

Jsn

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

WRIT PETITION NO. 409 OF 2017

Hiralal Mohanlal Jain & Anr. ...Petitioners
Versus
Municipal Corporation of Gr. Mumbai & ...Respondents
Anr.

Mr. A.S. Khandeparkar, i/b. Khandeparkar & Associates for the
Petitioners.

Mr. Yashodeep Deshmukh, for Respondents – BMC.

**CORAM: A.S. OKA &
RIYAZ I. CHAGLA, JJ.**

JUDGMENT RESERVED ON 2ND MAY, 2018

JUDGMENT PRONOUNCED ON 3RD JULY, 2018

O R A L J U D G M E N T :- (Per Riyaz I. Chagla J.)

1. This Writ Petition is filed under Article 226 of the Constitution of India seeking direction against Respondent No.1 to allot alternate accommodation in the area in close vicinity of the premises of the Petitioner viz. Shop premises on the ground floor of Lobo Chawl at Bhoiwada, Mumbai (for short the “said premises”) which was demolished for road widening.

2. The Petitioners were occupants of the said premises wherein they carried on business for more than 50 years. The

Mumbai Municipal Corporation is the owner of the land where the Lobo Chawl is constructed. The Respondent No.2 had addressed a letter dated 19th March, 2013 stating that the structure of the Petitioners is affected due to road widening of the G.D. Ambekar Marg. An alternate accommodation at Municipal Market at Mahim was offered to the Petitioners upon payment of necessary charges. In response thereto, the Petitioners vide a common representation dated 28th March, 2013 requested the Respondents to accommodate the Petitioners in the Bhoiwada Village project being developed in front of Lobo Chawl. The Respondents vide letter dated 23rd September, 2013 rejected the request of the Petitioners and directed the Petitioners to vacate the said premises within 15 days from receipt of the said letter. The Respondents sent a final notice dated 2nd July, 2014 asking the Petitioners to handover possession of the said premises within 24 hours or else forcible action will be initiated against the Petitioners. The Petitioners thereafter handed over the said premises to the officials of the Mumbai Municipal Corporation and the said premises have been demolished. Being aggrieved by the action of the Respondents, the Petitioners had initially filed Writ Petition (L) No. 1746 of 2014 in this Court. The said Petition was disposed of by this Court by granting liberty to the Petitioners to

make representation for other suitable alternate accommodation to the Respondents. The Petitioners made a representation on 30th June, 2015 pursuant to the order dated 21st July, 2014 passed by this Court. However, the same was not decided by the Respondents and hence this Petition has been filed.

3. This Court by an order dated 14th September, 2017 directed the Assistant Commissioner (Market) to grant opportunity of hearing and decide the representation of the Petitioners for suitable alternate accommodation. The Petitioners were accordingly granted hearing and by an Affidavit of Petitioner No.2 dated 22nd November, 2017 the particulars of the hearing set out and in which it is stated that the Authority in the hearing has admitted that the premises offered to the Petitioners are not suitable for the business of the Petitioners. The Authority is also stated to have expressed that there was no other alternate accommodation available with the Municipal Corporation.

4. An additional Affidavit dated 24th January, 2018 has been filed by Petitioner No.2, wherein she has dealt with the four premises which were offered pursuant to order dated 20th December, 2017 passed by this Court. The inspection of the premises had been taken on 8th January, 2018 and the Petitioner

No.2 has stated that the premises offered by the Respondents are not suitable to carry on commercial activity. They are stated to be in very poor condition and the premises are closed. They are mostly designed to be residential premises for market galas for carrying out business of vegetables and fisheries. It has been stated by the Petitioner No.2 that the Respondents had vacant shops in the same place where the Petitioner's shop was situated but allowed the developer to sell the shop instead of allotting the said shops to the Petitioners.

5. An order came to be passed by this Court on 13th February, 2018 wherein this Court recorded that the Municipal Corporation has never denied that the Petitioners are entitled to allotment of premises by way of rehabilitation. It is recorded in the said order that the learned counsel for the Respondents has stated that the process to determine the monetary compensation to the Petitioners has commenced and the quantum will be determined within a period of one month from the date of the said order. This Court directed the Assistant Municipal Corporation (Market) or any other officer nominated by the Municipal Commissioner to file Affidavit, setting out the factual aspects such as :-

- (i) How many shop premises in the Lobo Chawl were demolished for road widening,
- (ii) the details of the premises made available to other holders of the shops including the details as regards the location of the premises allotted and its area,
- (iii) whether any premises on the ground floor having an area of more than 500 Sq. ft in the vicinity of the Lobo Chawl is available for allotment to the Petitioners,
- (iv) the reasons for non allotment of proper tenement to the Petitioners and / or payment of monetary compensation from July-2014 till 10th October, 2017, when the Municipal Corporation was aware that way back on 23rd September, 2013, the Petitioners have declined to accept premises in the Municipal Market at Sheetaladevi Temple Road on the ground that the market is closed.

