

Sharayu Khot.

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

WRIT PETITION (L) NO. 3089 OF 2017

Dattatray B. Phadtare **...Petitioner**

Versus

State of Maharashtra & Ors. **...Respondents**

WITH

WRIT PETITION (L) NO. 3090 OF 2017

Geeta Suresh Angare & Ors. **...Petitioners**

Versus

State of Maharashtra & Ors. **...Respondents**

WITH

WRIT PETITION (L) NO. 3081 OF 2017

Muniram Shivpujan Gupta **...Petitioner**

Versus

State of Maharashtra **...Respondents**
Through the Office of the Govt. Pleader,
High Court, O.S.

WITH

WRIT PETITION (L) NO. 3082 OF 2017

Bhimsen P. Singh

...Petitioner

Versus

**State of Maharashtra
Through the Office of the Govt. Pleader,
High Court, O.S.**

...Respondents

WITH

WRIT PETITION (L) NO. 3083 OF 2017

Kantilal Girdhar Gandhi

...Petitioner

Versus

**State of Maharashtra,
Through the Office of the Govt. Pleader,
High Court, O.S.**

...Respondents

WITH

WRIT PETITION (L) NO. 3084 OF 2017

Anil Surajman Shukla

...Petitioner

Versus

**State of Maharashtra
Through the Office of the Govt. Pleader,
High Court, O.S.**

...Respondents

WITH

WRIT PETITION (L) NO. 3085 OF 2017

Panna Maheshchandra Dave

...Petitioner

Versus

State of Maharashtra
Through the Office of the Govt. Pleader,
High Court, O.S. ...Respondents

WITH

WRIT PETITION (L) NO. 3086 OF 2017

Sampatlal S. Jain ...Petitioner

Versus

State of Maharashtra
Through the Office of the Govt. Pleader,
High Court, O.S. ...Respondents

WITH

WRIT PETITION (L) NO. 3087 OF 2017

Babupuri Bhagwanpuri Goswami ...Petitioner

Versus

State of Maharashtra & Ors. ...Respondents

WITH

WRIT PETITION (L) NO. 3088 OF 2017

Grace Joseph Poovathingal ...Petitioner

Versus

State of Maharashtra & Ors. ...Respondents

WITH
WRIT PETITION (L) NO. 3092 OF 2017

Ramesh Chandrakant Panhalkar ...Petitioner

Versus

State of Maharashtra & Ors. ...Respondents

WITH
WRIT PETITION (L) NO. 3095 OF 2017

Leena Arun Bhatia ...Petitioner

Versus

State of Maharashtra & Ors. ...Respondents

Mr. Amrendra Mishra, for the Petitioner in all matters.

Mr. Himanshu Takke, AGP for the Respondent No. 1 in all the matters.

Mr. Rajesh Patil, with Ms. Vandana Mahadik, for the Respondent – BMC in all matters.

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

DATE : 16 April 2018

ORDER :

1. On the earlier date, the parties were put to notice that the Petitions shall be disposed of finally at the stage of admission.

2. Accordingly, the submissions were heard on the earlier date. However, order was not passed to enable the Municipal Corporation to make a better offer to the Petitioners. After the last date, no such offer has been made. Hence, we proceed to decide the Petitions.

3. The Petitioners in the Writ Petition (L) No. 3090 of 2017 are claiming to be the owners of the plot of land bearing CTS Nos. 4009/1 to 4009/7 at Village Dahisar, Taluka Borivali, Mumbai Suburban District (for short "*the said Plot*"). The Petitioners are relying upon the property register cards in respect of the said CTS numbers, which show that one Dattatray Mahadev Angare was the original holder of the said plot. It is

pointed out that after the demise of said Dattatray Mahadev Angare, the name of his widow Sushila was entered in the property register card. The said Sushila expired on 15 March 1995 and thereafter, the names of the legal representatives of Dattatray and Sushila were entered in the records. Accordingly, in the property register card, the names of the legal representatives of the said Dattatray and Sushila as the holders. One of the legal representatives Suresh expired on 31 January 2008. Thereafter, as can be seen from the property register card, the names of the Petitioners in Writ Petition (L) No. 3090 of 2017 have been mutated as the legal representatives of said Suresh.

4. In this Petition, it is pointed out that the predecessor of the Petitioners had constructed a chawl known as 'Jivanganga Chawl' on the said plot and the premises therein were let out to different persons.

