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

WRIT PETITION NO.2331 OF 2006

M/s. Ghanshyam Enterprises and Others ...Petitioners
vs.
Municipal Corporation of Greater Bombay and Others ...Respondents

Mr. Rajesh Patil a/w. Mr. D. Bannerjee and K.K. Joshi i/b. M/s. Mahesh Jani & Co., for the Petitioners.
Ms. Geeta Joglekar, for Respondent-BMC.

CORAM : SHANTANU KEMKAR & MAKARAND KARNIK, JJ.

DATE : JUNE 16, 2016

P.C.:

1. Parties through their counsel.

2. Through this Petition filed under Article 226 of the Constitution of India, the Petitioners are seeking direction to the Respondents to act on the basis of their circular dated 4th May, 1999 (Exhibit 'B') as also the circular dated 8th February, 2002 (Exhibit 'C') and to determine and pay to the first Petitioner his appropriate construction cost on the date of possession of the four flats in question, which according to the Petitioners were handed over by the

first Petitioner to Mumbai Municipal Corporation on 26th June, 1998. According to the Petitioner, in the report of the Executive Engineer, Development Plan dated 26th October, 1991 in clause 7, the development plan of the land in question was allowed subject to nine conditions. Condition No. 7 of the said report dated 26th October, 1991 reveals thus :

> 7] *"That the owner shall hand over 10% of the total number of tenements proposed to the Municipal Nominees, but of size having carpet area of 16.75 sq.m only, in the building so constructed by him on payment of cost of construction plus 15% of cost of construction as decided by the Chief Engineer (Development Plan)".*

3. It is further case of the Petitioner that thereafter the possession was handed over as aforesaid on 26th June, 1998 and in this regard Dy. C.H.E.D.P. (ii) and Assistant Commissioner of Estates have recommended the Petitioners' claim vide letter dated 8th February, 2002 by observing thus:

> *"In this case as informed by EEBP(W) the 4 No. of tenements are handed over to M.C.G.M on 26th June, 1998. Thus it can be seen that the prevailing rate at the time of handing over of flats was Rs. 392/- per sq. ft and*

as per aforesaid circular the same have to be adopted with 12% simple interest till the date of payment. Since the matter of taking over of flats and making payment to the owner/developer is being death with by Estate Department. Asst. Commissioner Estates is requested to examine the case in light of circular mentioned above and submit a detailed report to CHE.RP/(ii)(i) (ES&P) Jt. MC.(I) in this respect."

4. The grievance of the Petitioner is that in spite of the aforesaid letter and the recommendations, the Petitioners' claim has not been decided as yet. The Respondents have filed reply and have justified their action of non-payment of the construction cost to the Petitioners. Thereafter the Petitioners have also filed rejoinder demonstrating that how the action of the Respondents is illegal.

5. Having considered the submissions made by the parties and having gone through the pleadings raised by them, we find that in spite of there being a letter dated 26th October, 1991 written by the Executive Engineer, Development Plan and also the letter dated 26th June, 1998 by the Assistant Commissioner Estates, the Petitioners claim has not been considered. In the reply we find that the stand

taken by the Respondents is ignoring the aforesaid recommendations as also ignoring their own circulars dated 4th May, 1999 and 8th February, 2002 in which there is a clear mention that the rates have been enhanced from 305 to 392 per sq. ft. in the meeting of DIR. (ES&P) with CH.E. (D.P.) and B.P. D.P. staff held on 4th March, 1994.

6. In the circumstances, we dispose of this Petition by directing the competent authority of the Respondent-Corporation to consider the Petitioners' claim keeping in view all the aforesaid documents referred by us. While taking decision the Respondents shall not be influenced by the stand taken by them in the return. The decision is to be taken in accordance with law keeping in view the aforesaid observations made by this Court, within a period of eight weeks from the date of receipt of the copy of this order. In case the Petitioners are found to be entitled, then the due payment be made to the Petitioners within a period of one month thereafter.

7. The Petitioners to appear before the competent authority of Respondent-Corporation on 29th June, 2016. On that date or within a week thereafter the Petitioners shall be heard by the said competent

authority and appropriate order be passed within eight weeks from the date of hearing.

8. Accordingly the Petition stands disposed of.

(M.S. KARNIK, J.) (S.S. KEMKAR, J.)