6. The Municipal Corporation was directed to set out its precise offer of compensation in terms of money. It is recorded that Municipal Corporation will have to pay interest on compensation from July, 2014 when the shop premises of the Petitioners was demolished. The basis of compensation to be

determined shall also be set out in the Affidavit. Notice was issued to the parties that endeavour shall be made to decide the Petition finally at the stage of admission.

7. The Respondents have filed Affidavit dated 7th April, 2018 of one Shri Nishikant M. Luman, Assistant Engineer in employment of the Mumbai Municipal Corporation who has stated that further premises being CTS No. 42 at Tardeo Division, Khatawadi and CTS No. 369, Tulsiwadi may be offered to the Petitioners. It has been stated that the area offered to the Petitioners would depend upon the location and that the PAP will get the lesser area, when the Ready Reckoner Rate of that location is more than the Ready Reckoner Rate of the original location as in the case of the two premises. It has been stated in the said Affidavit that the market premises at Sheetaladevi Temple Road is not closed as incorrectly stated by the Petitioners and that three of the PAPs had accepted the offer at that location and obtained demarcation of their premises. Since the PAPs were not doing business in the premises the services were not being given in the said market building. However, if the PAPs start occupying the premises, all services to the market building will be restored by the market department. It is stated that since the PAPs did not accept the alternate accommodation offered to them, the

Corporation has now proposed compensation to the PAPs as per the Ready Reckoner rate of the affected shop / site.

8. The Petitioners have by an Affidavit of Petitioner No.2 dated 13th April, 2018 dealt with the two premises which were offered by the Respondents pursuant to directions of this Court. An inspection had been carried out of the two premises by the Respondents and it is mentioned that as against carpet area of 543 sq. ft, the Respondents have offered premises having carpet area of 332 Sq. ft. and 337 Sq. ft which is approximately half of the area which Petitioner originally had. It is mentioned that the alternate accommodation offered by the Respondents in the area of Khatavwadi and Tulsiwadi are not fit for carrying out the business of jewellery shop as the premises are in closed condition and mostly designed to be galas to assist residential premises or market for carrying on business of groceries etc. The said shops being almost half the size of the shops originally occupied by the Petitioners is not conducive to the jewellery business which depends upon exhibition. Hence it is stated that the alternate premises are not acceptable and that great prejudice will be caused to the Petitioners, if the suitable alternate premises as claimed by the Petitioners are not allotted.

9. The Respondents have filed a further Affidavit dated 18th April, 2018 of the said Shri Nishikant M. Luman wherein it is stated that the 5 shops were rehabilitated under SRA scheme in the Lobo Chawl much prior to the property being attained by the Mumbai Municipal Corporation in the year 2011 and hence there was no question of rehabilitation of the Petitioners as part of the SRA scheme. In fact, it is stated that the five shops were situated in the by lane opposite Lobo Chawl and not situated in the Lobo Chawl itself. As the Corporation had no shops in the SRA building, there could be no allotment of premises in the Lobo Chawl to the PAPs. It is further stated that the alternate premises offered by the Municipal Corporation in the market premises at Mahim Division situated at Sheetaladevi Temple road, is very much on the Municipal road and is in very good condition and the allotment given to the Petitioner is at the best possible place. It is further stated that the additional premises offered by the Municipal Corporation are on the southern side and having market value more than the place where the Petitioners' shop was situated and hence as per the newly approved policy of the Municipal Corporation the area is reduced proportionately. The Petitioners have in their further Affidavit dated 2nd May, 2018 filed by the Petitioner No.2 refuted the contents of the Respondents and

stated that the alternate premises situated at Sheetaladevi Temple Road are not on the Municipal road and they are inside a closed compound wall which has car parking in front of it and is surrounded by residential premises. The Affidavit attaches photographs and it states that the market is absolutely closed and it has not been used for any activity. It is thus stated that from inspection and photographs it is clear that the premises offered as alternate premises are not at all intended to be for jewellery business. It is stated that the Petitioners being PAPs on the same plot as the 5 shops ought to have been accommodated on that plot and more particularly in the same building.

