

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

WRIT PETITION NO. 1484 OF 2014

Mrs. Nasreen Mohd. Zuber Noorani ... Petitioner.

V/S.

Mumbai Metropolitan Region
Development Authority & Anr. ... Respondents.

Mr. P. M. Havnur, Advocate for the Petitioner.

Ms. Kiran Bhagalia, Advocate for the Respondent No. 1- MMRDA.
Mr. H. B. Takke, AGP for the Respondent No. 2- State.

CORAM : S. C. GUPTE, J.

DATE : APRIL 24, 2018

P.C.

1 Rule. Rule taken up for final hearing by consent of parties. Heard learned counsel for the parties.

2 The Petitioner challenges the 48 hours' notice issued to her by the Respondents on 23.09.2013, requiring her to vacate the tenement allotted to her as permanent alternative accommodation in a rehabilitation building in lieu of her old structure demolished as part of a road-widening project.

3 The Petitioner claims to be a widow of one Mohammed Zuber Noorani, who was the owner and occupant of a commercial structure, having I.D. No. 21, in the area known as Anthony Compound, C.D. Burfiwalla Road, Juhu Lane, Andheri. The I.D. number was issued by Respondent No. 1-MMRDA in the year 2005. In lieu of this commercial structure, which alongwith the other structures in the area was demolished for the purposes of a road widening project at N.S. Phadke Marg, Juhu Lane, Andheri (W), the husband of the petitioner, late Mohammed Zuber Noorani, was allotted a commercial tenement being Shop No. 2 in Building No. R-14 at Oshiwara, Ram Mandir Road, Goregaon (W). The Petitioner claims to be in possession of this new tenement as a widow of Mohammed Zuber Noorani. By an order dated 22.03.2012, Respondent No. 1 - Authority informed the Petitioner that pursuant to the order passed by this court in a Public Interest Litigation, being PIL No. 49 of 2008, the eligibility of the petitioner was reverified as a Project Affected Person (PAP) by the Deputy Collector (Enc./Rem.) and Competent Authority and she was found ineligible for allotment of any commercial tenement in lieu of the old structure represented by I.D. No. 21. The Authority, accordingly, revoked the alternative allotment letter issued to her by the authority and required her to quit and vacate the shop allotted to her within 48 hours. This order is challenged in the present petition.

4 It is the case of the Petitioner that she and her family have been running a business from the premises over the last many years, i.e. since 1994. It is submitted that a couple of years before this court issued its order in PIL No. 49 of 2008 and re-verification exercise was conducted by the concerned authorities in pursuance of the same, the Petitioner lost her husband. It is submitted that she was unaware of the procedure or documents required for the purpose of establishing her eligibility for the suit tenement. It is submitted that she was, therefore, not in a position to submit the documents and in the absence of the required documents, she was held to be ineligible by the Deputy Collector and Competent Authority for the alternative tenement. It is submitted that she, thereafter, filed an appeal before the Competent Appellate Authority, namely, Administrator and Divisional Commissioner, Konkan Division, Mumbai, under section 25 of the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971. It is submitted that the Divisional Commissioner, while disposing of her appeal, directed the authorities to consider her case afresh according to the G.R. Dated 02.01.2012 issued by the Housing Department of the State of Maharashtra; the Competent Authority was required to take a decision on her application within six weeks. It is submitted that despite the Petitioner having applied to the Competent Authority for an appropriate decision, no decision was taken on her application. The Petitioner, in the premises, resists the eviction notice. The Petitioner also

seeks directions for hearing of her representation in accordance with the applicable Government Resolutions.

5 Learned counsel for Respondent No.1 - Authority submits that there is no document produced by the Petitioner in support of her case that her deceased husband - Mohammed Zuber Noorani was the owner or occupant of the original commercial structure, having I.D. No. 21, or that the Petitioner was the widow of said Mohammed Zuber Noorani entitled to succeed to the alternative tenement offered to the owner and occupant of structure bearing I.D.No. 21. Learned counsel submits that there is no document produced to show her relationship with the deceased - Mohammed Zuber Noorani.

6 Learned counsel for the Petitioner has produced, in the course of the hearing, a compilation of documents which include a copy of the Petitioner's Pan Card showing her name as well as the name of her husband - Mohammed Zuber Noorani, as also her bank pass-book, marriage certificate, adhar cards of herself and her two daughters and their birth certificates, showing the name of her husband as Mohammed Zuber Noorani. The documents showing ownership and occupation of Mohammed Zuber Noorani of the old structure, represented by I.D. No. 21, such as the affidavit affirmed by the original owner and occupant of the structure, the shops & establishments licence and other

documents in the name of Mohammed Zuber Noorani are also produced with the Petition.

7 From the record produced before the court, it is apparent that the Petitioner has a legitimate claim as a widow of deceased Mohammed Zuber Noorani, who was the owner and occupant of the commercial structure affected by the road widening project, to have an alternative accommodation in lieu of the old commercial structure. This case has not been considered properly by the authorities concerned. Whether or not the Petitioner was justified in not producing the documents earlier, it is quite clear that in her appeal before the Divisional Commissioner the authorities were directed to consider her application afresh in the light of the documents relied upon by her and the applicable G.R. This exercise has evidently not been undertaken by the Competent Authority so far.

8 It is clear that the Petitioner has in her possession several documents, showing her relationship with the deceased husband - Mohammed Zuber Noorani and the latter's ownership and occupation of the old commercial structure, which was affected by the road widening project. In the light of these, it is imperative for the Authority concerned to re-visit/ reconsider the documentary evidence relied upon by the Petitioner and verify her claim of eligibility for an alternative accommodation in lieu of the old commercial structure.

9 In the premises, Rule is made absolute and the Petition allowed in terms of the following order :

- i. The impugned order of Respondent No. 1 dated 23.09.2013 is quashed and set aside;
- ii. The Petitioner is permitted to produce such documents as she chooses to rely upon before the Competent Authority within a period of two weeks;
- iii. The Competent Authority shall decide the Petitioner's claim for alternative commercial tenement in lieu of the old commercial structure, represented by I.D. No.21, in Anthony Compound, C. D. Burfiwalla Road, Juhu Lane, Andheri, in the light of the documents produced by the Petitioner and in accordance with the applicable law including the latest Government Resolutions bearing on the subject;
- iv. The application of the petitioner shall be decided and a reasoned order shall be passed thereon within a period of four weeks after the petitioner produces documents, if any, in support of her application in accordance with clause (ii) above.

(S. C. GUPTE, J.)

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