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

WRIT PETITION No. 552 OF 2014

M/s. Ishkrupa Co-operative Housing Society... Petitioner
Vs.
Mumbai Municipal Corporation & Ors. ... Respondents

Mr. Kunal Bhanage a/w Chetan Mhatre i/b Utangale & Co. for the
Petitioners.

Mr. J. Reis, Sr. Counsel a/w Joel Carloz & Ms. K. H. Mastakar, for the
Respondent - BMC.

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

DATE : FEBRUARY 21, 2018

PC :

1. Present petition is filed by a co-operative society, which is registered under the Maharashtra Cooperative Societies Act, 1960. It is not in dispute that one Mr. Nirgudkar on behalf of the Petitioner, when it was a proposed society, filed Writ Petition No. 376 of 1998 in this Court, which was disposed of by an order dated 27th April, 1998. The said order reads thus:

“Heard the learned counsel for the parties.

2. In view of the letter dated 24th April, 1998 written by the Joint Municipal Commissioner to the Petitioner indicating that a plot of land admeasuring 1078.80 sq. meters would be allotted after following the necessary procedure, this petition would not survive. The Petition stands disposed of accordingly.

3. The Municipal Corporation is directed to expedite finalisation of the formalities for allotment of the plot in question to the Petitioner.”

2. Perhaps, on the basis of the said order, a letter of allotment of a plot was issued on 21st of January, 1999 by the Ward Officer (Estate) which was addressed to Mr. Nirgudkar. The allotment of the plot was offered to the Petitioner Society subject to compliance with various terms and conditions incorporated therein. By the said letter, Mr. Nirgudkar was called upon to submit a written consent and acceptance to the conditions mentioned therein within a period of 15 days from the receipt of the said letter. The consent and communication of acceptance was not issued within stipulated time.

3. In this petition filed under Article 226 of the Constitution of India which was lodged on 28th August, 2012, a writ of mandamus is prayed directing the Mumbai Municipal Corporation to allot the plot

subject matter of the letter dated 21st January, 1999 to the Petitioner. The second prayer is for grant of permission to the Petitioner to carry out necessary repairs to the buildings occupied by the members of the Petitioner Society on the plot of land bearing CTS No. 469 (Part) admeasuring 1078.80 sq. meters. Prayer clause (c) is seeking to restrain the Municipal Corporation from initiating an action of eviction against the members of the Petitioner for occupying tenements in the buildings known as “A” and “B”, more particularly described in paragraph 4 of the petition. It is not in dispute that the land bearing CTS No. 469 (Part) is owned by the Municipal Corporation. It is the case of the Petitioner that in the year 1955-56, the Municipal Corporation allotted the tenements in the said buildings to its employees, who were treated as tenants of the Municipal Corporation. It is contended that tenancy has been transferred by the Municipal Corporation on demise of the original tenants and rent is being accepted from the tenants.

4. A reference is also made to the proceedings for eviction filed by the Mumbai Municipal Corporation under Section 105B of

the Mumbai Municipal Corporation Act, 1888. The order of eviction passed in the said proceedings was set aside in an appeal preferred by the members of the Petitioner. A writ petition was filed by the Mumbai Municipal Corporation against the said order, which has been admitted by the learned Single Judge of this Court and is pending.

5. The stand of the Municipal Corporation as reflected from affidavit of Mr. Chandrashekhar Chore, Dy. Municipal Commissioner (Improvement) is that the offer made by the Municipal Corporation by the letter dated 21st January, 1999 was never accepted by the Petitioner. Reliance is placed on a letter dated 31st March, 2011 addressed by Mr. Nirgudkar to the Ward Officer tendering apology for not accepting the offer contained in the letter dated 21st January, 1999.

