

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

WRIT PETITION NO.1531 OF 2017

**Rehan Mohammed Kalsekar
CA Mohammed Umar Kalsekar & ors. : Petitioners.
Versus
Maharashtra Housing and Area
Development Authority
Through its Vice President and
Chief Executive Officer and ors. : Respondents.**

**ALONG WITH
NOTICE OF MOTION NO.186 OF 2018
IN
WRIT PETITION NO.1531 OF 2017**

Abdul Quddus Mehndi Hasan Khan : Applicant/Org.Petitioner No.7

**Rehan Mohammed Kalsekar
CA Mohammed Umar Kalsekar & ors. : Petitioners.
Versus
Maharashtra Housing and Area
Development Authority
Through its Vice President and
Chief Executive Officer and ors. : Respondents.**

**Mr. Altaf Khan I/by Mr. Nizam T Mohammod Sharif for the Petitioners.
Mr. P G Lad a/w Mrs. Sayli Apte for the Respondent No.1.
Ms. Kejali Mastakar for the Respondent/MCGM
Mr. Abhijeet Kandarkar I/by Mr. Jayesh Joshi for the Respondent Nos. 7 to
11.
Mr.Girish Godbole a/w Ms. Rujuta Patil, Ms. Niyathi Kalra and Ms. Somu
Bhasi I/by Negandhi Shah & Himayatullah for the Respondent No.5.**

**CORAM : R. M. SAVANT &
NITIN W. SAMBRE, JJ.
DATE : 01st NOVEMBER 2018**

P.C.

1 The above Writ Petition has been filed seeking the reliefs which are mentioned in prayer clauses (a) to (d) of the Petition. The said reliefs are relating to the re-development scheme under Regulations 33(7) of the Development Control Regulations, 1991.

2 It has come on record that the building comprising of the rehab tenements is of 22 storeys. The building is on the verge of completion except for few works to be completed which are inter-alia the underground water pumps, lifts which are 7 in number out of which 2 have been installed and the remaining to be installed.

3 The learned counsel appearing on behalf of the Respondent No.5 – Developers Shri G S Godbole states that though an earlier occasion it was stated that the Developer would apply to obtain occupation certificate by 31/12/2018, the said date is now required to be extended in view of the fact that the aforesaid works are required to be carried out and in view of the fact that in respect of the material that is to be procured for carrying out the said works, especially installation of the underground pumps, the Respondent No.5 is in que with some others. The learned counsel therefore stated that the Respondent No.5 would be in a position to apply for the occupation certificate by 15/03/2019.

4 During the course of the hearing of the above Writ Petition from time to time, the issue as regards the structural stability of the building wherein the transit accommodation has been provided to the Petitioners was the issue which was raised by the learned counsel for the Petitioners. We had accordingly directed the Municipal Corporation of Greater Mumbai to carry out a survey and submit a report to us. It is required to be noted that the Respondent No.5 Developer carried out the repair work under the supervision of a licensed surveyor and has also obtained a structural stability certificate from a structural engineer which was annexed to one of its affidavits filed in the above Writ Petition. Though the exercise of carrying out survey and reporting to this Court as regards structural stability of the building wherein the transit accommodation has been provided was carried out by the MCGM, through its Assistant Engineer, we were not satisfied the manner in which the said exercise was carried out. We therefore directed the MCGM to carry out the exercise de-novo. The said de-novo exercise has now been carried out and the Executive Engineer, Building Proposal, City-II Shri Narendra Pagare who has submitted a report under his signature which is dated 31/10/2018. In the said report on the first page the works carried out by the Respondent No.5 and the observations of the Engineer of the MCGM have been listed from Item Nos.1 to 13. The report thereafter concludes thus :-

“It is to mention here that, in this regard the developer had submitted the letter dated 16.10.2018 informing this office that repair works of the transit camp is completed under the supervision of Licensed Site Supervisor and Structural Engineer / Consultant appointed by the developer. Further the developer has submitted the structural stability certificate of the Registered Structural Engineer, Mr. Pragnesh Oza dated 28.08.2018, wherein it is mentioned that the structure is safe and stable.

In view of above and in concurrence with the structural stability certificate of the Registered Structural Engineer, and the site inspection carried out on 29.10.2018 by Asstt. Eng. & Sub Eng. Of this dept, the said Transit Camp No.1 & 2 are safe and stable for residential use.”

Hence the Executive Engineer has observed that the MCGM is in concurrence with the structural stability certificate of the registered structural engineer, that the transit camp Nos. 1 and 2 are safe and stable for residential use. The copy of the MCGM's report has been furnished to the learned counsel for the Petitioners in Court today.

5 The learned counsel for the Petitioners would submit that the said report is based on the structural stability certificate issued by the registered structural engineer of the Respondent No.5 and that there is no independent opinion of the MCGM.

6 We are unable to accept the aforesaid contention of the learned counsel for the Petitioners. Pursuant to our order the concerned engineer of

the MCGM has carried out the survey and, after taking consideration the stability report etc provided by the Respondent No.5 which was post the repairs works which were carried out, the conclusion has been reached by the Executive Engineer which is contained in the report dated 31/10/2018 which we have reproduced in the earlier part of this order. Hence in so far as the aspect of structural stability is concerned, the apprehension of the Petitioner can now no more survive.

7 The grievance was also made on behalf of the Petitioners that the copy of the proposed agreement which is to be entered into with each of the Petitioners was not provided to the Petitioners. The said requirement was complied with and the pro-forma of the agreement which is to be entered into with each of the Petitioners was provided to the learned counsel for the Petitioners. There is now no dispute about the said fact. However, the learned counsel appearing for the Petitioners Shri Altaf Khan submits that the proposed agreement which is required to be entered into with each of the Petitioner and the agreements which have been entered into in the past in respect of the other tenants/occupants there is a variance. It is not possible to fathom such a variance when the Petitioners as well as the other persons are similarly situated. Hence we expect that the proposed agreement with the Petitioners would be on the same lines as the agreements which have been entered into in the past with the persons who are similarly situated like the Petitioners.

8 A grievance is thereafter made as regards obligation of the Respondent No.5 Developer to keep RG area etc. It is not necessary for us to go into the said aspect. As the MMRRB which is also a Statutory Authority under the MHAD Act 1976 would undoubtedly go into the aspect as to whether the conditions on the basis of which the NOC has been granted to the Petitioners have been complied with prior to giving its no objection for grant of occupation certificate. Hence the said aspect need not detain us. In so far as the said contentions are concerned, we do not foreclose the Petitioners and keep the contentions of the Petitioners open for being invoked at the appropriate time if the occasion so arises.

9 The learned counsel appearing for the Respondent No.5 Developer assures this Court that the transit rent would be provided to the Petitioners till the occupation certificate is obtained by the Respondent No.5. Statement accepted.

10 In so far as the factory which is being run on the ground floor of the transit accommodation is concerned, though action has been taken by the MCGM by filing an FIR, we expect the MCGM to take further appropriate action in accordance with law expeditiously.

11 It is now not necessary for us to keep the above Writ Petition pending. The same is accordingly disposed of. The report dated 31/10/2018 is taken on record and marked as “X” for identification.

12 In view of the disposal of the above Writ Petition, the Notice of Motion No.186 of 2018 does not survive and the same to accordingly stand disposed of as such.

[NITIN W. SAMBRE, J]

[R. M. SAVANT, J]