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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO.2622 OF 2016**

Tulsidas Damaji Koli	... Petitioner
Vs.	
Municipal Corporation of Gr. Bombay and Ors.	... Respondents

Mr. Pradeep Havnur for the Petitioner.
Ms. Vandana Mahadik for the Respondent Nos.1 to 4.
Mr. Pravind Samdani, Senior Counsel a/w Mr. Abir P. I/by Wadia
Ghandy & Co. for the Respondent No.6.

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

DATE : 17th JULY, 2017

ORAL JUDGMENT (Per A.S.Oka, J.)

1 Rule. The learned counsel appearing for the first to fourth respondents waives service. Advocate on record for the sixth respondent waives service. Forthwith taken up for final disposal.

2 The document annexed at Exhibit – A shows that Redevelopment of N.S.P. Shed on Municipal property bearing Cadastral Survey No.6(Pt) of Sion Division was undertaken under Regulation 33(7) of the Development Control Regulations, 1991 (for short “DCR”). The document annexed as Exhibit – A is Annexure – II signed by the

Ward Officer (Estates) of the first respondent – Municipal Corporation records that the property under redevelopment consists of 18 chawls and other structures. The list of eligible tenants with areas in possession of respective tenants is appended to the Annexure – II. The petitioner is claiming to be the tenant of the first respondent – Municipal Corporation in respect of Room No.4, Chawl No.17. In the Annexure – II which was issued on 30th December, 1999, the name of one Shri Harishchandra Jiwan is shown as the original tenant against the Room No.4 of Chawl/Building No.17.

3 The case made by the petitioner is that the said Shri Harishchandra Jiwan who was the original tenant in respect of Room No.4 passed away on 27th June, 1998 and thereafter, tenancy rights have been transferred in the name of the petitioner who has been regularly paying rent from 21st May, 1998 onwards. It is pointed out that on 21st May, 1998 transfer application fee of Rs.4 and transfer fee of Rs.5,000/- was received by the first respondent – Corporation from the petitioner. On the same day, ad-hoc deposit of Rs.5,000/- was received by the first respondent – Corporation and a separate rent receipt for the period from January, 1998 to May, 1998 was issued in the name of the petitioner on the very day. Copies of these four receipts are annexed on page 40 of the Petition. Thereafter, the petitioner has

repeatedly paid rent. Copies of the rent receipts have been annexed from page 41 to page 59.

4 The Advocate for the petitioner made a representation dated 29th June, 2015 to the Assistant Municipal Commissioner, F/North Ward which was replied by a letter dated 19th October, 2015 by the Administrative Officer (Estate), F/North Ward. It records that when Annexure – II was issued on 30th December, 1999 the name of the petitioner was not included as rent receipt was transferred in the name of the petitioner in June, 2000. The challenge in this Petition under Article 226 of the Constitution of India is to the said communication dated 19th October, 2015. There are consequential prayers made in the Petition.

5 The sixth respondent has filed an affidavit of Shri Dinesh M. Naik. In paragraph 2 of the said affidavit, the sixth respondent has stated thus :-

“2. I say that once the Petitioner is recognized as an eligible occupant/ tenant by the Respondent Nos.1 to 4 and his name is included in a supplementary annexure II issued by the Respondent Nos.1 to 4 in respect of the Annexure II dated 30th December 1999 (“**said Annexure II**”), he will be entitled to permanent alternate accommodation in the redevelopment project.

If the Respondent Nos.1 to 4 include the name in the Annexure II in place of Serial No.138 (deceased), by issuing a supplementary annexure Ii, the Respondent No.6 would pay the rent compensation to the Petitioner from the date on which his name is included in the said Annexure II as eligible municipal tenant till the time permanent alternate accommodation is offered to him. Upon his inclusion in the said Annexure II, the Petitioner will also be eligible to be rehabilitated in the Rehab Building No.2, as and when the occupation certificate thereof is received.”

6 The question is whether the first respondent – Municipal Corporation was justified in declining to include the name of the petitioner in respect of the said Room No.4 in Building No.17 on the ground that the rent receipt was transferred in the name of the petitioner in June, 2000.

7 Therefore, on the last date, we called upon the learned counsel appearing for the Mumbai Municipal Corporation to produce the relevant file.

8 Accordingly, the original file is produced for perusal of the Court. The original file shows that communication dated 7th May, 1999 was issued to the petitioner which was received by the petitioner on

11th May, 1999. The said communication is issued by the Administrative Officer (Estates), F/North Ward. The said communication is in respect of transfer of tenancy in respect of the Room No.4 in Building No.17 applied by the petitioner vide his application dated 7th March, 1998. The said letter specifically records that the Deputy Municipal Commissioner, Zone – II/ Improvement has been pleased to sanction the transfer of the tenancy in the name of the petitioner subject to terms and conditions set out in the said letter. The first condition is that the petitioner shall furnish Indemnity Bond on stamp paper. The second condition is that the petitioner shall enter into tenancy agreement on stamp paper of Rs.200/- The third condition is as regards the payment of rent @ Rs.51/- pm. The next condition is regarding deposit of arrears of rent, notice fee, tenancy deposit equal to three months rent. It also records that the petitioner has paid transfer fee of Rs.5,000/- on 21st May, 1998. He was also called upon to pay a sum of Rs.5,000/- by way of ad-hoc security deposit. We find from the file that there is noting of August, 1999 signed by the Municipal Officers which shows that payment of requisite amounts was made by the petitioner and the same has been verified on 17th November, 1999. The receipt number of various payments made by the petitioner have been mentioned in the noting.

9 A copy of the agreement executed by the petitioner is also on the file which bears Franking of Rs.200/- on 12th May, 1999. It bears the signature of the Administrative Officer (Estates), F/North Ward.

10 Thus, it appears from the original documents in the file that the entire procedure for transfer of Room No.4 in the name of the petitioner was completed prior to 30th December, 1999 and all amounts demanded by the Municipal Corporation were paid by the petitioner. As stated earlier, the letter dated 7th May, 1999 addressed to the petitioner records sanction for the transfer of tenancy in the name of the petitioner subject to compliance of terms and conditions mentioned therein. It appears that a formal entry of the name of the petitioner in the Municipal records was made after 30th December, 1999.

11 Therefore, in our considered view, the name of the petitioner ought to have been included against Sr. 138 in Annexure - II in respect of the Room No.4 of Building No.17.

12 Accordingly, the petition must succeed and we pass the following order :-

ORDER

- (i) We direct the first respondent to either modify entry against Sr. No.138 of the Annexure – II issued on 30th December, 1999 or to issue a Supplementary Annexure –

II or Corrigendum showing the petitioner as eligible in respect of the Room No.4 in respect of Building No.17. This exercise shall be completed by the first respondent within a period of one month from the date on which this judgment and order is uploaded. A copy of the modified Annexure-II / Corrigendum / Supplementary Annexure – II shall be supplied by the Municipal Corporation to the sixth respondent;

- (ii) We accept the statement on oath made by Shri Dinesh M. Naik, Authorised Signatory of the sixth respondent in the affidavit of 17th July, 2017 tendered today;
- (iii) Needless to add that the sixth respondent shall take necessary steps as mentioned in clause 2 of the said affidavit on receipt of the modified Annexure – II/ Supplementary Annexure – II/Corrigendum of original Annexure – II;
- (iv) The Petition is allowed on above terms;
- (v) Rule is disposed of accordingly;
- (vi) All concerned to act upon an authenticated copy of this order.

(SMT. VIBHA KANKANWADI, J)

(A.S. OKA, J)