

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION (ST.) NO.12021 OF 2018

Silloo Dhan Mistri and anr.	... Petitioners
Vs.	
Executive Engineer and ors.	... Respondents

Mr. E.P.Bharucha, Sr. Advocate with Mr. Cyrus Ardeshir, Mr.Sarosh Bharucha and Mr.Shrey Fattarpekar with Mr. Ooril Panchal i/by M/s Mahimtura and Company for the Petitioners.

Mr. Pravin Samdani with Mr. Soumya Shrikrishna, Ms.Tanvi Shah and Kaidokht Vasania i/by M/s Wadia Ghandy & Co. for Respondent No.2.

Mr.Saifee Raj for Respondent No.3.

Mr. Prakash G. Lad for MHADA.

CORAM : R.D.DHANUKA, J.

DATE : APRIL 23, 2018.

P.C. :

1. I have heard the learned counsel appearing for the parties at length. The Petitioner has impugned an order passed by the Respondent No.1 under Section 95A of the Maharashtra Housing Area Development Authority Act, 1976 on 13th April 2018.

2. In the notice, issued under Section 95A, the dispute regarding the title claimed by any of the parties can not be adjudicated upon. Scope of Section 95A is very limited.

3. After hearing the parties, I therefore pass the following order:-

- a. The Respondent No.2 accepts the Petitioners as the tenants of Garage No.3 situated on the ground floor/street level of the building known as "Ram Mansion" situated at Napean Sea Road. The 2nd Respondent is redeveloping Ram Mansion under a scheme sanctioned under Regulation 33(7) of Development Control Regulations, 1991.
- b. The Petitioners shall surrender the vacant and peaceful possession of the existing garage to the Respondent No.1 in accordance with order under Section 95A of the MHADA Act, for demolition by tomorrow.
- c. The Respondent No. 2 shall provide to the Petitioners an independent area parking space in the basement of similar area to the existing garage on tenancy basis at a standard rent in the new building to be constructed on the plot where the erstwhile Ram Mansion stood, for which Petitioners shall have free and uninterrupted use as a car park and the Petitioners shall have access to the car park at all times during the tenure of their tenancy. This arrangement will be binding not only on the Respondent No.2, but also their successors and assignees.

- d. The Respondent No.2 shall hand over the permanent car parking to the Petitioners within 30 months from the receipt of the commencement certificate with respect to the new building proposed to be constructed by the Respondent No.2.
 - e. The Respondent No.2 shall pay compensation of Rs.10,000/- per month towards transit to the Petitioners commencing from 1st May 2018, till the possession of the car park is handed over to the Petitioners in new building.
4. The Respondent No. 2 undertakes to comply with the order passed by this court today. The Petitioners are directed not to interfere with the redevelopment of the new building in any manner. Undertaking tendered by the Respondent No.2 is accepted.
 5. It is made clear by this order the rival claims between the Petitioners and the Respondent No.3 are not decided in this order.
 6. All the contentions raised by the Respondent No.3 in respect of the garage No.3 are kept open.
 7. Writ Petition is disposed of in the aforesaid terms.

8. In view of the aforesaid order, the Respondent No.1 is entitled to execute the order passed by the Respondent No.1 under Section 95A of MHADA Act, 1976 forthwith.

9. Parties excluding Respondent No.3 to act on the authenticated copy of this order.

(R.D.DHANUKA, J.)

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