IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 2050 OF 2015

M/s. Relief & Sadhana Soap Syndicate
& Anr. ..Petitioners
versus
The Municipal Corporation of
Greater Mumbai & Ors. ..Respondents

Mr. A. N. Narula i/b. Jhangiani, Narula & Associates for Petitioners.
Ms Vandana Mahadik for Respondents - MCGM.

CORAM: A. S. OKA & M. S. SONAK, JJ.
DATE : 18TH DECEMBER 2017

P. C. :

1] Heard the learned counsel appearing for the petitioners. There are three substantive prayers in this petition, which read thus :

> "(a) For a Writ of Mandamus, or any other writ, direction or order in the nature of Mandamus commanding the Respondents to convert the stall in the Municipal Market situated at Gala admeasuring 327.95 sq. mtrs. situate on the plot, bearing CTS Nos. 15A, Village – Vyravali, MIDC, Andheri (E), on ownership basis without imposing any condition as to the manner in which the said premises could be utilised by the firm;
>
> (b) the demand made by the Respondents by stallage charges be struck down;
>
> (c) the demand for penalty be held to be exorbitant, extortionate and ultra-virus;"

2] The first petitioner was shown as a tenant of the premises of Lal Chimney Compound bearing City Survey No. 1887 and 1887/1 to 1887/8. There were 81 tenants in the said property which was acquired under the provisions of the Land Acquisition Act, 1894 at the instance of the 1st respondent Mumbai Municipal Corporation. The public purpose for which the property was acquired was extension of Y. L. Nair Hospital and Topiwala National Medical College. At the conclusion of the acquisition proceedings, an award was made under section 11 of the said Act of 1894 on 24th February 1968. As per the said award, compensation of Rs.15,000/- was offered to the first petitioner and sum of Rs.2,000/- was offered as shifting charges.

3] It appears that the 1st respondent Municipal Corporation offered an area in Goregaon Industrial Area on tenancy basis to the first petitioner by a letter of allotment dated 17th July 1972. As the first petitioner did not respond, it appears that the allotment was cancelled. According to the case of the 1st respondent Corporation, subsequently alternate premises at Oshiwara, Goregaon and Deonar were offered to the first petitioner.

4] It appears that the petitioner addressed a letter to the Additional Municipal Commissioner on 24th February 2003 giving two alternatives for allotment of premises in lieu of the acquired premises. On the basis of the said letter, a direction was issued by the Municipal Commissioner of the 1st respondent in a meeting convened on 13th January 2005. As per the said direction, by a letter dated 11th March 2005 a constructed gala admeasuring 327.95 sq. meters in Municipal Market at Andheri (East) was offered to be allotted subject to payment of 25% of the cost of construction and stallage charges of Rs.44,126/-. In the said letter, it was mentioned that the gala will be allotted as a licensee and not on tenancy or ownership basis subject to the first petitioner abiding with other terms and conditions. It appears that the first petitioner could not pay requisite amount. On 4th June 2008, the first petitioner by addressing a letter to the

Additional Municipal Commissioner of the 1st respondent informed the 1st respondent that the first petitioner had decided to take possession of the accommodation offered as per the letter dated 11th March 2005 by making requisite payment. It was stated that due to domestic problems, the requisite amount could not be paid earlier. The said request made by the first petitioner was acceded to by the 1st respondent as is clear from the letter dated 3rd June 2009 addressed by the Assistant Commissioner (Markets). The said letter records that it was decided to allot area of 327.95 sq. meters in Municipal Market situated on plot bearing CTS No. 15-A of Village Varivali, Andheri (East) subject to the terms and conditions mentioned in the said letter. Clauses 1 to 6 of the said letter, read thus :

