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

WRIT PETITION NO.511 OF 2017

M/s. M.K. Builders & Developers and Anr. ... Petitioners
Vs.
The Chief Executive Officer and Ors. ... Respondents

Mr. Jahangir A. Khan for the Petitioners.
Mr. Hemant Haryan, AGP for the Respondent Nos.2 and 6.
Mr. Anoop U. Patil for Respondent No.4.
Ms. Pallavi Thakar for the Respondent No.3 and 5.

**CORAM : A.S. OKA &
SMT. VIBHA KANKANWADI, JJ.**

DATE : 12th JUNE, 2017

PC.

1 Heard the learned counsel appearing for the petitioners.
The petitioners who are the builders and developers were granted permission by the Slum Redevelopment Authority to implement a Slum Rehabilitation Project. The substantive prayer in this Petition under Article 226 of the Constitution of India is prayer clause (a) which reads thus :-

“(a) To issue a writ of Mandamus or any other appropriate writ, order or direction directing Respondent Nos.1 to 6 or any of Respondent to clear the illegal encroachment on the road set back area on the plot of land bearing CTS No.464, 464(pt), 103 to 300 and 465 at S.G. Barve

Marg, Kurla (W), Mumbai – 400 070, immediately and to issue Occupancy Certificate to the Rehab and Sale Component building upon the Petitioner fulfilling and complying with all conditions of LOI and IOA of Respondent No.4.”

2 We have perused the intimation of approval and development permission granted under Section 45 of the Maharashtra Regional and Town Planning Act, 1966 on 9th May, 2005 to the present petitioners. In the Letter of Intent, Condition No.23 reads thus :-

“23. That you shall get set back/Reservation of 651.50 admeasuring demarcated from A.E. (Survey)/D.P./T&C department of M.C.G.M. and handed over to M.C.G.M. free of cost, free of encumbrances by changing ownership in the name of M.C.G.M. duly developed as per Municipal specification and certificate to that effect shall be obtained and submitted.”

Admittedly, the petitioners were in possession of the road set back/reservation area.

3 The contention of the learned counsel appearing for the petitioners is that action for eviction of illegal occupants on the set back area has been already commenced as disclosed from various documents on record. He submitted that it is not possible for the petitioners to

remove the encroachments made on the set back area and to place the Municipal Corporation in possession and therefore, a writ of mandamus as prayed be issued.

4 We have considered the submissions. We have already quoted Condition No.23 which is incorporated in the Letter of Intent issued by the Slum Rehabilitation Authority on 30th July, 2004. Thus, it was the obligation of the petitioners to hand over the set back/reservation area of 651.50 square meters to the Mumbai Municipal Corporation free of cost and free of encumbrances.

5 The petitioners accepted the aforesaid condition of handing over the set back area to the Municipal Corporation free of encumbrances. Therefore, it is the legal obligation of the petitioners to comply with the said condition. In fact, way back on 7th February, 2015 the Executive Engineer of the Slum Rehabilitation Authority had informed the petitioners and their Architect to hand over road set back area to the Municipal Corporation by removing the structures thereon.

6 The petitioners have never challenged the aforesaid Condition No.23 in the Letter of Intent. By accepting the said condition, they proceeded with the work of development by acting upon the Letter

of Intent. Now, after taking full advantage of the Letter of Intent, they cannot come before the writ Court and state that they are unable to comply with one of the conditions of the Letter of Intent issued about 13 years back.

7 Therefore, at the instance of the petitioners, a writ of mandamus as prayed cannot be issued. Accordingly, the Petition is rejected. We, however, make it clear that if any proceedings have been initiated by the concerned parties for demolition of the illegal structures on the set back area, the said proceeding shall continue in accordance with law.

(SMT. VIBHA KANKANWADI, J)

(A.S. OKA, J)