

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
ORDINARY ORIGINAL CIVIL JURISDICTION  
WRIT PETITION NO.2246 OF 2014

Zubeda Akhta Shaikh. .. Petitioner

Vs

The Assistant Commissioner-G/North,  
Municipal Corporation for Greater Mumbai  
and Others. .. Respondents

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Shri Altaf Khan i/b Ms. Anjali Awasthi for the Petitioner.

Ms. Vandana Mahadik for the Respondent Nos.1 and 2.

Shri Amit Shastri, AGP for the Respondent No.3.

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

DATED : 15TH JUNE 2017

ORAL JUDGMENT ( PER A.S. OKA, J)

1. Heard learned counsel appearing for the Petitioner, the learned counsel appearing for the first and second Respondents and the learned AGP for the third Respondent.

2. Rule. The Advocate for the first and second Respondents waives service. The learned AGP waives service for the third Respondent. Taken up forthwith for final disposal.

3. In terms of the earlier order, an additional affidavit has been tendered on 13<sup>th</sup> June 2017 by the Petitioner annexing thereto

copies of certain documents. The learned counsel appearing for the Petitioner states that some of the documents annexed thereto were produced by the Petitioner pursuant to the Show Cause Notice dated 18<sup>th</sup> October 2013 which was served to the Petitioner along with the impugned order dated 14<sup>th</sup> October 2013. Therefore, obviously, some of the documents annexed to the affidavit have not been considered by the Assistant Commissioner, G/North Ward, while passing the impugned order dated 14<sup>th</sup> October 2013. Learned counsel appearing for the first and second Respondents does not dispute that the copies of the documents annexed to the additional affidavit tendered on 13<sup>th</sup> June 2013 were produced by the Petitioner.

4. There are two questions which arise for consideration. Firstly, whether all the documents tendered by the Petitioner along with the said additional affidavit have been considered by the Municipal Corporation for deciding the issue whether the Petitioner is entitled to rehabilitation. The second question is which is the policy or Rule which will govern the eligibility criteria for rehabilitation. Perusal of the impugned order dated 14<sup>th</sup> October 2013 shows that it proceeds on the footing that a person who is in possession from the year 1976 is entitled to rehabilitation. Today, an oral submission is made by the learned counsel appearing for the first and second Respondents that the Sub-clause (15) of Regulation 33 of the Development Control Regulations

for Greater Mumbai, 1991 will determine the issue of eligibility. We are not entering into the question whether Clause (15) of Regulation 33 will apply. However, Sub-clause (c) of Clause 15 of Regulation 33 refers to a cut off date of 1<sup>st</sup> January 1995. The impugned order proceeds on the footing that the cut off date is of the year 1976. Therefore, it appears to us that while passing the impugned order, one eligibility criteria has been applied but in this Petition, it is contended that the eligibility criteria under Sub-clause (c) of Clause 15 of Regulation 33 of the Development Control Regulations, 1991 will be applicable.

5. Considering both the aforesaid questions, we have no option but to send the matter back for reconsideration of the Assistant Commissioner. We may note here that in the operative part of the impugned order, the Assistant Commissioner has stated that the Petitioner was not residing on the plot in question from the year 1976. Thus, there is absolutely no clarity as regards the eligibility criteria to be applied in the case.

6. The learned counsel appearing for the first and second Respondents on instructions accepts that the structure subject matter of this Petition is still in existence.

7. Therefore, we dispose of the Petition by passing the following order:

ORDER :

- (a) The impugned order dated 14<sup>th</sup> October 2013 is hereby set aside;
- (b) We direct the Petitioner or her authorized representative and/or her Advocate to remain present before the Assistant Commissioner, G/North Ward, on 30<sup>th</sup> June 2017 at 11.00 a.m.;
- (c) The Assistant Commissioner, G/North Ward, shall give an opportunity of being heard to the Petitioner and/or her representative and/or her Advocate. We make it clear that the Petitioner will be entitled to rely upon only those documents which are already produced on record of the Municipal Corporation and which are annexed to the additional affidavit and which are part of this Petition. The Petitioner will be disentitled to produce any other documents;

- (d) The Assistant Commissioner, G/North Ward, shall pass a speaking order. Firstly, he will decide as to which policy/rule/regulation governs the issue of eligibility for rehabilitation. Secondly, he will decide whether the Petitioner satisfies the eligibility criteria;
- (e) Appropriate order shall be passed by the Assistant Commissioner, G/North Ward, as expeditiously as possible and in any event on or before the 11<sup>th</sup> August 2017;
- (f) A copy of the order shall be served to the Petitioner and/or her representative and/or her Advocate;
- (g) Till the date of communication of the order to the Petitioner or her representative or her Advocate, whichever is earlier, the structure subject matter of this Petition shall not be demolished;
- (h) If the order be adverse to the Petitioner, the protection granted under this order will continue to apply for a period of one month from the date on

which a copy of the order is served to the Petitioner or her representative or her Advocate, whichever is earlier;

- (i) We make it clear that we have not made any adjudication on merits of the aforesaid questions and the same are left to be decided by the learned Assistant Commissioner, G/North Ward;
- (j) Rule is partly made absolute on above terms;
- (k) All concerned to act upon an authenticated copy of this order.

(SMT.VIBHA KANKANWADI, J)

( A.S. OKA, J )