

Jsn

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

WRIT PETITION (L) NO. 2946 OF 2017

Shiv Premises Co-Operative Society Ltd. ...Petitioners
Thru Its Secretary Arun L. Rokade and Anr.
Versus
The State of Maharashtra & Ors. ...Respondents

Mr. Ashish Gaikwad, for the Petitioners.
Ms. Yamuna Parekh, for MCGM.
Ms. Aparna Murlidharan, for MHADA, for Respondent No.3.
Ms. Rupali Bawkar, Sub- Engineer 'L' Ward officer from MCGM
present.

**CORAM: SMT. VASANTI A NAIK AND
MR. RIYAZ I. CHAGLA, JJ.**
DATED: 6TH NOVEMBER 2017

PC:-

By this writ petition, the petitioners have challenged the order of the Mumbai Municipal Corporation dated 2nd May 2017 declaring that the petitioners are ineligible for rehabilitation as the structure that is sought to be demolished was not in possession of the petitioners on or before 1st January 2000.

Shri Thorat, the learned counsel for the petitioners submits that the impugned order is illegally passed by the corporation though MHADA had not answered the query made by the municipal corporation in regard to the date on which the structure was erected and possessed by the petitioners. It is submitted that the corporation ought to have waited for the reply of the MHADA and also ought to have considered the documents tendered by the petitioners to point out that the petitioners were in possession of

the structures before the cut of date i.e. 1st January 2000.

Ms. Mahadik, the learned counsel appearing for the corporation states on instructions that before the impugned order was passed on 2nd May 2017, the petitioners had not produced any documents to show that they were in occupation of the structure before 1st January 2000. It is stated that certain documents are tendered by the petitioners to the corporation after 2nd May 2017 and the corporation could not have considered the same as they were tendered after the passing of the impugned order.

In the circumstances of the case, we find that the corporation was not justified in declaring that the petitioners were ineligible for rehabilitation. If the corporation had made a query to MHADA in respect of the date on which the structures were erected and if the query was not answered by MHADA, the Corporation could not have declared the petitioners to be ineligible. Since there is a dispute whether the petitioners had tendered the necessary documents before the impugned order was passed, without dealing with the said dispute, in the interest of justice, it would be necessary to direct the corporation to re-decide the question of eligibility of the petitioners by considering the documents tendered by the petitioners and the opinion of the MHADA.

Hence, for the reasons aforesaid, the writ petition is partly allowed. The impugned order is quashed and set aside. The respondent – corporation is directed to re-decide the question of

eligibility of the petitioners within eight weeks.

Order accordingly. No costs.

(RIYAZ I. CHAGLA J.)

(SMT. VASANTI A. NAIK, J.)