

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO.2222 OF 2014

Mr.Altaf Khan i/b Ms Anjali Awasthi for the
Petitioner
Mr.Rajiv ManE, AGP for State
Ms Pallavi Thakar for the MMC.

P.C.:

3 The contention of the Advocate for the
petitioner is that along with the copy of the

impugned order dated 14th October 2014, a show cause notice was served to the petitioner. On the basis of the show cause notice, various documents were produced by the petitioner. He relied upon the Government Resolution dated 2nd January 2012 as well as the Government Resolution (for short G.R.) dated 16th May 2015. He submitted that the Government Resolution dated 2nd January 2012 is applicable to the projects like MUDP, MUIP, Airport Project, Dharavi Project and therefore, there is no reason why the said G.R should not be applied to implementation of a Town Planning Scheme under the MRTP Act. He also relied upon GR dated 16th May 2015 and in particular paragraph 11 thereof. He submitted that paragraph 11 clearly records that for various projects of civic amenities or basic amenities implemented by the Maharashtra Housing Area Development Authority, the Mumbai Metropolitan Region Development Authority, the City and Industrial Development Corporation of Maharashtra Limited, the Maharashtra Industrial Development Corporation and Mumbai Municipal Corporation, the said G.R will be applicable. He submitted that the Municipal Corporation wants to take possession of the structure and the land below the structure for construction of a road and therefore, the said G.R will apply. He submitted that the said GRs will apply and the contention raised in the reply that sub clause (c) of clause 15 of Regulation 33 of the Development Control Regulation, 1991 (for short DCR) will determine the eligibility cannot be accepted. He submitted that in a similar matter, this Court

has passed an order of remand after considering both the Government Resolutions. However, on a query made by the Court, the learned counsel for the petitioner candidly stated that the petitioner has not produced any document to show his eligibility under sub clause (C) of clause 15 of Regulation 33 of the DCR. He submitted that in the Intimation Of Disapproval (for short "IOD") granted to the developer, there is a provision for getting the persons in possession of the affected structures rehabilitated.

4 In the present case, notice was issued under the MRTP Act which reads thus:

"Whereas the Government of Bombay (hereinafter called the Government of Maharashtra) has been pleased to sanction the above scheme under Section 51 of the Bombay Town Planning Act, 1954 XXVII of 1953) under their Notification Urban Development and Public Health Department No.TPB/1360/M dated 24.8.1960 and to fix thereunder the 1.3.1961 as the day on which the said scheme shall come into effect AND WHEREAS under section 88 of the Maharashtra Regional and Town Planning Act, 1966, on and after the date on which a final scheme came into force all lands acquired by the Planning Authority shall unless it is otherwise determined in such scheme, vest absolutely in the Planning Authority, free from all encumbrances and all rights in the Original Plots which have been

reconstituted shall determine and the reconstituted plots shall become, subject to the rights settled by Arbitrator AND WHEREAS the original holding has been affected under the scheme delineated in the scheme plans which may be inspected if desired at the office of the Assistant Engineer, Town Planning (Implementation) Department Centralised, G/North Ward Office, Harishchandra Yelve Marg, Dadar (West), Mumbai - 400 028, AND WHEREAS owner has failed to remove the structure on the land/vacate the land, of which he is no more the owner, AND WHEREAS you are the occupier of the aforesaid structure/land which you are not entitled to occupy under the scheme.

. I, therefore, hereby call upon you, under section 89 of the Maharashtra Regional and Town Planning Act, 1966 and the rules made thereunder to vacate the structure/land within 30 (thirty) days from the date hereof, failing which you will be evicted therefrom without any further reference, under the provision of the Maharashtra Regional and Town Planning Act, 1966.

. If you resist or obstruct your eviction from the structure/land or if you reoccupy the structure/land after eviction, you will render yourself liable for prosecution under section 88 of the Indian

Penal Code."

5 Section 88 of the MRTTP Act lays down the effect of preliminary scheme which reads thus:

88. Effect of [preliminary scheme]

On and after the day on which a [preliminary scheme] comes into force-

(a) all lands required by the Planning Authority shall, unless it is otherwise determined in such scheme, vest absolutely in the Planning Authority free from all encumbrances;

(b) all rights in the original plots which have been reconstituted shall determine, and the reconstituted plots shall become subject to the rights settled by Arbitrator;

(c){* * *}

6 In the present case, there is a Town Planning Scheme which provides for construction of a road. The structure of the petitioner is affected by the said road.

7 The Apex Court and this Court have repeatedly held that the Planning Authority is under an obligation to implement a Town Planning Scheme under the MRTTP Act. In the case of Municipal Corporation and others vs. Advance Builders Private Limited and others¹, the Apex Court held that it is the duty of

1 1972 AIR SC 793

the Planning Authority to implement the scheme and to remove encroachments by exercising the powers under sections 89 and 90 of the MRTTP Act for the purpose of implementation of the scheme. In the present case, the petitioner is relying upon aforesaid two G.Rs. The G.R dated 2nd January 2012 provides that the same will apply to hutments affected by the MUTP, MUIP, Airport Project, Dharavi Project as well as similar projects. English translation of relevant part of the said G.R reads thus:

"1 As per provisions of Maharashtra Slum Areas (I.C. and R.) Act, 1971, the hutment on or prior to 1.1.1995 and present in existence (hut structure) will be eligible for protection. Similarly, for the vital Projects like MUTP, MUIP, Airport Project and Dharavi Project, the hutment prior to eligibility dated 1.1.1995 and at present in existence hutment will also be eligible for protection..."

The GR dated 16th May 2015 and in particular clause 11 thereof provides that it will apply to the projects for providing civil amenities and basic infrastructure undertaken by the Maharashtra Housing and Area Development Authority and other Authorities named therein. In the present case, Mumbai Municipal Corporation is the Planning Authority which is performing its statutory obligation to implement the said Town Planning Scheme. The statutory

obligation is under the MRTTP Act. Therefore, both the said G.Rs will have no application.

8 At this stage, the learned counsel for the petitioner submits that the criteria laid down for rehabilitation of Tansa Pipeline Project will apply to this case. There is a direction issued by this Court in a PIL to clear all hutments in the area of 10 meters of both the sides of Tansa Pipe line. Tansa Project is not at all a part of the MRTTP Act. It is not necessary to adjudicate upon the question whether sub clause (c) of clause 15 of Regulation 33 of the DCR will apply in the present case as the petitioner admittedly does not satisfy the criteria for eligibility as provided in sub clause (c). Suffice it to say that the petitioner is not able to point out any other policy under which he can be rehabilitated.

9 As regards the said contention based on the condition in the IOD, the same has not been raised in this petition. In any case, it is a matter between the petitioner and the developer. Hence, no case is made out for interference. Writ petition is rejected. On the prayer made by the learned counsel for the petitioner, ad-interim relief granted earlier is extended by a period of ten weeks from today.