6. The submission of the learned counsel for the Petitioner pointed out that the Petitioner Society was registered and copy of registration certificate is annexed at Exhibit “D” to the petition. He pointed out that though the date on the registration certificate cannot be read, the Society appears to have been registered in the year 1998-99. He submitted that even assuming that Mr. Nirgudkar did not

respond to the letter dated 21st January, 1999, there is enough material on record to indicate that in the year 2004-2005, the Municipal Corporation was considering the issue of allotment of the said plot to the Petitioner. He invited our attention to the internal note of the Municipal Corporation, a copy of which is annexed at Exhibit “J” to the petition. He also pointed out another internal note of the Municipal Corporation of the year 2004. He submitted that at the time of hearing as to admission of Writ Petition No. 4115 of 2013, certain documents were placed on record indicating that the Municipal Corporation was considering the request for allotment of the plot to the Petitioner. He submitted that in the face of the order of this Court dated 27th April, 1998, now the Municipal Corporation cannot refuse to make allotment of the said plot to the Petitioner Society as the Municipal Corporation is bound by the said order. He submitted that as the proposal of the Petitioner for allotment of the plot was under consideration throughout, the issue of delay does not arise at all.

7. The learned counsel for the Municipal Corporation invited our attention to the affidavit of Mr. Chandrashekhar Chore and

annexures thereto. He pointed out that the request made by Mr. Nirgudkar for allotment of the plot was rejected by a communication dated 6th May, 2011. He relied upon minutes of the meeting of the Technical Advisory Committee which records a decision that repairs of existing structures is not economically viable. He, would, therefore, submit that no interference is called for from the Writ Court.

8. We have carefully considered the submissions. According to the case of the Petitioner, its members are occupying the tenements in the building known as “A” and “B” standing on land bearing CTS No. 469 (Part) which is owned by the Municipal Corporation and the said tenements are held by them on tenancy basis. Mr. Nirgudkar who was the Chief Promoter of the Petitioner Society appears to have moved the Municipal Corporation for grant / allotment of the plot on which the said buildings are situated. By a letter 24th April, 1998 the Municipal Corporation informed Mr. Nirgudkar that the request made by him for allotment of the same plot bearing CTS No. 469 (part) has been accepted by the Municipal Corporation in principle and it has decided to lease out the plot admeasuring 1078.80 sq. meters from

CTS No. 469 (part) (for short “the said plot”) to the Society. Perhaps on the basis of the order dated 27th April 1998 passed in Writ Petition No. 376 of 1998 which we have quoted in the first paragraph, the letter dated 21st January, 1999 was addressed by the Ward Officer (Estate) to Mr. Nirgudkar offering an allotment of the said plot on 13 conditions set out in the said letter. Mr. Nirgudkar was called upon to submit a written consent and acceptance of the said conditions. We must note here that there is nothing placed on record to show that the terms and conditions stipulated in the letter dated 21st January, 1999, were accepted by a written communication. In fact, it is not the case of the Petitioner that a communication of acceptance was issued. It is true that in certain notings of the year 2004 and 2005, there is a reference to the allotment of the said plot to the Petitioner. However, it appears that after 21st January, 1999, apart from failing to accept the terms and conditions by sending a letter in writing, the Petitioner took no steps. From the certificate of registration (Exhibit “D” to the petition), it appears that the Petitioner Society was registered in the year 1998. The first step taken by the Petitioner Society after registration was of issuing a notice dated 7th July, 2010 to the Legal

Department of the Municipal Corporation through its advocate. In clause (e) of paragraph 1 of the said notice / letter, it is stated that the Petitioner has been registered on 9th October, 1998. The advocate's letter refers to the letter dated 21st January, 1999 addressed to Mr. Nirgudkar and another letter dated 6th April, 2000 addressed by the Ward Officer to Mr. Nirgudkar sending therewith a copy of other usual terms and conditions mentioned in condition No. 13 of the letter dated 21st January, 1999. In the advocate's letter dated 7th July, 2010 it is not even the case made out that till the date of the said letter, the Petitioner / Mr. Nirgudkar had communicated the acceptance of the terms and conditions contained in letter dated 21st January, 1999. Thereafter, another letter dated 4th October, 2010 was addressed by the Petitioner to the Municipal Corporation. Before the said letter, on 26th July, 2010 another letter was addressed through the same lawyer to the Assistant Commissioner. It is contended in the said letter dated 26th July, 2010 and the letter dated 4th October, 2010 that lease should be for a period of 60 years.

