

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

WRIT PETITION (L) NO.2648 OF 2017

Mrs. Vinodini C. Pradhan Petitioner

Vs.

Asstt. Commissioner K/East Respondents
Ward, BMC & Anr.

**WITH
WRIT PETITION (ST) NO.2426 OF 2017**

Amul Enterprises (thru' its partners).... Petitioners

Vs.

Mrs. Vinodini C. Pradhan & Ors. Respondents

Mr. A.A. Garge i/by Satyajeet P. Dighe for the Petitioner in WPL
No.2648 of 2017.

Mr. Hemant Haryan, AGP for the State
Ms. Pallavi Thakar for MCGM.
Mr. V.A. Thorat, Senior Advocate i/by Anilkumar Patil for the
Petitioners in WP(L) No. 2426 of 2017.

**Coram : Smt. Vasanti A. Naik &
Riyaz I. Chagla, JJ.**

Date : 21st November, 2017

P.C.:

Since the facts and the issue involved in these writ petitions are similar, they are heard together and are decided by this common order.

Writ Petition (L) No.2426 of 2017 is filed by the developer and some others for a direction to the Corporation to implement the notice issued by the Corporation authorities under Section 354 of the Mumbai Municipal Corporation Act, 1888 (hereinafter referred to as “the Act” for the sake of brevity). The petitioner in Writ Petition (L) No.2426 of 2017 seeks a direction against the respondent no.1 to vacate the premises occupied by her in Old Mani Bhuvan situated in Vile Parle in view of the notice under Section 354 of the Act. Certain other ancillary prayers are also made in the said writ petition.

Writ Petition (L) No.2648 of 2017 is filed by Vinodini Pradhan, the sole occupier of the building who is not ready to vacate the same. According to the petitioner in Writ Petition (L) No. 2648 of 2017, the notice issued by the Corporation under Section 354 of the Act is bad in law. In the said writ petition, Vinodini Pradhan has sought a directions against the respondent to restore the water and electricity supply to her house premises.

According to the developer and others, the petitioners in Writ Petition (L)2426 of 2017, the concerned building was in a totally dilapidated condition and required demolition. The petitioners in Writ Petition (L) No.2426 of 2017 had sought permission for redevelopment and the same is granted to them. According to the petitioner in Writ Petition (L) No. 2426 of 2017, all other residents in the said dilapidated building have vacated the premises and have executed the agreements for alternate accommodation and have accepted the same. According to the petitioner in Writ Petition (L) No.2426 of 2017, the petitioner in Writ Petition (L) No.2648 of 2017, viz.Vinodini Pradhan is the sole occupier of the building, who is adamant and is not desirous of vacating the same. It is stated in Writ Petition (L) No.2426 of 2017 that though the petitioners in the said writ petition are willing to execute the agreement with Vinodini in respect of alternate accommodation and also in respect of the premises in the redeveloped property, she is not ready to accept the same. It is stated that in the aforesaid set of facts, the proposal for redevelopment should not be stalled only at the behest of one of the occupants, specially when all the other occupants have vacated the premises and the delay on the part of Vinodini, the petitioner in Writ Petition (L) No.2648 of 2017 to vacate the premises would cause great inconvenience to the other occupants.

On the other hand, it is the case of petitioner-Vinodini, in Writ Petition (L) No.2648 of 2017 that the Corporation has not carried out inspection of the building through the structural engineer as per the directions of this court in Writ Petition (L) No.1135 of 2014. It is stated that the building was not inspected before the notice under Section 354 of the Act was served on the owner of the building. It is stated that notice under Section 354 of the Act was not served on petitioner-Vinodini and the same was served only on the owner of the building. It is submitted that the developer is a sub-lessee and therefore he would not be entitled to develop the property. It is stated that the aforesaid objections are raised by the petitioner in her representation made to the Corporation authorities but without deciding that representation, the Corporation authorities are taking steps for the demolition of the building.

Ms. Thakar, the learned counsel for the Corporation submitted that before the notice under Section 354 of the Act was issued, the inspection of the building was made. It is submitted that petitioner-Vinodini in Writ Petition (L) No.2648 of 2017 did not permit the concerned engineer to enter into the premises occupied by her. It is submitted that the building is in an absolutely dilapidated condition and hence the notice under Section 354 of the Act was issued. It is submitted that if this Court so directs, the Corporation would take further steps for implementation of the notice under Section 354 of the Act.

