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

WRIT PETITION NO. 2861 OF 2016

M/s Lalani Constructions Pvt. Ltd. Petitioner.

V/s

Municipal Corporation of Greater
Mumbai and Others Respondents.

Mr. Vivek Kantawala a/w Mr. Ajit N. Makhijani, Mr. Amey Patil, Ms.
Shruti Anurag i/b M/s. M & M Legal Associates for the Petitioner.

Ms. Kejali Mastakar for Respondent Nos. 1 to 3 – MCGM.

Mr. Gauraj Shah i/b M/s Legal Vision for Respondent Nos. 4 to 7.

Mr. Anil K. Lulla for Respondent Nos. 15 to 19.

**CORAM: B. R. GAVAI &
M.S. KARNIK, JJ.**

DATE: 14th September, 2017

P.C.:-

1] Rule. Rule is made returnable forthwith. Respondents waive service. Heard by consent of parties.

2] By way of the present Petition, the Petitioner has prayed for direction, directing Respondent No. 1 to forthwith take necessary steps

to prevent loss of life by way of collapse of building by taking immediate steps to evict the occupants in respect of the building, which is the subject matter of the present Petition.

3] Petitioner is an owner of a Building on the land bearing CTS No.F/73A at Khar, Mumbai viz. Kadri Manzil (hereinafter referred to as “the said building”). Since the building is in a dilapidated condition, the Petitioner desired to demolish the said building and redevelop the same. Accordingly, the Petitioner applied to Respondent – Corporation which issued an IOD on 18/05/2013.

4] It is the contention of the Petitioner that since the Petitioner's building is in a dilapidated condition, Petitioner submitted a Structural Auditor's Report to Respondent No.1, which showed that the building to be in a dilapidated condition, requiring demolition. It is submitted that, accordingly, Corporation had issued notices to the occupants of the said building for vacating the premises. It appears that there is some dispute between Respondent Nos. 4 to 7 on one hand and Respondent Nos. 8 to 14 on the other hand and that with regard to the same R.A.D. Suit No.223 of 2014 is pending before the Small Causes Court. It further appears that the Petitioner had also filed R.A.E. Suit No.292/403 of 2011 against Respondent Nos. 15 to 19, which suit was decreed and against which decree, an Appeal being Appeal No.15 of 2016 is pending before the Appellate Bench of the Small Causes Court. In the said Appeal, Respondent Nos. 15 to 19 are directed to deposit

an amount of Rs 20,000/- per month.

5] When the matter was listed before us on the last date, taking into consideration the factual position that the building is in a dilapidated condition and requires urgent demolition, we had requested the learned Counsel for the Petitioner to take instructions as to whether the Petitioner was willing to give an undertaking that it would allocate the same area, which is in occupation of the contesting Respondents in a reconstructed building and as to whether it was willing to pay rent for the alternative accommodation, which the said Respondents would be required to obtain during the period of redevelopment. We had also requested the learned Counsel for contesting Respondents to take instructions as to whether they would be willing to vacate the premises on an Undertaking being given by the Petitioner.

6] Accordingly, the Petitioner has given two Undertakings. One Undertaking is with regard to Respondent Nos. 4 to 7 who are in occupation of commercial premises of 165 square feet carpet area. It is stated in the Undertaking that the Petitioner will handover to Respondent Nos. 4 to 7, an area admeasuring 165 square feet on tenancy basis in the new building to be constructed. However, it is stated that the same shall be subject to outcome of the R.A.D. Suit No.223 of 2014, which is pending before the Small Causes Court. It is further stated that the aforesaid Undertaking shall also be subject to

Respondent Nos. 4 to 7 handing over peaceful and vacant possession of the said tenanted shop within seven days from the date of the order of this court. It is further stated that the Petitioner undertakes to complete the new building within a period of twenty-four months of obtaining the Commencement Certificate with six months' grace period. Petitioner has also undertaken to pay a sum of Rs 200/- per square feet per month as monthly compensation to Respondent Nos. 4 to 7 in respect of their shop in their occupation from the date Respondent Nos. 4 to 7 handover vacant and peaceful possession of the said tenanted shop to the Petitioner. It is further undertaken that, in the event, Petitioner is unable to complete the construction of the new building within 24 months from the date of obtaining Commencement Certificate, the Petitioner shall enhance the rate by providing for an escalation of 10% for the next one year and thereafter with an escalation of 5% every year.

7] Similar Undertaking is filed in respect of residential premises, admeasuring 377 square feet carpet area, which are in occupation of Respondent Nos. 15 to 19. However, the said Undertaking is subject to Respondent Nos 15 to 19 withdrawing the Appeal filed before the Small Causes Court. The rent which is undertaken to be paid is at the rate of Rs 125/- per square feet with similar escalation, as is provided in the Undertaking given in respect of Respondent Nos. 4 to 7.

8] We find that the interest of the parties would be sub-served by

the following order:-

(i) Undertakings given by the Petitioner are taken on record and marked as “X” and “X-1” for the purpose of identification. Undertakings are accepted.

(ii) The Petitioner and Respondent Nos. 4 to 7 and Respondent Nos. 15 to 19 shall execute necessary agreement within a period of one week from today. The Petitioner shall execute an agreement with Respondent Nos. 4 to 7 on the basis of the terms which are stipulated in the Undertaking. Needless to state that rights in favour of Respondent Nos. 4 to 7 shall be subject to outcome of R.A.D. Suit No.223 of 2014.

(iii) The Petitioner shall also execute an agreement with Respondent Nos. 15 to 19 on terms, as stipulated in the Undertaking within a period of seven days from today. Needless to state that aforesaid Respondents shall cooperate with the Petitioner for executing the agreement. The said respondents shall furnish their Bank details to the Petitioner, so that they are incorporated in the agreement itself.

(iv) Upon execution of the agreement, Respondent Nos. 4 to 7 and Respondent Nos. 15 to 19 shall handover vacant and peaceful possession of the premises in their occupation to the Petitioner within a period of three weeks from the date of execution of the agreement.

(v) The Appeal filed by Respondent Nos. 15 to 19 being Appeal No.15 of 2016 shall stand disposed of as withdrawn by the said Respondents. Similarly, a decree passed in R.A.E. Suit No.292/403 of 2011 filed by the present Petitioner shall stand set aside with the consent of Respondent Nos. 15 to 19 and the amount deposited by Respondent Nos. 15 to 19 before the Appellate Court at the rate of Rs 20,000/- per month shall be permitted to be withdrawn by the said Respondents.

(vi) The aforesaid Respondent Nos. 4 to 7 and 15 to 19 shall file an Undertaking in this Court within three days that they will handover vacant and peaceful possession of the premises in their occupation to the Petitioner in any case within a period of four weeks from today and also shall not

create any third party rights in the premises in their occupation. They shall also state in the Undertaking that occupation of the premises by the said Respondents would be solely at their risk as to cost and consequences and neither the owner nor Corporation would be responsible, if any mishap takes place. The said Undertaking would be accepted as an undertaking to this Court.

(vii) Since the aforesaid Respondents have now undertaken to vacate the premises in their possession within a period of four weeks, Respondent – Corporation shall reconnect the electric and water supply to the said premises forthwith for a temporary period.

(viii) Rule is made absolute in the aforesaid terms.

(M. S. KARNIK, J.)

(B. R. GAVAI, J.)