9. It appears that one of the members of the Petitioner was

proceeded against in the year 2012 by issuing a notice under Section 105B under the said Act of 1888. The order of eviction was passed against the said member, which was challenged by her by preferring an appeal before the City Civil Court. On the basis of the order of eviction, the said member was evicted. The City Civil Court set aside the order and directed the restoration of possession. The Mumbai Municipal Corporation challenged the said order by filing Writ Petition No. 4115 of 2013 which is admitted by order dated 26th April, 2013. A detailed order admitting the petition passed by the learned Single Judge does not record that Municipal Corporation has agreed to allot the said plot to the Petitioner.

10. An affidavit-in-reply has been filed by Mr. Chandrashekhar Chore, Dy. Commissioner (Improvement) to which a copy of letter dated 31st March 2011 sent by Mr. Nirgudkar to the Ward Officer is annexed. By the said letter, Mr. Nirgudkar expressed apology for the delay. He referred to the letter dated 21st January, 1999. He has tried to explain why action could not be taken earlier on the basis of the said letter. By the letter dated 6th May, 2011, the

Administrative Officer (Estate Department) informed Mr. Nirgudkar that the said plot cannot be allotted to the Petitioner.

11. Thus, it is crystal clear that by the letter dated 21st January, 1999, allotment of the plot was was offered to the Petitioner. The said offer was never accepted by the Petitioner or by the Chief Promoter by addressing a letter of acceptance, as required by the said letter. After 21st January, 1999, there was a complete inaction for more than 10 years and for the first time on 7th July, 2010 a legal notice was issued by the Petitioner through its advocate to the Municipal Corporation. Even in the said legal notice, the steps taken by the Petitioner after receiving letter dated 21st January, 1999 were not set out. It is not the case of the Petitioner that a letter of acceptance of the terms and conditions of the said letter was issued either by the Petitioner or by the Chief Promoter at any time after 21st January, 1999. The said letter specifically required the allottee to accept the terms and conditions in writing within fifteen days. From the tenor of the letter dated 31st March, 2011 addressed by Mr. Nirgudkar to the Ward Officer, it is apparent that he was conscious of the delay on the

part of the Petitioner. In fact, a prayer in the said letter was for reconsidering the proposal and Mr. Nirgudkar offered that tenements of minimum area would be constructed by the Petitioner so that other employees can take the advantage. Now, in this petition filed in the year 2014, a writ of mandamus cannot be issued against the Municipal Corporation directing the Municipal Corporation to act upon the letter of allotment dated 21st January, 1999 though the Petitioner never accepted the terms and conditions in the said letter of allotment.

12. Therefore, a writ of mandamus as prayed for in prayer clause (a) cannot be granted. As far as prayer clause (b) is concerned, the report of the Technical Advisory Committee is annexed to the affidavit-in-reply of the Municipal Corporation in which it is stated that repairs to the existing building are not economically viable as the cost of repairs will be nearly equal to the cost of reconstruction. It is not the case of the Petitioner that it has applied for permission to carry out repairs. Therefore, a writ as prayed for in prayer clause (b) cannot be issued.

13. As far as prayer clause (c) is concerned, admittedly, the

members of the Petitioner Society are occupying tenements in the building standing on the land owned by the Municipal Corporation. Therefore, a writ of mandamus cannot be issued restraining the Municipal Corporation from exercising its statutory powers conferred under Section 105B of the said Act of 1888.

14. There is absolutely no merit in the petition and the same is rejected. However, rejection of this writ petition will not prevent the Petitioner from making a fresh application to the Municipal Corporation for allotment of the subject plot, provided the said plot can be allotted as per the existing policy, if any, of the Municipal Corporation.

Sd/-
[P. N. DESHMUKH, J.]

Sd/-
[A. S. OKA, J.]

Vinayak Halemath