

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

WRIT PETITION NO.43 OF 2017

Madanlal Gulabchand Bhutra ... Petitioner
Vs.
State of Maharashtra,
Through the Hon'ble Minister,
Urban Development Department,
Mantralaya, Mumbai & Ors. ... Respondents

Mr. A.Y. Sakhare, Senior Counsel, a/w. Mr. Bhavin Bhatia and
Mr. Santosh Yadav, for the Petitioner.

Mr. A.I.I. Patel, A.G.P., for the Respondent-State.

Ms. Vandana Mahadik for the Respondent-Municipal Corporation.

Mr. Joseph Fernandes for Respondent No.10.

Mr. Ravi Gadagkar, i/by Ms. Usha Gadagkar, for Respondent No.11.

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

DATE : 12TH APRIL 2017.

P.C. :

1. Heard learned counsels for the respective parties.
2. Mr. Fernandes, learned counsel appearing for Respondent No.10, has tendered appropriate undertaking. The same is taken on record.

3. By this Petition, the Petitioner seeks a direction to the Respondent-Municipal Corporation to allow him to go ahead with the construction, as, out of 54 tenants, 52 tenants have already entered into the agreement and 53rd tenant, who has submitted undertaking to this Court today, will be also entering into the agreement with the Petitioner.

4. Mr. Sakhare, learned Senior Counsel for the Petitioner, submits that, Respondent No.11 is the last occupant, due to whom further progress of the construction has come to a standstill. Mr. Gadagkar, learned counsel appearing for Respondent No.11, submits that, instead of ground-floor flat, a flat on the 25th floor, which could have access to the terrace of the building, be allotted. The learned Senior Counsel appearing for the Petitioner, on instructions, submits that, that would be difficult. Instead, the Petitioner would provide a composite flat to Respondent No.11 on the 3rd floor of the subject building, having carpet area of 114 sq.ft.

5. In the facts of the case, we find that fair proposal has been given by the Petitioner. In case Respondent No.11 finds it difficult to accept, then, further progress of the construction cannot be stalled.

6. At this stage, learned counsel for Respondent No.11 sought some time to take instructions in the matter and, hence, the matter was kept back for some time.

7. Learned Senior Counsel for the Petitioner and learned counsel for Respondent No.11, both, submit that now the issue has been resolved. Respondent No.11 will be getting Multipurpose Room (*residential-cum-commercial*), tentatively numbered as "Room No.2", on the ground-floor of the subject building, as per the Site Plan, having carpet area admeasuring 114 sq.ft. The Site Plan of this block is handed over by the Petitioner to Respondent No.11 in Court today. Petitioner is present in the Court and Power of Attorney of the Petitioner has signed the ground-floor Site Plan, which is handed over to Respondent No.11. A copy of the said ground floor plan is also placed on record and marked as "X" for identification.

8. Learned Senior Counsel for the Petitioner and learned counsel for Respondent No.11, both, submit that the basic issue stands resolved now and consequent thereof, Respondent No.11 would execute necessary agreement with the Petitioner shortly.

9. In this view of the matter, the Respondent-Municipal Corporation would take necessary steps now in accordance with law.

10. The rent compensation shall be paid by the Petitioner to Respondent No.11 on or after the date of execution of the agreement in accordance with the terms settled at par with the other tenants of the subject building.

11. Petition is disposed of.

[DR. SHALINI PHANSALKAR-JOSHI, J.] [NARESH H. PATIL, J.]