

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

WRIT PETITION (LODGING) NO.1350 OF 2016

M/s. Karim Esmail, Mumbai,
Through its Partners
Gulamhusain Abdul Aziz Karim & Anr. Petitioners
V/s.
State of Maharashtra,
Through the Secretary,
Housing Department, Mantralaya, Mumbai & Ors. Respondents

Mr. Madhav J. Jamdar, a/w. Mr. Santosh Musale,
for the Petitioners.

Mr. P.G. Lad, a/w. Ms. Aparna Murlidharan, for
Respondent Nos.2 to 4.

Mr. S.U. Kamdar, Senior Counsel, a/w. Mr. Nikhil
Sakhardande, Mr. Dhawal Mehta, Mr. Denzil
Arambhan, Ms. Rati Patni and Mr. Nanki Grewal,
i/by M/s. Wadia Ghandy & Company, for
Respondent No.5.

CORAM : S.C. DHARMADHIKARI &
DR. SHALINI PHANSALKAR-JOSHI, J.J.

DATE : 14TH JUNE, 2016.

P.C. :

1. By this Petition, under Article 226 of the Constitution of India, the Petitioners had sought an appropriate writ, order or direction to quash and set aside the communication / order dated 4th May 2016 of the Executive Engineer, 'C-1' Division, of the Mumbai Building Repairs and Reconstruction Board, Mumbai, (*for short "the Board"*).

2. The communications, copies of which are annexed to the Petition as Annexures "C" and "Z", informed the Petitioners that the Board has certified list of tenants / occupants of Cluster Development Scheme undertaken by a Trust, including a building more particularly described as 'Chitalwala Building', City Survey No.3611 of Bhuleshwar Division.

3. The plans were approved by the Municipal Corporation of Greater Bombay and a Commencement Certificate has been issued on 30th April 2015. The Layout has been approved by the Municipal Corporation on 16th January 2015. The Trust in question had by various letters informed the Petitioners that they should shift to the temporary transit accommodation made available to them so that the Cluster Development Scheme can go through.

4. Since the Petitioners were not co-operating, Respondent No.5-Trust approached the Board and that is how the Office of the Executive Engineer, "C-1" Division, issued the impugned communications.

5. We have heard Mr. Jamdar appearing for the Petitioners, Mr. Lad appearing on behalf of Respondent Nos.2, 3 and 4 and Mr. Sakhardande appearing for Respondent No.5-Trust.

6. With their assistance, we have perused these communications and the entire Petition and annexures thereto. There is an affidavit, which has been filed by Respondent Nos.2, 3 and 4, confirming the entitlement of the Petitioners herein. The grievance is that the Petitioners do not wish to shift to second floor accommodation, which is meant for commercial

usage. The Petitioners' complaint is that their shop was located and situated on the ground floor. Given the nature of their business, they want an accommodation on the ground floor. However, throughout the correspondence and even before us it is mentioned that the Petitioners are ready and willing to co-operate with the authorities in the redevelopment and do not wish to hold it up. They are ready and willing to vacate the premises, which is presently in their occupation and possession.

7. The only grievance is that considering the nature of the business, the Petitioners would not like to be located on the second floor in the redeveloped premises and a shop on the ground floor be allotted to them.

8. Having heard both sides, we do not find that this is a reason enough not to vacate. After the stand of the Petitioners is noted and now they are held eligible for permanent alternate accommodation, then, the impugned communications cannot be declared as illegal or vitiated by any malafides. The actions cannot be termed as arbitrary or vitiated by any error of law apparent on the face of the record. There is no perversity demonstrated and once we have ensured that the sanctioned and approved plans denote and depict the proposed accommodations of the Petitioners on the second floor of the reconstructed building, then, all the more, the Writ Petition need not be entertained. It is dismissed.

9. We, however, clarify that, on Mr. Lad handing over a list of the shop-keepers / tenants of commercial structures on the ground floor of the existing building, it would be open for the Petitioners to present any scheme of exchange in the sense that anybody on the ground floor of the

existing premises and meant for commercial user is ready and inclined to shift to the second floor. It would be open for the Petitioners to present such exchange offer / scheme for consideration of the Board and the Trust. We have no doubt in our mind that any such reasonable exchange proposal and meeting the approval of both sides would be sympathetically considered by the concerned Respondents. We do not think that any such arrangement can be termed as a precedent for all cases to come. It would be only peculiar and to the Petitioners. With this liberty, we dispose of this Writ Petition.

10. It is made clear that Respondent No.5-Trust cannot be compelled to make any offer to the Petitioners of accommodation on the ground floor or the exchange of the above nature. It is for the Petitioners and those located on the ground floor in the reconstructed building to work out any arrangements and present the same for consideration of the Authorities or the Trust. We have no doubt that the Trust as well as the Authorities will duly co-operate with the Petitioners, if at all any scheme or arrangement is provided.

11. Mr. Jamdar, on instructions, states that the Petitioners do not wish to shift to any transit or temporary alternate accommodation, but would be satisfied if compensation in lieu thereof and on same terms, as is offered to other commercial occupants, is paid to them. The Petitioners having been declared eligible now, they would be entitled to such compensation in lieu of transit accommodation. Both, the Board and the Trust, shall ensure that such compensation is paid as expeditiously as possible, including any arrears thereof, within a period of four weeks from today.

12. The Petitioners would receive the Demand Draft towards the monthly compensation in lieu of transit accommodation on or before Thursday, the 16th June 2016.

13. Mr. Jamdar, on instructions, states that the Petitioners undertake to vacate and hand over peaceful possession of the premises within a period of ten days from the date they receive the monthly compensation. We accept this statement as undertaking given to this Court.

[DR. SHALINI PHANSALKAR-JOSHI, J.] [S.C. DHARMADHIKARI, J.]