> "1) The total carpet area to be allotted shall be restricted to 327.95 sq. mtrs.
>
> 2) That after seeking specific permission, you shall construct internal 4 1/2" thick brick masonry wall, provide electric wiring & fixtures etc entirely at your own cost. The demarcation will be given by A. E. (Market) in due course, before commencing construction work.
>
> 3) <u>That you shall earmark & utilize 229.56 sq mtrs area exclusively for marketable commodities and balance 98.39 sq. mtrs area can be utilized for Non-marketable commodities</u>, as permissible in schedule J.J. of the M.M.C. Act. Please note that request for change of commodity from Marketable to Non-Marketable will not be entertained.
>
> 4) <u>That you shall pay the monthly Stallage Charges for 327.95 sq. mtrs as applicable, subject to revision from time to time</u>.
>
> 5) <u>That this allotment is made purely as a licensee of Market Department and not on tenancy or ownership basis</u>.
>
> 6) That you shall in toto abide with all policy, rules & regulations of Market Dept and any amendments thereof from time to time."
>
> [Underlines added]

5] By a letter dated 8th June 2009, the first petitioner informed the Assistant Superintendent (Markets) that an undertaking on Rs.100/- stamp paper executed before the Notary Public by the proprietor of the first petitioner is being forwarded. A copy of the said undertaking is annexed to the petition on pages 79 and 80. The material part of the undertaking reads thus :

> "To,
> The Asstt. Suptd. Of Markets (Z III),
> Market Deptt., Top Floor,
> B.M.C. Office, Water field Road,
> Next to Bhabha Hospital, Bandra (West),
> Mumbai 400 050
>
> Sub :- Allotment of alternate accommodation to M/s. Relief & Sadhna Soap Syndicate on plot bearing C.T.S. NO. 15-A of Village Vairavali, M.I.D.C., Municipal Market, Andheri (East).
>
> Ref : Letter from A.C. (MKT), ____________, AC market dated 03.06.2009
>
> I, the undersigned, <u>**Shri Atul N. Patel** hereby undertake to comply with the conditions mentioned in the above cited Allotment letter under reference</u> & observe the rules, terms & conditions of market Deptt.
>
> Thanking you,
>
> Yours faithfully,
> For M/s. Relief and Sadhana Soap Syndicate
> sd/-
> (Atul N. Patel)."
>
> [Underlines added]

6] The letter dated 2nd July 2009 sent by the first petitioner records that physical possession of the said premises was given to the first petitioner on 8th June 2009. In the said letter addressed to the Assistant Commissioner, it was contended by the first petitioner that the Municipal Commissioner has passed an order directing not to charge stallage charges in a meeting which was attended by one Shri Gopal Shetty. However, along with the letter dated 30th October 2009, the first petitioner forwarded a cheque in the sum of Rs.2,42,687/- being stallage charges at the agreed rate of Rs.44,125/- per month for four months together with penalty.

7] Thereafter, on 18th March 2010 the first petitioner addressed a letter to the Assistant Commissioner to allot the said premises on ownership basis. The said request was rejected by the 1st respondent. Accordingly a communication dated 24th May 2010 was issued by the Assistant Engineer (Markets) to the first petitioner. In the said letter, it is stated that the terms and conditions of allotment were mentioned in the allotment letter dated 3rd June 2009 and by accepting the alternative accommodation in terms of the said letter, the petitioner had become a licensee of the Market Department.

8] There are demands made by the 1st respondent Municipal Corporation by various letters / notices issued in the year 2014 for payment of various amounts payable as per the terms and conditions incorporated in the letter of allotment.

9] The learned counsel appearing for the petitioners submitted that the first petitioner was occupying a large area in the acquired property as a protected tenant. He submitted that the correspondence made before the letter of allotment dated 3rd June 2009 will show that the petitioner always demanded premises on ownership basis. He submitted that in fact considering the large area occupied by the first petitioner in the acquired property, there ought not to have been any restriction on the user of the said premises in Municipal Market. He pointed out that out of area of 327.95 sq. meters, only an area of 98.39 sq. meters is permitted to be used for non marketable commodities. He submitted that it is impossible for the first petitioner to pay the stallage charges at an exorbitant rate. He submitted that the first petitioner was entitled to allotment of alternate accommodation on an ownership basis without any condition. The learned counsel appearing for the first petitioner submitted that the premises ought to have been allotted to the petitioner at least on tenancy basis and not as a licensee and that also without imposition of any restriction on the user.

