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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION (L) NO. 1451 OF 2017

Kamala Laxminarayan Chintakindi	...Petitioner
<i>Versus</i>	
State of Maharashtra & Ors	...Respondents

Mr Yuvraj D Patil, *for the Petitioner.*
Mr Kedar Dighe, *AGP, for Respondent No. 1-State .*
Mrs Pooja Yadav, *for Respondent No. 2-MCGM.*
Mr Hamid Ahmad, *i/b Diamondwala & Co., for respondent No. 5.*

CORAM: G.S. PATEL, J
DATED: 31st October 2017

PC:-

1. The Petitioner seeks this Court's intervention under Article 226 of the Constitution of India for a direction to be put in possession of certain premises in Wing "I" of the 4th Respondent cooperative society. She claims that her premises must be allotted facing Pandurang Budhkar Marg, Worli, Mumbai. The second relief sought is to prevent the society and the 5th Respondent, the developers, from allotting these premises to anyone else.

2. The place where the Petitioner used to conduct her business was declared as a slum. Respondents Nos. 2 and 3, the local authorities, surveyed the area. Annexure II was prepared and the

Petitioner was found eligible for allotment of a commercial tenement. As is usual in such cases, this allotment was to be done by a lottery. The 4th Respondent-society was formed and the 5th Respondent was appointed as the developer.

3. Alleging there were irregularities, the Petitioner and other shop owners filed Writ Petition (L) No. 2319 of 2011. That was disposed of on 21st October 2011 (SC Dharmadhikari J). A copy of that order is at Exhibit “A” from pages 16 to 26. As regards the claim of the Petitioner, this was dealt with specifically in paragraph 6. On behalf of the present Petitioner, it was argued that although her existing shop admeasured 216 sq ft, she was being given permanent alternate accommodation of 112 sq feet, leaving a deficit of about 114 sq ft. The Court held that the petitioner was to be given permanent alternate accommodation in terms of the area mentioned in Annexure II but without prejudice to her rights and contentions. On actual measuring, if she was found entitled to more then the developer and the society would ensure that she would get the correct area.

4. Mr Patil argues that the plan of the rehab building Wing “I” prepared as of 13th July 2011 at page 80 shows a portion marked “P1” and this was to be allotted to the present Petitioner.

5. One of the contentions raised at the time of the writ petition disposed of by Dharmadhikari J was whether these plans were themselves liable to alteration. In paragraph 11, the Court clarified that the fact that plans were inspected did not mean that they could

not be modified or changed, provided that eligible persons were not excluded from the accommodation in the revised plans. What this meant was that the Petitioner's entitlement would continue but would be subject to lawfully amended or revised plans.

6. The complaint now by the Petitioner is that she is not being allotted the premises in accordance with the plan at page 80 and the portion marked "P1".

7. What this argument overlooks, or perhaps conceals, is that these plans have been changed subsequently. There was a further survey after Dharmadhikari J's order and the Petitioner was found entitled to a larger area than that allotted to her in Annexure II. Her entitlement was revised upward to 172 sq ft. This also required the plans to be revised. A copy of the revised plan is annexed to the 5th Respondent's reply affidavit and on this the premises to be allotted to the Petitioner are marked as Annexure 1454 admittedly applicable to the Petitioner. The petition does not disclose that having taken inspection of the previous plans, the Petitioner herself executed an indemnity-cum-undertaking on 8th November 2015 accepting the allotment of shop No. 5 in Wing "I" on the ground floor. A copy of this indemnity-cum-undertaking is at Exhibit "B" to the 5th Respondent's Affidavit. A photograph of the Petitioner is on that indemnity-cum-undertaking and there is therefore no dispute about her having executed it. Indeed, her execution is not denied. Mr Patil attempts an argument that this indemnity-cum-undertaking, though executed, is ineffectual and meaningless because it contains some blanks. But the question is not of enforcement of the indemnity or the undertaking. The question is of the Petitioner's knowledge of

her allotment of Room No. 5 on the ground floor or Wing “I” and her acceptance of this allotment. The Petitioner cannot possibly disavow that acceptance; whether or not the indemnity holds is immaterial to this question. There is also an affidavit in Marathi at Exhibit “C”.

8. It is sought to be argued that this shop No. 5 in the affidavit does not correspond to the revised plan at Exhibit “A” to the affidavit in reply filed by Respondent No. 5. It is argued that the plan was sanctioned only in 2017 but the indemnity-cum-undertaking is of 2015. The date of sanction is not in itself relevant. That might happen at a later date well after the submission of the plan. What is of significance is the assertion that the revision in areas required a modification of the plans and this is stated in paragraph 4 of the affidavit in reply. There is no specific denial of paragraph 4 of the affidavit in reply in the Petitioner’s rejoinder.

9. It appears that what the Petitioner wants is that she should be given premises according to the old plan, one that is no longer valid and which is no longer in consonance with the construction, that plan having been superseded by the later sanctioned plan; and, further, demands a smaller area than that to which she is entitled in law. This is not only unreasonable but it postulates several disputed questions of fact including as to circumstances of the Petitioner’s indemnity document. There is also the question of why this indemnity was not disclosed in the petition. Indeed there is not even a mention of it. It surely could not have been unknown to the Petitioner.

10. These are all sufficient reasons to reject the petition outright. However, the 5th Respondent through its Advocate makes a statement that it will, within two weeks from today, deliver physical vacant possession of the premises shown in the map at page 96 against Annexure 1454 and which is said to measure 172 sq ft. This statement is accepted as an undertaking to this Court.

11. In my view, this is sufficient protection. It is not possible to entertain the other requests or demand made by the Petitioner.

12. Other than this protection there is no merit in this petition and it is rejected. There will be no order as to costs.

(G. S. PATEL, J)