10. The learned counsel appearing for the Petitioners has relied upon the said Affidavits filed by Petitioner No.2 and has submitted that the alternate premises offered by the Respondents are not suitable for the Petitioners jewellery business and hence are not acceptable to the Petitioners. He has submitted that the Petitioners have been discriminated against by the Respondent No.2 as despite being similarly located as the five shops which were rehabilitated in the vicinity of the same area viz. the said Lobo Chawl, have been offered alternate premises in far off areas. He has submitted that the Petitioners business is being gravely prejudiced by the action of Respondents in not providing alternate

accommodation in the same area in which the Petitioners premises were situated. He has submitted that the premises offered by the Respondents in Khatavwadi and Tulsiwadi have lesser area than the Petitioners premises which were demolished by the Respondents for road widening. He has submitted that the alternate premises offered by the Respondents in the Municipal market at Sheetaladevi Temple road is not at all suitable to the Petitioners as the market is closed and the premises offered are inside a closed compound wall with car parking in front of it and surrounded by residential premises, which are not properly maintained. The galas inside the market are designed mostly for the purpose of godown and hence the alternate premises are not at all conducive to the Petitioners jewellery business. He has thus submitted that the Petitioners are entitled to suitable alternate accommodation in lieu of their premises having been demolished.

11. The learned counsel appearing for the Respondents have supported the Respondents action. He has submitted that the alternate premises offered to the Petitioners are suitable and in very good condition and in the best possible place. He has submitted that the additional alternate premises offered by the Respondents in Khatavwadi and Tulsiwadi are of lesser area as they are on the southern side of the Petitioners original premises

and have market value more than the area where the Petitioners premises were situated. He has relied upon policy of the Corporation in support. He has submitted that the Petitioners are obliged to accept the alternate accommodation being provided by the Respondents.

12. We have considered the submissions of the parties. There appears to be a dispute as to the suitability of the alternate premises being offered by the Respondents to the Petitioners. The Petitioners have in their Affidavits attached photographs from which it appears that the alternate premises offered at the Municipal market at Sheetaladevi Temple road, Mahim, Mumbai are in a closed compound having car parking in front of the it and there appears to be goods lift and inspection room which appears to cater to activities such a downloading and uploading of goods and storage of the same. From these photographs it is apparent that the alternate premises offered by the Respondents are not conducive to the Petitioners' jewellery business. We further observe that the additional alternate premises at Khatavwadi and Tulsiwadi are not acceptable to the Petitioners as they are of lesser area than the Petitioners' original premises, being half the size of the shops originally occupied by the Petitioners. It appears that the Petitioners would not be able to maintain their earlier set

up as jewellery shop from these premises. We further find that the Respondents have despite directions of this Court, not provided details of the compensation which they would be in position to offer the Petitioners in lieu of the Petitioners original premises being demolished for road widening. The Municipal Corporation would also have to pay interest on the compensation from July, 2014, when the said premises of the Petitioners were demolished. We also find that there is no proper justification on the part of the Respondents in not offering the Petitioners the alternate premises in the same area in which the Petitioners original premises was situated. The Respondents have in fact granted alternate accommodation to five shops in the same area in which the Petitioners' said premises were situated. It appears that the Respondents have sought to distinguish the Petitioners' premises with the five shops on the ground that the five shops were included in SRA scheme and that the rehabilitation was prior to the Lobo Chawl being attorned by the Municipal Corporation. However, there are no particulars given in support of the same other than the bare assertion. We find that the alternate premises offered by the Respondents are not conducive to the Petitioners' jewellery business and hence the Petitioners are not obliged to accept the same. We find that this Petition can be suitably

disposed of by directing the Respondents to allot the Petitioners suitable alternate accommodation in the area in nearby vicinity of Petitioners original premises and failing which the Respondents be directed to provide suitable monetary compensation to the Petitioners together with interest on the compensation from July, 2014 when the shop premises of the Petitioners was demolished. We find that the policy guidelines for removal of bottlenecks on roads of the Mumbai Municipal Corporation nowhere mention that suitable alternate accommodation will not be provided by the Respondents in the area in which the original premises of the PAPs was situated.

13. We accordingly pass the following order:-

- (a) We order and direct the Respondents to provide suitable alternate accommodation to the Petitioners in the area in nearby vicinity of Bhoiwada, Mumbai where the original premises of the Petitioners was situated and which would be conducive to the Petitioners' business. The accommodation shall be allotted within three months from today;
- (b) In the event, the Respondents are unable to provide suitable alternate accommodation to the Petitioners

as directed in (i) above within three months from today, the Respondents are ordered and directed to pay suitable compensation in terms of money as per the Ready Reckoner market value rate of the original premises of the Petitioners together with the interest at the rate of 6% p.a. from July, 2014 when the shop premises of the Petitioners was demolished till payment and / or realisation. The amount shall be paid to the Petitioners within two months from the expiry of the aforesaid period of three months.

- (c) The Petition is disposed of on the above terms with no order as to costs.

(RIYAZ I. CHAGLA J.)

(A.S. OKA, J.)