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

WRIT PETITION NO. 1709 OF 2016

The Keraleeya Mahila Samaj

.. Petitioner

Versus

Municipal Corporation of Greater Bombay
and ors.

.. Respondents

Mr. Rajiv Narula a/w Sudalai Mani i/by Mahesh Menon and Co. for
petitioner.

Mr. Milind Sathe, Sr. Advocate a/w Ms. Pallavi Thakar for MCGM.

Ms. Kavita Solunke, AGP for State.

CORAM: NARESH H. PATIL &
DR. SHALINI PHANSALKAR-JOSHI, JJ.

MAY 05, 2017.

P.C.

1. The petitioner, a public trust, registered under the Bombay
Public Trust Act, 1950, under Registration No. F 909, on 11/12/1961, filed
the present writ petition in the year 2016 for following relief:

- (a) that this Hon'ble Court be pleased to issue a writ of
certiorari or a writ in the nature of certiorari or any other

appropriate writ, order or direction calling for the papers and proceedings leading to issuance of Impugned Notice No. ACGN/ESR/285/AO (Estate) dated 23rd March, 2016 (Exhibit “J” hereto), for termination of Vacant Land Tenancy (VLT), issued by the Respondent No.2 and after considering the legality, veracity and correctness thereof, this Hon'ble Court be pleased to quash and set aside the same.

- (b) that this Hon'ble Court be pleased to issue a writ of mandamus or a writ in the nature of mandamus or any other appropriate writ, order or direction calling upon the Respondent No.2 to execute a proper registered Lease Deed in respect of the Petition Property, viz., Land admeasuring 574 square meters or thereabout with constructed area of 81.16 square meters thereon, in the beach house compound, opposite Shivaji Park, Mahim, in favour of the Petitioner, on such terms and conditions as may be directed by this Hon'ble Court.”

2. The petitioner contends that petitioner is engaged in promoting social, cultural and literary interest of its members, by organizing discussions and cultural shows, setting up reading rooms, library, conducting sports and games and social charitable activities. Petitioner has more than three hundred members including Patron Members, Life

Members, Ordinary Members and about 20 Associate Life Members. The membership of the petitioner-trust is open to Keralite (Malayalee) women and also to non Keralite (Malayalee) women. The petitioner's constitution is cosmopolitan in nature and, therefore, open to all women in general.

3. The petitioner further submits that by letter dated 28/8/1953, respondent no.1 addressed a communication informing that respondent no.1 has no objection to allot the petitioner a vacant piece of land admeasuring 320 sq.yards on the stipulated terms and conditions. The petitioner further claims that petitioner took possession of the subject property in the year 1953 and constructed a permanent ground floor structure. An agreement came to be executed between the petitioner and the Corporation on 10/4/1957. By a letter dated 8/12/1959 addressed by the petitioner to the respondent no.1, the petitioner accepted the terms and conditions and requested respondent no.1 to make necessary arrangement for transfer of the subject property in favour of the petitioner. The petitioner further places reliance on a communication dated 11/6/1974 wherein the petitioner applied to respondent no.1 for extension of lease in respect of the subject property.

4. The petitioner's case is that by communication dated 23/3/2016, which was received by the petitioner on 28/3/2016, petitioner was asked to vacate the subject property. The said notice is impugned in the present writ petition.

5. The respondent no.1 filed affidavit-in-reply. The petitioner tendered rejoinder to the same.

6. By an order dated 15/4/2016, the Division Bench of this court issued notice to the respondents and in the meantime, it was directed that no coercive steps shall be taken till the next date. On 24/4/2017, the matter was heard for some time and was adjourned as counsel for the petitioner desired to go through the reply filed on behalf of the Corporation. The petition was to be listed on 2/5/2017. On circulation, it is listed today before this court.

7. Learned counsel appearing for the petitioner submits that the petitioner desires to raise several other grounds in support of its contentions and claim. Learned counsel submits that on merits, the petitioner has a good and sound case.

8. Learned Senior Counsel appearing for the respondent-Corporation submits that the Corporation had disclosed its intention while issuing notice dated 23/3/2016 addressed to the petitioner. The Corporation informed the petitioner that within 30 days, the petitioner may vacate the premises, failing which the Corporation will re-enter in the subject property and take possession of the land along with structure thereon. This notice was issued by the Assistant Commissioner (G/N) Ward. Learned counsel, on instructions, submits that the apprehension of the petitioner to the effect that the Corporation at any time would forcibly enter in the subject premises and take over possession by evicting the petitioner from the premises is unfounded. It is submitted that the Corporation is bound to follow the procedure established by law and in accordance with the same, due process of law will be followed. Learned counsel further clarified that the Corporation would resort to appropriate steps by following procedure under Chapter V-A of the Mumbai Municipal Corporation Act, 1888 and more particularly the provisions of Section 105B onwards. It was submitted that petitioner is not remedy-less even if the Corporation resorts to the said provisions. In case if an adverse order is passed against the petitioner, appeal is prescribed under Section 105F.

Learned counsel, therefore, requested that at least the Corporation be permitted to follow the procedure established by law, which is stated above. The order passed by this court on 15/4/2016 is required to be vacated.

9. At this stage, learned counsel appearing for the petitioner, on instructions from the office bearers of the petitioner-Trust, who are present in court, submits that the Corporation may resort to appropriate procedure as they desire but the petitioner has serious apprehension that in view of the notice issued on 23/3/2016, particularly the observations made in the last para of the said notice, the Corporation authorities may enter in the subject property and may deprive the petitioner of possession in respect of the subject property. Learned counsel submits that this apprehension may be taken care of by the court.

10. We have perused the record placed before us. Chapter V-A of the MMC Act, 1888 refers to “Power to evict person from Corporation premises”. Admittedly, the subject premises belong to the Corporation. The petitioner was put in possession of the subject premises under an agreement executed between the parties. We do not wish to observe

anything more in respect of the agreement executed between the petitioner and respondent no.1.

11. In the facts, we find it appropriate to observe that respondent no.1 – Corporation can be permitted to resort to procedure established under Chapter V-A of the MMC Act, 1888 in respect of the subject property.

12. The respondent no.1 – Corporation may resort to appropriate procedure as indicated above and in accordance with the statement made on behalf of the Corporation. Till the notice is issued under Section 105B of the MMC Act, 1888 and received by the petitioner, we direct that status quo of possession as on today in respect of the subject property by the petitioner shall be maintained. In case the appropriate Authority / Designated Officer, under Section 105B, decides the proceedings against the petitioner, then the execution of the same shall not take place for a period of four weeks from the date of communication of the order by the Authority to the petitioner.

13. It is clarified that we have not expressed any opinion on merits

of the impugned notice, grounds which are raised by the petitioner before this court or which the parties are likely to raise before the appropriate authority. All issues on merits are kept open.

14. It is further clarified that parties are free to still continue to explore possibility of an amicable settlement. Considering the purpose for which the petitioner is carried out its activities, petitioner is also entitled to submit appropriate representation to the Commissioner, Mumbai Municipal Corporation.

15. With the aforesaid observations and directions, petition stands disposed of.

(DR. SHALINI PHANSALKAR-JOSHI,J.)

(NARESH H. PATIL,J.)