5. The Petitioners are relying upon the Suit No. 2161 of

1979 filed by the said Smt. Sushila in the City Civil Court at Mumbai for challenging the notice dated 13 February 1979 issued by the Municipal Corporation under Section 351 of the Mumbai Municipal Corporation Act, 1888 (for short "*the said Act*"). It is claimed that in the said suit, injunction was granted against the Municipal Corporation. It is pointed out in the Petition that the Municipal Corporation has demolished 11 structures on the said plot without following due process of law and took over the possession of the land below the said structures for the purpose of road widening. The first contention in the Petition is that the demolition of 11 structures by the Municipal Corporation on 26 October 2017 is without following due process of law and therefore, it is illegal. The second prayer is for directing the Municipal Corporation to grant transferable development rights and/or compensation in accordance with law. These prayers have been made in the Writ Petition filed by the holders of the said plan.

6. The other Petitions in the group have been filed by

the persons in possession of 11 structures complaining about the illegal demolition of their structures. In the said Petitions, the prayer is to grant the permanent accommodation to the Petitioners.

7. The Affidavit in Reply filed by the Mumbai Municipal Corporation of one Geetanjali Anil Chaphalkar in Writ Petition (L) No. 3090 of 2017 deals with all the aspects of the case.

8. The submission of the learned Counsel appearing for the Petitioners is that the structures subject matter of these Petitions have been demolished without following due process of law and even the Affidavits filed on record by the Mumbai Municipal Corporation show that due process of law is not followed. He submitted that only some of the Petitioners have been held eligible for rehabilitation and even those who are held eligible, are not offered proper accommodation.

9. The learned Counsel appearing for the 2nd to 4th

Respondents submitted that the Municipal Commissioner on 15 January 1974 exercised power under Section 297(1)(a) of the said Act and prescribed a regular line of street of Padmakar Javle Road upto Dahisar Railway Station. He pointed out that earlier, the width of the road was upto 5 meters and by the exercise of powers under Section 297(1)(b) of the said Act, the width of the road was made 13.40 meters. He points out that a letter dated 10 March 2010 was addressed by the Deputy Collector (Encroachment/Eviction) and Competent Authority addressed to the Assistant Municipal Commissioner of R-South Ward stating therein that by issuing a notification under Sub-Section 3 of Section 10 of the Urban Land (Ceiling and Regulation) Act, 1976 (for short "*the ULC Act*") on 25 September 2006, the plot of land on which the subject structures were situated has been acquired by the State Government. The Affidavit further shows that the State Government issued Annexure II deciding the eligibility of the persons / affected structures. It is claimed that way back on 23rd June 2008, the Municipal Corporation offered alternate accommodation to the

Petitioners in Writ Petition (L) No. 3081 to 3084 of 2017. He pointed out that the said Petitioners did not accept the accommodation offered and therefore, another accommodation was offered. He pointed out that the said four Petitioners were served with final notice on 7 July 2016 calling upon them to pay requisite charges for the alternate accommodation within 15 days, failing which the possession of the structures will be taken over. Two more such notices were issued on 11 April 2017 and 11 October 2017 and the Petitioners in the said four Petitions did not respond. Ultimately, on 26 October 2017 the demolition has been carried out. He pointed out that the Petitioners in the Writ Petition (L) No. 3092, 3095 and 3087 and 3089 of 2017 were having shanties and their names are not reflected in the Annexure II prepared by Deputy Collector and Competent Authority at Borivali. As regards the Petitioners in Writ Petition (L) No. 3085, 3086 and 3088 of 2017, he submitted that they were served with the notice dated 26 November 2009 under Sub-Section 2(1) of Section 3Z of the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971 (for

short “*the Act of 1971*”). However, the said Petitioners could not submit the requisite documents to prove their eligibility and hence, they were held ineligible for grant of alternate accommodation. As regards the Petitioners in Writ Petition (L) No. 3090 of 2017, it is the claimed that the Municipal Corporation was always ready and willing to grant TDR to original owners of the affected plot. However, the Petitioners therein did not submit proper documents. He submitted that now the land below 11 structures has been utilised for widening of the road and therefore, no interference is called for especially when to those who are held eligible, alternate accommodation was offered by the Municipal Corporation.

10. We have considered the submissions. Even assuming that the road line was fixed by the Municipal Commissioner by exercising the power under clause (b) of Sub-Section 1 of Section 297 of the said Act, obviously the structures thereon could not have been demolished by taking recourse to Section 299 under the said Act. The said Section is applicable

only in respect of the land falling within the road line which is not occupied by the structures. Even Section 298 was not applicable, as the same could have been applied provided there was a proposal of rebuild the structures. Even according to the case of the Municipal Corporation, the land below the 11 structures was not acquired by the said Corporation by following due process of law. It is not the case of the Municipal Corporation that before demolishing the structures of the Petitioners, due process of law either under the said Act was followed by the Municipal Corporation. It is true that the Municipal Corporation had offered the alternate accommodation to the Petitioners in Writ Petition (L) No. 3087, 3089, 3095 and 3092 of 2017. However, the said Petitioners did not accept the alternate accommodation offered. They did not accept the offer made before the demolition.