10] We have considered the submissions. We have perused the documents as well as the reply of the 1st respondent Corporation. The reply shows that in accordance with the award made under section 11 of the said Act of 1894, the first petitioner was entitled to compensation of Rs.15,000/- and shifting charges of Rs.2,000/-. However, way back in the year 1972, the 1st respondent offered allotment of area of 800 sq. yards at Goregaon Industrial Estate on tenancy basis to the first petitioner. Subsequently, the area was increased to 1200 sq. yards. As the first petitioner did not show interest, the allotment was cancelled. A copy of letter of the allotment dated 14th July 1972 allotting area of 800 sq. yards in the Goregaon Industrial Estate is annexed to the reply of the 1st respondent at Exhibit 'III'. On 24th February 2003, the first petitioner addressed a letter to the Additional Municipal Commissioner of the 1st respondent making two suggestions regarding the allotment of premises. The Municipal Corporation acting upon the said request issued a letter of allotment dated 11th March 2005 of allotment of the gala admeasuring 327.95 sq. meters which is the subject matter of this petition. The terms of the allotment are set out in the said letter, which read thus :

> "(i) That you shall pay Rs.10,59,017/- in lieu of 25% cost of construction at the rate of Rs.1200/- per sq. ft.
>
> (ii) That you shall pay monthly stallage charges amounting to Rs.44,126/- per month, till finalisation of the issue for the allotment of premises on maintainance and management basis, as per M.C.'s directives.
>
> (iii) That you shall pay a standing deposit amounting to Rs.2,64,756/- equivalent to 6 months stallage charges.
>
> (iv) That this gala will be allotted as a Licensee of Market Deptt. and not on tenancy or ownership basis. You shall have to abide all the rules and regulations of the Market Department."
>
> [Underlines added]

11] The first petitioner admittedly committed default and did not pay the amount as set out in the said letter within the specified time. Time of six months was granted to the first petitioner to deposit sum of Rs.2,64,756/- which the first petitioner did not deposit. Only on 4th June 2008 that the first petitioner by a letter addressed to the Additional Municipal Commissioner again approached the 1st respondent requesting the Municipal Corporation to accept the amount payable as per the letter dated 11th March 2005 and grant physical possession of the said premises. Notwithstanding the gross delay and default on the part of the first petitioner, by a letter dated 3rd June 2009, the 1st respondent offered allotment of the said premises to the petitioner on the terms and conditions set out in the letter dated 11th March 2005 which we have reproduced above. The petitioner acted upon the said letter and executed an undertaking on Rs.100/- denomination stamp paper and accepted terms and conditions in the letter. We have already quoted what is stated in the undertaking by the petitioner. Though by a letter dated 2nd July 2009 the first petitioner claimed that the Municipal Commissioner had directed waiver of stallage charges, on 30th October 2009, the first petitioner not only paid stallage charges at the agreed rate but also of the penalty thereon.

12] Considering the aforesaid conduct of the first petitioner, he is bound by the terms and conditions in the letters dated 3rd June 2009 as well as 11th March 2005 and cannot refuse to comply with the said terms and conditions. The first petitioner is estopped from contending that he is entitled to allotment of the said premises either on ownership or tenancy basis and that also without payment of stallage charges. As far as the user is concerned, the same has been specified in clause 3 of the letter dated 3rd June 2009 which the first petitioner has voluntarily accepted.

13] During the pendency of the petition, the first petitioner has deposited the entire arrears of stallage charges without prejudice to the rights of the first petitioner.

14] Considering the aforesaid conduct of the first petitioner, we see absolutely no merit in the challenge in this petition under Article 226 of the Constitution of India. The first petitioner is disentitled to any of the reliefs which are claimed in this petition.

15] Accordingly, the petition is rejected. The rejection of the petition will not prevent the petitioners from making appropriate representation to the Municipal Authorities.

(M. S. SONAK, J.) **(A. S. OKA, J.)**

Chandka