

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION
WRIT PETITION NO. 10117 OF 2017

Mr. Dilip Amarchand Gadiya and others

.....Petitioners

V/s.

The Thane Municipal Corporation through
Commissioner and others

....Respondents

Mr. Sandeep Mishra for the petitioners.

Mr. N. R. Bubna for the respondent nos. 1 to 3.

Mr. A. P. Vanarase AGP for the State.

**CORAM : SMT. VASANTI A. NAIK,
RIYAZ I. CHAGLA, JJ.**

DATE : NOVEMBER 3, 2017.

P.C.

By this writ petition, the petitioners seek a declaration that the notices of the respondent-Corporation under section 264 (1) (2) (3) & (4), under section 268 (1) (c) of the Maharashtra Municipal Corporation Act (Hereinafter referred to as “the said Act” for the sake of brevity) are bad in law. The petitioners have sought a declaration that the respondent-Corporation does not have the authority in law to issue the notices to the petitioners. Certain other ancillary prayers are also made.

It is the case of the petitioners, who are the tenants in Shalimar Co-

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operative Housing Society Ltd that notices are served on the petitioners under the provisions of section 264 (1) (2) (3) & (4) and 268 (1) (c) of the said Act. According to the petitioners, the building in which the petitioners are residing is not in a dilapidated condition and it would not be necessary to demolish the same. It is stated that when it is not necessary for the Corporation to demolish the building and the building could be repaired and strengthened, the Corporation was not justified in issuing the notices.

Shri. Bubna, the learned counsel for the Corporation submitted by referring to the structural audit report pertaining to the building and prepared by Prof. V. B. Deshmukh & Prof. S. S. Pendhari, Veermata Jijabai Technological Institute (VJTI) that the building is beyond repairs and it is advisable to reconstruct the same. It is stated that the petitioners had agreed for the redevelopment of the property and the developer was ready to enter into the agreements with the petitioners. It is stated that it is averred by the petitioners in para 20 of the petition that the petitioners are not opposing the redevelopment of the property but the developer is not ready to enter into the agreements with the petitioners. It is stated that it is averred by the petitioners in para 20 of the petition that the petitioners are not opposing the redevelopment of the suit property and are only interested in executing the agreements with the developer in respect of the premises. It is stated that for seeking alternate accommodation in the proposed building, the petitioners have other remedies. It is stated that without seeking any action against the developer, specially when the petitioners are interested in the redevelopment

of the building, the petitioners have inappropriately filed the writ petition challenging the notices under sections 264 (1) (2) (3) & (4) and 268 (1) (c) of the said Act. In the circumstances of the case, the learned counsel sought for the dismissal of the writ petition.

On a reading of the writ petition, we find that in one breath, the petitioners have claimed that the building is in good and habitable condition and that the respondents are not justified in demolishing the same and in the other breath, the petitioners have stated that the petitioners are not opposing the redevelopment of the building and that the petitioners wish that the builder should execute the agreement with the petitioners and provide alternate accommodation to them in the proposed building. It appears from a reading of the writ petition that since the developer must not have agreed to execute agreements with the petitioners in respect of alternate accommodation on their terms, the petition is filed. The petitioners have also not joined the developer of the building as a party respondent though it is apparent from the averments in para 20 of the writ petition that the petitioners are desirous of seeking the execution of agreements between the petitioners and the developer so that the petitioners are provided with alternate accommodation in the proposed building. It appears that the petitioners have approached this Court with a view to bargain with the developer by stalling the demolition of the building, though they are desirous of seeking accommodation in the redeveloped building. In the circumstances of the case, it appears that the remedy of the petitioners is against the developer who according to the

petitioners is not ready to execute appropriate agreements in favour of the petitioners. The petitioners are free to take appropriate steps against the developer, if they are so advised. However, in the circumstances of the case, when the petitioners are ready for the redevelopment, the impugned notices cannot be quashed and set aside, specially in view of the report of Veermata Jijabai Technological Institute (VJTI).

In the circumstances of the case, the writ petition is dismissed with no order as to costs. The petitioners are however at liberty to take appropriate steps against the developer or any other parties, if so advised. Order accordingly.

At this stage, an oral request is made by the counsel for the petitioners for continuing the status-quo granted in favour of the petitioners for a period of four weeks. We find that since 18 out of 22 residents of the building have already vacated the building and since it is apparent from the averments in the writ petition that the petitioners do not oppose the redevelopment and are only desirous of executing appropriate agreements in respect of alternate accommodation in the redeveloped premises, the prayer for continuation of ad-interim relief is rejected. Order accordingly.

[RIYAZ I. CHAGLA J.]

[SMT. VASANTI A. NAIK, J.]