We are not inclined to grant any relief, as sought by petitioner-Vinodini in Writ Petition (L) No.2648 of 2017. It is conspicuous to note that it is not the case of the petitioner-Vinodini in Writ Petition (L) No.2648 of 2017 that the house is not in a dilapidated condition and that it could be repaired. In the writ petition filed by Vinodini, it is clearly averred that the petitioner is anxious to vacate the premises for the purpose of redevelopment, however, she apprehends that the builder would not be in a position to complete the project and after vacating the premises, she would be left without any accommodation, as the developer has not assured as to when he would complete the project. Several similar averments are made in the writ petition. It is apparent from the said averments and also from the statement made at the outset, by the learned counsel for the petitioner, on instructions, in the Court today, that petitioner-Vinodini is ready to immediately vacate the premises but she should be allotted a permanent accommodation of the same area in the same locality, immediately. Since the building in which the petitioner is residing is under redevelopment, the request made on behalf of the petitioner appears to be unreasonable. From the said request and from the averments, it is apparent that petitioner-Vinodini, in Writ Petition (L) No.2648 of 2017 is not opposed to redevelopment but is not ready to vacate the premises only with a view to ensure that the offer given by her to the petitioners in Writ Petition (L) No.2426 of 2017 should be accepted unconditionally. It

is clear that petitioner-Vinodini is anxious to vacate the premises and does not oppose the redevelopment. If that be so, the entire project cannot be stalled at the behest of Vinodini when the other occupants have already vacated the building to ensure its demolition and an early redevelopment. The grounds raised by petitioner-Vinodini in Writ Petition (L) No.2648 of 2017 cannot be favourably considered as they are pressed into service only with a view to ensure that the offer of petitioner-Vinodini that she may be allotted a flat of equal area in the same locality immediately is accepted by the developer. On a reading of Writ Petition (L) No. 2648 of 2017, it is apparent that the grounds raised by the petitioner for challenging the notice under Section 354 of the Act are only illusory and are raised merely with a view to ensure that the deal, as sought by the petitioner is finalised. We do not wish to grant any relief in favour of petitioner-Vinodini as it appears that she has filed the petition only for bargaining. The relief under writ jurisdiction could not be granted to petitioner-Vinodini in Writ Petition (L) No. 2648 of 2017 as she has not approached this Court with clean hands. We do not find any illegality in the notice issued by the Corporation under Section 354 of the Act. The notice itself demonstrates that the Executive Engineer had inspected the building and from the submissions made on behalf of the Corporation, it appears that the entire building except the premises occupied by the petitioner- Vinodini was inspected. We do not find any merit in the submission made on

behalf of Vinodini that the redevelopment permission is not granted as a copy of the redevelopment permission is annexed to the writ petition filed by the petitioners in Writ Petition (L) No.2426 of 2017. In any case, when the house is in a totally dilapidated condition and petitioner-Vinodini has no objection for redevelopment, we do not find any reason for not granting the prayer made in Writ Petition (L) No.2426 of 2017, seeking a direction against the Corporation and its authorities to implement the notice under Section 354 of the Act.

In the circumstances of the case, Writ Petition (L) No.2426 of 2017 is partly allowed. The respondent-Corporation authorities are directed to implement the notice under Section 354 of the Act as early as possible. Writ Petition (L) No.2648 of 2017 stands dismissed. However, the petitioner in the said writ petition would be entitled to enter into an agreement with the petitioners in Writ Petition (L) No.2426 of 2017, if so advised as the petitioner in Writ Petition (L) No.2648 of 2017 have offered to enter into an agreement with her. Order accordingly. No costs.

At this stage, the learned counsel for the petitioner in Writ Petition (L) No.2648 of 2017 seeks the continuation of the ad-interim relief granted in the said petition for a period of four weeks.

The request is reasonable. The ad-interim relief would operate only for a period of four weeks. It is needless to mention

that as per the undertaking of petitioner-Vinodini in Writ Petition (L) No.2648 of 2017, she would continue to reside in the dilapidated building at her risk and costs. Order accordingly.

(Riyaz I. Chagla, J.)

(Smt. Vasanti A. Naik, J.)