

Sharayu Khot.

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

WRIT PETITION (L) NO. 1927 OF 2018

M/s. Rizvi Estates & Hotels Pvt.Ltd. ...Petitioner

Versus

**The Municipal Corporation of Greater ...Respondents
Mumbai & Ors.**

Mr. Akash Rebello and Mr. Mahesh Mishra, i/by Mr. Ravi Thankian, for the Petitioner.

Mr. Narendra V. Walawalkar, Senior Counsel, a/w Ms. Vandana Mahadik and Ms. K.H. Mastakar, for the Respondents No. 1 and 2-BMC.

Mr. Vachan Bodke, i/by Mr. V.M. Jhaveri, for the Respondent No. 3.

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

DATE : 27 June 2018

ORDER :

1. Heard the learned Counsel appearing for the

Petitioner. The challenge in this Petition under Article 226 of the Constitution of India is to the order dated 15 January 2018 passed by the Assistant Commissioner of H-Ward of the Mumbai Municipal Corporation as well as separate orders passed on 25 January 2018 by the Ward Executive Engineers of the Municipal Corporation. The said orders are at *Exh.B* to *Exh.D*. These are the orders addressed to the Respondents No. 3 to 6 who are occupying the structures falling in the road alignment of 90 feet wide Hill Road, Bandra West. By the said orders, the said Respondents have been directed to remove the portions of the structures in their respective possession which are affected by the road line. In lieu of removal of the affected portions, they have been permitted to make additional construction on the rear side of their structures by following policy of the Mumbai Municipal Corporation which is known as 'Kurar Pattern'. By the order at *Exh.A* dated 15 January 2018, the Assistant Commissioner after hearing the Petitioner as well as 4th, 5th and 6th Respondents directed removal of the structures affected by the road line and reconstruct the same on the lines of Kurar

Pattern. A direction was issued that failing compliance, the affected portions coming in the road line will be demolished by the Municipal Corporation after expiry of 30 days from the date of issue of individual notices to the holders of the affected structures. The Petitioner was directed to co-operate with the Municipal Corporation so as to clear the built up set back thereby clearing a major bottleneck on the Hill Road, which will benefit the public at large.

2. One of the objections of the learned Senior Counsel appearing for the Municipal Corporation was that the structures of 3rd to 6th Respondents in respect of which the orders at *Exh.B* to *Exh.D* have been made are on set back land and the Petitioner was under an obligation to handover to the Municipal Corporation vacant possession of the set back land as a condition for grant of a building permission. He submitted that not only that the Petitioner has taken advantage of the building permission by constructing a building, but the Petitioner has inducted third parties in possession of the premises in the

building, though occupation certificate is not granted by the Municipal Corporation.

3. The learned Counsel appearing for the Petitioner submitted that it is an accepted position that the structures of the said Respondents are on a set back land and that the Petitioner was required to handover the vacant possession of the set back land to the Municipal Corporation as a condition incorporated in the development permission granted to the Petitioner. Relying upon the additional Affidavit and photographs tendered across the bar, he submitted that a substantial part of the set back area which the Petitioner is required to handover to the Municipal Corporation has been cleared and in fact, the occupants of the structures on the set back area have been accommodated in the newly constructed building. He stated that no FSI benefit of the set back land has been taken by the Petitioner. He submitted that it is only in view of the orders passed by the Court of Small Causes that the Petitioner is unable to remove the structures which are the

subject matters of this Petition.

4. Going by the averments made in the Petition and submissions made across the bar, the Petitioner has no objection to the Municipal Corporation demolishing the portions of the structures in possession of 3rd to 6th Respondents which are falling in the road line. The objection is to that part of the orders passed at *Exh.B* to *Exh.D* by which the concerned Respondents have been permitted to make additional construction on the rear side of the existing structures. The objection of the Petitioner is that without permission of the Petitioner, the Municipal Corporation cannot permit the 3rd to 6th Respondents to carry on construction on the land owned by the Petitioner.

5. It is an admitted position that as per the condition imposed while granting building permission to the Petitioner, the vacant set back land was required to be handed over by the Petitioner to the Municipal Corporation. In fact on the earlier date, a copy of letter of no objection dated 17 October 1997

signed by the Executive Engineer, Building Proposal (WS) of the Municipal Corporation addressed to the Petitioner's Architect along with a copy of the building plan was tendered across the bar. The letter records no objection of the Municipal Corporation for carrying out the work as per the amended plans subject to eight conditions incorporated therein. One of the conditions is that the work already carried out by the Petitioner shall be regularized and stop work notice will be withdrawn only after handing over the set back land. There is no dispute about the said condition. The Petitioner never challenged the said condition. Notwithstanding, acceptance of the said condition by the Petitioner, for last more than 20 years, the structures of 3rd to 6th Respondents continue to exist on the set back land which the Petitioner ought to have handed over to the Municipal Corporation 20 years back. Though no occupation certificate has been granted, admittedly, the Petitioner has allowed the building constructed on the basis of the said permission to be occupied. Thus, without complying the condition No. 8 referred above, though the Petitioner was all

along aware of its obligation to hand over the vacant possession of the set back land to the Municipal Corporation, not only that the Petitioner has carried out the construction of a new building by taking advantage of the said permission, but has allowed the building to be illegally occupied though there is no occupation certificate granted. It is obvious that the occupation certificate cannot be granted to the Petitioner, unless the Petitioner complies with the condition of handing over the set back land as well as other terms and conditions.

6. If the Petitioner had complied with the condition imposed way back on 17th October 1997, in fact, there would not have been any occasion for the Municipal Corporation to issue the notices which are impugned in this Petition for the purposes of giving effect to the road line to reduce conjection on Hill Road at Bandra West. As the Petitioner himself has not complied with the condition, which was required to be complied with, the Municipal Corporation has no option to give benefit of Kurar Pattern to the occupant of the structures as the Municipal

Corporation is under an obligation to give an effect to the road line in the larger public interests.

7. Considering this conduct of the Petitioner, we are of the view that the Petitioner cannot be allowed to invoke discretionary and equitable jurisdiction of this Court under Article 226 of the Constitution of India. Accordingly, we reject the Writ Petition.

8. The learned Senior Counsel appearing for the Municipal Corporation on instructions states that on both the sides of bottleneck created by the subject structures, road has been already widened.

9. We make it clear that pending proceedings, if any, in the Court of Small Causes shall be decided at its own merits.

[RIYAZ I. CHAGLA J.]

[ABHAY S. OKA, J.]