

Sharayu Khot.

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

**WRIT PETITION NO. 1165 OF 2016
WITH
NOTICE OF MOTION NO. 158 OF 2018
IN
WRIT PETITION NO. 1165 OF 2016**

**Haji AVC Mohd. Ali @ Mahammadali ...Petitioners
AVC & Anr.**

Versus

**Municipal Corporation of Greater ...Respondent
Mumbai**

Mr. Amrendra Mishra, for the Petitioners.

Mr. R.S. Apte, Senior Counsel, Ms. Shital Mane, for the
Respondent-BMC.

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

DATE : 24 April 2018

ORDER :

1. Heard the learned Counsel appearing for the

1/11
April 24, 2018

Petitioners and the learned Senior Counsel appearing for the Respondent. According to the case of the Petitioners, they were in possession of a shop premises, more particularly, described in paragraphs 1 and 2 of this Petition the area of which was 840 sq.ft. The said structure was demolished on 23 February 2016. The prayer in this Petition under Article 226 of the Constitution of India is for issuing a writ of mandamus directing the Respondent to allot a permanent alternate accommodation under PAP scheme of an area equivalent to area of the said premises at commercially viable location to continue the business of running a hotel. The second prayer is for a declaration that the action of demolition was illegal.

2. There is a Reply filed by Shri. T.V. Chandrakant, Assistant Engineer (Maintenance) R/South Ward in which reliance is placed on the policy dated 25 February 2004. Clauses (a) and (b) of paragraph 4 read thus:-

“a) I say that as per the bottleneck policy u/n.

AMC/ES/D/168 (CHE/1876/DPC/Gen) dt.
25.02.2004, the affected structure divided in
category A & category B.

*In Category A: Unauthorized tolerated structures,
residential structures existing prior to 17.04.1964
& commercial existing structures prior to
01.04.1962, area to be allotted is equivalent to
authentic tolerated carpet area of the
residential/commercial structures.*

*In Category B: Structures protected under State
Government policy existing prior to 01.01.1995
includes structure/structures after 17.04.1964 of
residential user and after 01.04.1962 for
commercial user on the land private/State
Government/Central Government. This category
also includes census structures of 01.01.1976 with
photopass, without photopass and also from
01.01.1976 till 01.01.1995. For those structures*

*the area 180 sq.ft. Carpet or 225 sq.ft. Carpet shall be allotted to the affected occupants / structures as the case may be. Hereto annexed and marked **Exhibit-1** is the copy of the guidelines.*

*b) I say that in the present case the Petitioner was holding a structure on S.V. Road, admeasuring 66.95 sq.mt. Carpet area as per physical inventory made by MCGM. Hereto annexed and marked **Exhibit-2** is the copy of the inventory report.”*

3. This Petition was kept pending as there was exchange of offers. However, amicable solution could not be arrived at. The learned Counsel appearing for the Petitioners relies upon the statement of the learned Counsel appearing for the Respondent recorded in paragraph 1 of the order dated 7 February 2018 and he submits that the constructed area 720.38 sq.ft. (carpet) should be allotted to the Petitioners in nearby locality and the premises should be such that the same are on

the ground floor in which the Petitioners can carry on their hotel business.

4. The learned Senior Counsel appearing for the Corporation submits that now there is a proposal to allot the area of 623.23 sq.ft. in the Municipal Market at Anand Nagar, Dahisar East. He has tendered across the bar a document dated 21 April 2018.

5. The learned Senior Counsel invited our attention to the policy dated 25 February 2004 and in particular clause 4 thereof. He submitted that the Petitioner will be entitled for an allotment of area which is equivalent to the area of the demolished premises as on 1 April 1962. He submitted that the statement made by the learned Counsel for the Respondent on 7 February 2018 is obviously erroneous, as it is contrary to the said policy. He pointed out a copy of the document on pages 76 to 83 and in particular entry at Sr.No. 7 on page 80. He states that the statement recorded in the order dated 7 February 2018

was made on the basis of the area of the premises of the Petitioners at the time of its demolition. In the last column, it is not stated that the area mentioned therein was as of 1 April 1962. He submits that on consideration of the documents which may produced by the Petitioners, the Municipal Corporation is prepared to make adjudication about the exact area in possession of the Petitioners as on 1 April 1962.

6. We have considered the submissions. We find from the averments made in the Petition and the documents annexed to the Petition, a notice under Section 56 of the Maharashtra Regional and Town Planning Act, 1966 (for short “MRTP Act”) was served to the Petitioners informing the Petitioners that their structure admeasuring 6.50 to 10.30 sq.meters will be affected by the action of the Municipal Corporation of removal bottleneck and for widening 90 feet wide D.P. Gaondevi Road. We have perused the policy of 25 February 2004 annexed to the Reply of the Municipal Corporation. There are two categories of project affected persons. The first category (Category 'A')

includes commercial structures existing prior to 1st April 1962. The second category is of commercial structures constructed after the said date. The project affected persons are falling in second category are entitled an area 225 sq.ft. However, those who are falling in the first category are entitled to allotment of an area equivalent to the tolerated area which is the area in existence as on 1st April 1962.

7. In the offer letter dated 19 March 2018, the Petitioner was offered the area of 58.20 sq.meters. Even in the letter dated 21 April 2018 tendered across the bar, the Municipal Corporation proposed to allot an area of 626.23 sq.meters to the Petitioners. Therefore, there is no dispute that the case of the Petitioners will be governed by the category A of commercial structures which were in existence prior to 1 April 1962. Therefore, as per the policy, the Petitioners are entitled to the area equivalent to the area of the affected structure as on 1 April 1962.

8. As regards the location where the alternate accommodation would be offered, the policy is silent. Once there is a policy decision taken for the rehabilitation of the project affected persons, the rehabilitation has to be in true sense. As the Petitioners were running a hotel in the premises which is demolished, the Municipal Corporation is bound to allot a premises which can be conveniently used for running of the same business. The area in which the alternate accommodation is offered has to be the same area in which the original structure was situated. If any premises are not available in the area which is in the vicinity of the area in which the demolished premises was situated, the Municipal Corporation will have to offer a suitable premises in the nearest possible area where the Petitioners could carry on their original business.

9. Accordingly, we depose of the Writ Petition by passing the following order:-

(i) We direct the Petitioners or their Constituted

Attorney to appear in the office of the Assistant Commissioner, R/South Ward of the Respondent-Corporation of 9 May 2018 at 11.00 a.m. The Petitioners will produce the documents for showing the area of demolished premises as of 1 April 1962;

- (ii) After giving an opportunity of being heard to the Petitioners and after perusal of the documents produced by the Petitioners, the Assistant Commissioner will decide as to what was the area of the demolished structure as on 1 April 1962. This exercise shall be completed within a period of two months from 9 May 2018. A reasoned order shall be passed by the Assistant Commissioner which shall be served upon the Petitioners;
- (iii) As the Petitioners fall in category A of the policy,

the Petitioners are entitled to an allotment of an area equivalent to the area of the original premises as on 1 April 1962. Along with the order, the Assistant Commissioner shall also make an offer in writing to the Petitioners of an allotment of an alternate accommodation in the light of the discussion made in this judgment and order;

- (iv) A copy of the order fixing the area and a letter of offer shall be served to the Petitioners within a period of three months from 9 May 2018;
- (v) If the Petitioners have any grievance about the area determined or the allotment of the premises, he can always take recourse to remedies in accordance with law;
- (vi) The Petition is disposed of in the aforesaid

terms;

(vii) Pending Notice of Motion does not survive.

[RIYAZ I. CHAGLA J.]

[ABHAY S. OKA, J.]