

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

WRIT PETITION NO. 1174 OF 2015

Anil Ganpat Naik

..Petitioner

v/s.

Shankar Nagar 1 Shantivan CHS Ltd
& Ors.

..Respondents

Mr. Siddesh Pilankar h/f. Mr. Warunjikar for the Petitioner.
Mr.A.G.Damle, Sr. Advocate a/w. Swati Sagrekar for the Respondent
No.3.
Mr. Rupesh Lanjekar for the Respondent No.1.
Ms. Neha Bhide for MHADA.

**CORAM : RANJIT MORE &
SMT. ANUJA PRABHUDESSAI,JJ.
DATED : APRIL 27, 2018.**

P.C.

1. Heard the learned Counsels for the respective parties. By the present petition, the petitioner is challenging the Order/Communication dated 18th March, 2015 passed by the Chief Officer, Mumbai Housing & Area Development Board.
2. The petitioner, had earlier filed Writ Petition No.1180 of 2014 making grievance about the various lacunas in the development of the subject building which have not been considered by MHADA. This

petition was disposed of by the Division Bench by Order dated 18th December, 2014. The Division Bench directed MHADA to consider the petitioner's representation and take decision expeditiously on merits and in accordance with law, within a period of twelve weeks.

3. The MHADA, thereafter considered the petitioner's various grievances and passed an order dated 18th March, 2015 which is impugned in the present petition.

4. On the last date of hearing, learned Counsel Mr. Warunjikar, restricted his grievance to the area of the tenement bearing no.601 which according to the petitioner is less than that agreed in the agreement.

5. Accordingly, we directed Mr. Damle, learned Sr. Counsel for the respondent no.3 to place on record the area which was agreed upon and which is being now offered to the petitioner. Mr. Damle, filed additional affidavit along with the copy of the carpet area measurements statement certified by the Deputy Engineer of MHADA after physical verification the area of the tenement no.601 which the petitioner is getting is 64.63 sq. meters which is equivalent to 689 sq. ft. Out of this area, the petitioner is getting 586 sq.ft. carpet area and rest of the area is flower bed.

6. Admittedly, entitlement of the petitioner under the agreement is 580

carpet area + 120 flower bed area. As a matter of fact, the petitioner is getting 6 sq. ft more carpet area than his entitlement. However, he is getting 11 sq. ft. less area so far as the flower bed area is concerned.

7. The petitioner has already filed a complaint before the Consumer Dispute Redressal Forum claiming compensation of Rs.1,80,000/- in respect of 14 sq. ft. (according to the developer 11 sq. ft) less flower bed area. The petitioner has also filed a civil suit claiming more or less similar reliefs, challenging the entire scheme of development and the suit also includes the grievance made in the present petition. The said suit is pending.

8. Mr. Damle, learned Counsel for the respondent no.3, makes a statement that the respondent no.3 is ready and willing to give flat no.603 to the petitioner, however, the petitioner is not accepting the same and thereby the respondent no.3 is burdened to pay him Rs.30,000/- per month by way of rent. We observe that the petitioner is at liberty to accept the possession of the said flat. The petitioner makes a grievance that, so far the Occupation Certificate is not granted to the subject building. Learned Sr. Counsel Mr. Damle, however pointed out that the Occupation Certificate is withheld because of the various complaints made by the

petitioner before various authorities.

9. In any case, in the facts and circumstances mentioned above, we are not inclined to entertain this petition and the same is accordingly dismissed.

(ANUJA PRABHUDESSAI, J.)

(RANJIT MORE, J.)