

Sharayu Khot.

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

**WRIT PETITION NO. 460 OF 2015
AND
CHAMBER SUMMONS NO. 79 OF 2018
IN
WRIT PETITION NO. 460 OF 2015**

Bhawarlal Tejpal Jain

...Petitioner

Versus

**Assistant Municipal Commissioner &
Ors.**

...Respondents

Mr. Bharat S. Kothari, for the Petitioner.

Ms. Vandana Mahadik, for the Respondents No. 1 and 2-BMC.

Mr. K.J. Patil, for the Respondent No. 4.

**CORAM : ABHAY S. OKA AND
RIYAZ I. CHAGLA, JJ.**

DATE : 4 July 2018

ORDER :

1. The learned Counsel appearing for the Petitioner

states that the Petitioner is pressing only prayer clause (a) which reads thus:-

“This Hon'ble court be pleased to issue an appropriate writ and order and restrain the respondent no. 1 & 2 from issuing any commencement certificate, IOD or sanctioning any plan unless and until the respondent no. 3 & 4 enter in to an agreement for temporary and permanent alternate accommodation with the petitioner, in respect of his tenanted premises in the demolished building i.e. Azramar Krupa (formally known as S-cube sadan), Dafray Road, Malad (E), Mumbai -64.”

2. There is an Affidavit in Reply filed by the Mumbai Municipal Corporation of Shri. S.R. Mahajan, Assistant Engineer (Building Proposal). In the Reply, it is stated that I.O.D and Commencement Certificate were issued on 3rd August 2010 to the developer. It is further stated that the said I.O.D and the

Commencement Certificate have lapsed. It is further stated that at present, there is no building proposal pending for construction of the building on the plot under reference. In paragraph 8, Shri. S.R. Mahajan has stated thus:-

“I say that, in the above Writ Petition, the Petitioner has prayed that these Respondents be directed not to issue any IOD, or Commencement Certificate or sanction any plan unless Respondent No. 3 and 4 enter into an agreement with the Petitioner for alternate accommodation. In this regard, I say that as per the policy of redevelopment of the tenanted properties, a condition to submit the Consent of existing tenants and agreement executed with the existing tenants including alternate accommodation is always incorporated as a condition of I.O.D. to be observed before the grant of Commencement Certificate.”

3. We accept the aforesaid statements made in the

Affidavit of Shri. S.R. Mahajan. In view of the statements made in paragraph 8, as and when a fresh I.O.D and the Commencement Certificate are issued for the construction of buildings on the subject plot, the Municipal Corporation is bound to incorporate a condition in the I.O.D. and the Commencement Certificate as set out in paragraph 8. If the Municipal Corporation fails to incorporate such a condition, the Petitioner can always file appropriate proceedings in accordance with law.

4. Subject to what is observed above, the Petition is disposed of.

5. In view of the disposal of the Petition, pending Chamber Summons, if any, does not survive and is disposed of as such.

[RIYAZ I. CHAGLA J.]

[ABHAY S. OKA, J.]