

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

WRIT PETITION NO. 2413 OF 2015

Carter Road Municipal Market Shop Owners
Welfare Society and another.

... Petitioners.

V/s.

Municipal Corporation of Greater Mumbai
and others.

... Respondents.

Mr.A.G.Damle, Senior Advocate Ms.P.R.Lalchandani for the petitioners.
Ms.Pallavi Thakar for the respondent- MMC.
Mr.Hemant Haryan, AGP for the respondent- State.

CORAM : A.S.OKA AND P.N.DESHMUKH, JJ.

DATE : 9th January 2018

PC.:

Heard the learned senior counsel appearing for the petitioners and the learned counsel appearing for the first and second respondents. The learned AGP represents the third respondent. The first petitioner is an association of vendors who are carrying on business in the municipal market known as Carter Road Municipal Market at Borivli (East). The first challenge in this petition under Article 226 of the Constitution of India is to the impugned notices at Exh.E-1 to Exh.E-25. The second prayer is for issuing a writ of mandamus directing the first and second respondents to decide the application dated 9th November 2007 made by the petitioners for grant of permission to redevelop the

municipal market. The third prayer in substance seeks a direction which is consequential to the direction sought in the second prayer.

2. There is an affidavit filed by Shri Narayan Vasudeo Patkar, Assistant Superintendent of Markets (W.S.) IV (I/C). In clause (b) of paragraph-4 of the affidavit, he has relied upon the report of a Consultant who suggested that the structure of the said municipal market should be retrofitted including the foundations thereof. The same clause (b) refers to the decision taken to redevelop seven markets mentioned therein. In clauses (a) to (e) of the said paragraph-4 of the affidavit, the said officer has stated as thus:

“(a) I say that the above matter came up before this Hon'ble Court on 30.10.2015 when this Hon'ble Court observed that if the Municipal Corporation wants to rehabilitate the persons in occupation of galas in the existing market in the newly constructed market, an affidavit to that effect shall be filed by the Municipal Corporation giving all the particulars such as time frame within which the new market will be constructed and the terms and conditions on which the premises will be allotted. Pursuant to the above direction, these Respondents are filing the present affidavit.

(b) I say that the structure under reference i.e. Carter Road Municipal Market, Borivli (E) comprising of ground floor RCC structure with trusses & A.C. Sheet roofing, is under possession of Market Development. In this case, the structural consultant was appointed by the office of Asst. Commissioner (Market). In consultant's report he has suggested that the structure should be retrofitted including foundations. Consultant has also worked out the structural repair cost, which is about 88% as compared to the cost of re-construction as per SDRR rate. Corporation has decided to redevelop the following 7

markets on cost parameter basis:-

1. Bandra Town Mandai H/West ward
2. Khardanda Mandai H/West ward
3. D.N.Nagar Mandai K/West ward
4. Laxman Yadav Mandai M/East ward
5. Kandivali Mandai R/South ward
6. Akruli Mandai R/South ward
7. Kasturba Mandai R/Central ward

(c) I say that the details are as below:

- i) the office of Dy.Chief Engineer (Building & Maintenance) Suburbs has prepared the proposal of structural repairs to the market under reference.
- ii) Civil estimate for structural repairs on the basis of suggestions and revised BOQ submitted by consultant works out to Rs.21,00,000/- (approx).
- iii) Electrical estimate amounting to Rs.1,50,000/- is prepared by A.E. (M&E) B.M.
- iv) Total cost of repairs at this stage works out to Rs.22,50,000/-
- v) As the estimate amount is less than 25 lacs, the same will be referred by A E (Maint) R/C ward for inviting tender and further execution work.

(d) I say that the Kasturba Market is one of the market which has been taken for redevelopment. Till the period of actual starting work of redevelopment, MCGM will carry out minor repairs, so that there will not be any danger till the redevelopment. During the work of redevelopment, the existing licencees will be accommodated in the adjacent market or accommodation reservation markets, wherever place is available.

(e) I say that as and when the minor repairing work will start, the same will require at least one months time. During the said period the licencees will have to shift to another market as per availability, or close the business for a period of one month. I say that before starting the minor repair work, these Respondents will issue 7 days

advance notice to that effect, so as to give them sufficient time for shifting their articles. After the minor work is complete, the Petitioners can continue carrying on their business as per the licence conditions of MCGM Market.”

The aforesaid clauses take sufficient care of prayer clause (a) of the petition.

3. As regards prayer clause (b), by order dated 10th June 2016, a direction has already been issued to the first respondent to take a decision on the proposal submitted by the petitioners. The learned counsel appearing for the Municipal Corporation, on instruction from Shri Nishikant Luman, Assistant Engineer (Market), states that a decision will be taken on the application dated 9th November 2007 within a period of two weeks from today which shall be communicated to the petitioners.

4. Hence, in this petition, prayers (b) and (c), which are the other two substantive prayers, need not be considered.

5. Accordingly, we dispose of the petition by passing the following order:

(i) We accept the statements made by Shri Shri Narayan Vasudeo Patkar in his affidavit and, in particular the statements made in paragraph-4 as the statements made by the first respondent- Municipal Corporation. In view of this statements, it is not necessary to consider prayer clause (a) on merits;

(ii) As far as prayer clause (b) is concerned, we direct the first respondent to take an appropriate decision on the

application dated 9th November 2007 and communicate the same to the petitioners within two weeks from today. If the said decision be adverse to the petitioners, it will be open to the petitioners to challenge the same in accordance with law;

(iii) It will also be open to the petitioners to apply under Regulation 33(21) of the Development Control Regulations for the City of Mumbai which has been brought in by notification dated 14th March 2016. If such an application is made, the said application shall be decided as expeditiously as possible;

(iv) The petition is disposed of in the above terms.

(PN.DESHMUKH, J.)

(A.S.OKA, J.)