11. The said four Petitioners could not have been compelled by the Municipal Corporation to accept the alternate accommodation offered and vacate their existing structures as

admittedly due process of law was not followed. In case of the Petitioners in Writ Petition (L) No. 3085, 3086 and 3088 of 2017, reliance is placed on the notice issued by the Competent Authority under the Act of 1971. The said notice merely called upon the persons to whom the notice was addressed to produce the documents failing which an order of eviction would be passed. It is not the case of the Municipal Corporation that an order of eviction has been passed under the Act of 1971. Therefore, the Corporation cannot rely upon the notice issued by the Competent Authority.

12. The Municipal Corporation is relying upon the notification under Sub-Section 3 of Section 10 of the ULC Act. The provisions of the ULC Act as far as the State of Maharashtra are concerned, were repealed with effect from 29 November 2007. It is not the case of the 1st Respondent or the Municipal Corporation that before 29 November 2007, the possession of the excess vacant land subject matter of the notification of Sub-Section 3 of Section 10 of the ULC Act was taken over in

accordance with Sub-Section 5 of Section 10 of the ULC Act. Therefore, as per the law laid down by the Division Bench of this Court in the case of *Voltas Ltd. Vs. Additional Collector And Competent Authority & Ors*¹, the said plot ceased to vest in the Government under the provisions of ULC Act with effect from 29 November 2007. Thus, on the date of the demolition, the said plot continued to vest in its holders.

13. Therefore, these are the cases where the Municipal Corporation has taken the law into its own hands and without following the due process of law, the structures of the Petitioners except for the Petitioners in Writ Petition (L) No. 3090 of 2017 were demolished. An attempt was made by the 2nd to 4th Respondents to show that some of the Petitioners are the persons who have not established that they had lawfully acquired or constructed that structures. We find that it is not the case made out by the Municipal Corporation on oath that the persons who have filed the Petitions were not in possession, when their structures were demolished.

¹ 2008(5) Bom.C.R. 746

14. In view of this high handed action of the Municipal Corporation, in normal course, this Court would have been justified in directing the reconstruction of all the structures, as it existed before its demolition, on 26 October 2017. However, we find that a road has been already constructed on the land below the said structures. Therefore, we propose to direct the Municipal Corporation to allot alternate accommodation of the same size as that of the original premises held by the Petitioners in the close vicinity of the original structures. The Municipal Corporation will have to allot the structures abutting the main road. Needless to add that the allotment of the structures to the Petitioners except in Writ Petition (L) No. 3090 of 2017, will have to be made free of cost. As far as the Petitioners in Writ Petition (L) No. 3090 of 2017 are concerned, we proposed to grant liberty to the Petitioners and other co-owners to apply for grant of TDR or DRC which Application will have to be decided within the time stipulated. Hence, we dispose of the Petitions by passing the following order:-

- (i) It will be open for the Petitioners in Writ Petition (L) No. 3090 of 2017 to make an Application to the Municipal Commissioner for grant of TDR (Transferable Development Rights)/DRC (Development Right Certificate) in respect of the area out of the said plot which has been used by the Municipal Corporation for road widening. If such an Application is made, the Municipal Corporation or its appropriate authority shall decide the same within a period of 60 days from the date of filing of the Application. The decision taken thereon shall be communicated to the Petitioners immediately thereafter. We clarify that we have made no adjudication on the title claimed by the said Petitioners;
- (ii) As regards the Petitioners in all the other Writ Petitions, we direct the Mumbai Municipal

Corporation to allot to the said Petitioners tenements having the size equal to that of their demolished tenements. The premises offered shall be in the vicinity of the demolished premises. The premises shall be such that the same will have a frontage on any of the main roads;

- (iii) The allotment of the premises shall be made to the said Writ Petitioners as expeditiously as possible and in any event on or before 30 June 2018;
- (iv) We make it clear that the allotment will have to be made free of cost. However, it will be open for the Municipal Corporation to impose appropriate terms and conditions;
- (v) The Petitions are disposed of with the aforesaid

directions;

- (vi) All concerned to act upon an authenticated copy of this order.

[RIYAZ I. CHAGLA J.]

[ABHAY S. OKA, J.]