

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

WRIT PETITION NO. 963 OF 2018

Sunil Madanlal Thenge and others. ... Petitioners.

V/s.

Municipal Corporation of Greater Mumbai
and others. ... Respondents.

Mr.Atul Damle, Senior Advocate with Mr.Ashutosh Gavnekar, Mr.R.
Narayanan and Mr.Tejas P. Shah i/b. Narayanan and Narayanan
for the petitioners.

Mr.Ajit Kenjale with Ms.K.H.Mastakar for respondent Nos.1 to 3.

Mr.Sachin Punde for respondent Nos.21,23,24, 25A and 76 to 79.

CORAM : A.S.OKA AND RIYAZ I CHAGLA, JJ.

DATE : 28th March 2018.

PC.:

We have heard the learned senior counsel appearing for the petitioners, the learned counsel for the respondent Nos.21, 23, 24 and 76 to 79. We have also heard the learned counsel appearing for the first and second respondents.

2. In this writ petition under Article 226 of the Constitution of India, the challenge is to the notice dated 8th September 2017 (Exhibit-Q) as well as the notice dated 22nd December 2017. This petition relates to a

building which has been declared by the first respondent- Municipal Corporation as falling under the Category “C-1” which is not fit for human habitation and which is required to be pulled down. The first impugned notice dated 8th September 2017 is a notice by which temporary accommodation has been offered to the petitioners in the form of tenements in the building constructed by Eversmile Constructions at Mahul in Mumbai. By the second notice, the occupants were informed that electricity and water supply to the building will be disconnected on 29th December 2017.

3. The petitioners and the respondent Nos.5 to 11 and 13 to 31 have filed similar undertakings on oath before this Court. We must note here that the learned counsel appearing for the respondent No.25A stated that the undertaking of the said respondent is ready and will be filed during the course of the day. In the undertakings filed by all the aforesaid parties, it is stated thus:

“1. I say that I am filing present Undertaking pursuant to the order dated 23/02/2018 passed by this Honourable High Court in present Writ Petition. I say that present Undertaking may not be treated as my Affidavit in Reply to the writ Petition and I crave leave to file separate Affidavit in Reply.

2. I say that tenancy rights in respect of Flat No.A-5, First Floor, B.I.T. 2 Rooms Tenements, C.S.No.327/10 and 544 (part), Dadar Matunga Division, Scheme No.6, Road No.4, Laxminarayan Lane, F/North Ward, Matunga, Mumbai 400 019 are standing in my name and I am the authorized tenant in respect of the aforesaid flat in the records of Brihan-Mumbai Municipal Corporation

and the aforesaid Flat is in my possession and is being occupied by me and my family.

3. I hereby offer my unconditional undertaking to this Honourable court that I will vacate Flat No.A-5, First Floor, B.I.T. 2 Rooms Tenements , C.S.No.327/10 and 544 (part), Dadar Matunga Division, Scheme No.6, Road No.4, Laxminarayan Lane, F/North Ward, Matunga, Mumbai 400 019 on or before 31st May 2018. I further undertake to this Honourable Court that I will continue to occupy the aforesaid Flat at my own risk and in the event of collapse of the building or any part thereof, I will be solely responsible for any loss or damage which may be caused to any third party.”

4. As stated earlier, there are similar undertakings given by the aforesaid parties. The undertakings given by the parties are to vacate the premises in their possession on or before 31st May 2018.

5. The learned senior counsel appearing for the first to third respondents states that the first respondent will take appropriate decision on the application for redevelopment submitted under regulation 33(7) of the Development Control Regulations, 1991 and the same will be communicated to the petitioners by 10th April 2018. We accept the said statement.

6. In view of undertakings, the challenge to both the notices will not survive as all concerned have undertaken to vacate the premises in their respective possession on or before 31st May 2018.

7. Hence, we dispose of this petition by passing the following order:

(i) We direct the respondent Nos.1 to 3 not to take any steps against the petitioners and the respondent Nos.4 to 31, on the basis of second impugned notice at Exhibit-T which is dated 22nd December 2017 till 31st May 2018. Needless to clarify that not only the action on the basis of the said notice shall not be taken but even the electricity and water supply to the respective premises of the said parties shall not be disconnected;

(ii) In the event the respondent Nos.4, 12 and 25A fail to file similar undertakings in this Court within a period of three weeks from today, the protection granted as above shall stand vacated only as far as these three respondents are concerned and the Municipal Corporation shall be free to take action on the basis of the impugned notices against the said respondents;

(iii) In the event of failure of the parties who have given undertakings, to vacate their respective premises and hand over the vacant possession thereof to the first respondent-Municipal Corporation on or before 1st June 2018, it will be open for the first respondent to take forcible possession of the premises in possession of the respective parties. For that purpose, the concerned local police station shall grant adequate police force to the Municipal Corporation;

(iv) We accept the statement made by the respondent Nos.1 to 3 that the proposal for redevelopment submitted by the petitioners will be decided and the decision taken thereon will be communicated to the petitioners and all concerned parties on or before 10th April 2018;

(v) We also make it clear that if the parties who have given undertakings as aforesaid wish to avail the alternative accommodation offered by the first respondent, they are free to do so on or before 31st May 2018. If they fail to avail benefit of allotment of alternate accommodation on or before the said date, the first respondent will not be bound to provide the alternate accommodation to the said parties;

(vi) The petition is disposed of on the above terms.

(RIYAZ I. CHAGLA, J.)

(A.S.OKA, J.)