

Santosh

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
APPEAL FROM ORDER NO. 1095 OF 2014
WITH
CIVIL APPLICATION NO.1322 OF 2014**

Municipal Corporation of Greater Mumbai	...Appellant
<i>Versus</i>	
Ramesh K Athani & Anr	...Respondents

Mrs Madhuri More, for the Appellant/MCGM.
Mr Diwakar A Dwivedi, for Respondent No.1.
Ms Kiran Bagalia, for MMRDA/Respondent No.2.

CORAM: G.S. PATEL, J
DATED: 5th July 2017

PC:-

1. The Municipal Corporation of Greater Mumbai (“MCGM”) is in Appeal against an order dated 4th March 2014. The 1st Respondent to the Appeal is the original Plaintiff. The 2nd Respondent is MMRDA.

2. The Trial Court granted the interim injunction sought by the Plaintiff restraining the MCGM from demolishing the suit structure without providing the Plaintiff alternative accommodation.

3. In the plaint the suit premises were described as Room No.10, a 10 ft. X 15 ft. space at Surajmal Gosai Chawl, Pratap Nagar,

Jogeshwar-Vikhroli Link Road (JVL R), Jogeshwari (East), Mumbai 400 060. The structure was said to be on the service road abutting the main JVL R. It was said to be affected by the alignment of the JVL R. Several structures were so affected. The MCGM said that the survey for the purposes of eligibility was carried out by the MMRDA, after which the area was handed over to the MCGM for the construction of the road.

4. The controversy before the Lower Court was that the Plaintiff's name did not appear on the eligibility survey, and only his brother Nagesh was shown as being eligible. In paragraph 10 of the impugned order, the Trial Court found that the structures were in two rows, back-to-back, each row comprising five rooms. Room No.1 and Room No.10 were exactly opposite each other, that is to say the rear portion of both rooms had a common separating wall. Room No.2 to the side of Room No.1 stood in the name of the father and about this there was no confusion. It seems that Room No.1 and Room No.10 were shown together as one, the dividing wall perhaps having been removed. The unit was shown as one. This left the Plaintiff without remedy with his name not featuring in the list of those eligible for rehabilitation.

5. In the present Appeal, MMRDA has filed an Affidavit with a plan annexed from pages 97 to 99. In paragraph 3, it is stated that the landlord had let out 10 rooms. Room No.1 and Room No.10 are adjacent (in the manner I have described). The Plaintiff Ramesh and his brother Nagesh jointly occupied these structure and these were therefore identified as a single structure and given an ID-049-SUPP. This is shown in the plan. Ms Bagalia for MMRDA fairly states that

the joint occupancy is not disputed and this appears to be an error that has crept in. She also tenders the eligibility list and this shows against ID No.049-SUPP the names of both the Plaintiff and his brother as occupants. The list is taken on record and marked “X-1” for identification.

6. In my view this will now completely end the controversy. The fact that the structure is liable to be demolished is not in dispute. Clearly the Plaintiff (Respondent No.1) is eligible for rehabilitation in the same manner and to the same extent as his brother Nagesh.

7. Not only the Appeal but entire Suit can be disposed of in these terms with a finding that the Plaintiff does not claim an area larger than 150 sq. ft. Consequently, the Plaintiff is found eligible for rehabilitation according to the existing policy on the basis that he was occupying a structure of 150 sq. ft. that is affected by the project and he is entitled to rehabilitation on that basis.

8. The learned Advocate for the Plaintiff says that this order will sufficiently dispose of the Suit itself.

9. Hence the following order:

- (a) The Appeal is disposed of in the above terms.
- (b) In view of disposal of the Appeal, the Civil Application does not survive and is disposed of accordingly.
- (c) The Suit is decreed in the following manner:

- (i) The Plaintiff is declared to be entitled to rehabilitation in accordance with existing policy on the basis that he was an occupant of the 150 sq. ft. structure now included in ID-049-SUPP.
- (ii) The MCGM will be at liberty to proceed with the demolition of the existing structure.
- (iii) The MCGM is directed to provide rehabilitation and alternative accommodation to the Plaintiff in accordance with the existing policy and to treat the Plaintiff as a project affected person to the above extent.

10. Parties may appear before the Trial Court on 14th July 2017 with an authenticated copy of this order. The Trial Court will formally pass an order decreeing and disposing of the Suit in these terms and disposing of the Notice of Motion as infructuous.

11. For the record and so that there is no misunderstanding, a copy of the Affidavit of the MCGM will also be tendered to the Court for its records.

12. The Trial Court will dispose of the Suit and the Motion accordingly. Both disposals will count towards the disposal of the Trial Court.

(G. S. PATEL, J.)