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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION (L)NO.2991 OF 2016

Dinesh Munilal Sharma ...Petitioner
vs.
State of Maharashtra & Ors. ...Respondents

Mr.Kantilal H. Kanojia for the Petitioner
Mr.Sanjay Jain a/w Mr.Sharad Wakchore i/b Thakore
Jariwala & Co. for the Respondent Nos.6 to 8.
Mr.A.I.Patel, Addl.G.P. For respondent No.1

CORAM : A.S.OKA, &
SMT.ANUJA PRABHUDESSAI,JJ.
DATE : DECEMBER 9, 2016

P.C.:

1 The learned counsel for the respondent Nos.2 and 3 states that before issuing notice dated 24th October 2016, the Chief Officer of the Mumbai Building Repairs and Reconstruction Board (for short "the said Board") has not given an opportunity of being heard to the petitioner. On instructions, he states that the Chief Officer will hear the petitioner on the date fixed by this Court.

2 The submission of the learned counsel for the petitioner is that section 95-A of the Maharashtra Housing and Area Development Act, 1976 (for short 'the said Act') will have no application to the case of the petitioner.

3 Now, the Chief Officer of the said Board has

shown willingness to give hearing to the petitioner. At the time of hearing, the petitioner can always urge that section 95-A of the said Act is not applicable. Thus, the issue will have to be gone into by the Chief Officer while passing the order.

3 In view of the aforesaid statement made by the learned counsel for the respondent Nos.2 and 3, it is obvious that action of eviction cannot be taken against the petitioner unless an order is made by the Chief Officer of the said Board after hearing the petitioner.

4 Accordingly, we dispose of the petition by passing the following order:

- (I) We direct the petitioner to appear before the Chief Officer of the Mumbai Building, Repair and Reconstruction Board on 17th December 2016 at 11.00 a.m. It will be open for the petitioner to make a representation in writing before the Chief Officer of the said Board and produce the documents;
- (II) It will be open for the petitioner to raise a contentions before the Chief Officer that the provisions of section 95-A of the said Act are not applicable to his case;
- (III) After opportunity of being heard is granted to the petitioner, the Chief Officer shall pass an order in accordance with law as expeditiously as possible and preferably within a period of one week from the date on which

hearing is concluded;

(IV) A copy of the order passed by the Chief Officer be served on the petitioner;

(V) Needless to add that till the date of passing of the order as aforesaid, the action of eviction cannot be taken against the petitioner. If the order passed by the Chief Officer be adverse to the petitioner, action of eviction shall not be taken against the petitioner for a period of two weeks from the date on which the order is served to the petitioner;

(VI) We have made no adjudication on the contentions of merits and all issues are left open to the decision of the Chief Officer;

(VII) Writ Petition is disposed of on above terms;

(VIII) All concerned to act upon an authenticated copy of this order.

(ANUJA PRABHUDESSAI, J.)

(A.S.OKA, J.)