizen. The Petitioner after taking legal advise has agreed to restrict her entitlement to 180 square feet commercial premises on the ground floor of Rehab Building No.2.

(7) I find the request of the Petitioner reasonable. The same will also lead to a quietus on number of proceedings. If accepted by the court, the same will also save a lot of time and energy of all concerned including authorities as well as the Developer.

(8) In light of the above, it is ordered that on account of the Petitioner being a widow and a senior citizen and also on account of the peculiar circumstances of the matter, the Petitioner would be entitled to rehab commercial premises admeasuring 180 square feet carpet area on the ground floor of Rehab Building No.2 facing Rehab Building No.1, i.e 89 square feet less than her entitlement of 269 square feet as per Annexure II at a location between A and B on the plan tendered and marked ('X') for identification subject to planning requirement. Annexure II at Serial No.391 shall stand amended as above and the order dated 27 July 2011 is set aside. The records of the competent authorities would be changed accordingly. Respondent No.4 shall allot rehab commercial premises admeasuring 180 square feet carpet area on the ground floor of Rehab Building No.2 facing Rehab Building No.1. The Petitioner shall within a period four weeks from the date hereof hand over quiet, vacant and peaceful possession of the existing premises for the purposes of demolition and implementation of the SR Scheme. In default whereof the authorities would be entitled to demolish the same and the order dated 22 February 2016 would be implemented within two weeks thereafter. The Respondent shall pay an amount of Rs.16,000/- per month as transit compensation to the

Petitioner for a period of 11 months and thereafter in the same manner as being paid to other eligible slum dwellers. The premises to be handed over by Respondent No.4 in pursuance of this order will be treated as rehab premises for all intents and purposes by all authorities and the sale FSI potential available to Respondent No.4 will not be affected.

(9) The Petitioner and the Respondent, on the plans being approved and sanctioned and the premises being identified, shall enter into an agreement for permanent alternate accommodation. The Petitioner shall pay the stamp duty in connection therewith. Respondent No.4 shall bear the registration costs of the same.

(10) The Petitioner shall have no other claims, save and except to rehab commercial premises of 180 square feet. All other claims of the Petitioner are hereby rejected with the consent of the Petitioner. The Petitioner agrees and undertakes not to stake any claims in connection with the alleged residential premises or otherwise. The Petitioner shall withdraw the appeals filed before the competent authorities and the writ petition filed in this Court.

(11) This order is being passed on account of the peculiar facts and shall not be treated as a precedent for other slum dwellers / occupants or for any purpose whatsoever.

(S.C. Gupte, J.)