

Shephali

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION (L) NO. 3488 OF 2017**

Nithesh Gunakar Shetty ...Petitioner
Versus
The Chief Executive Officer MBR & R Board & ...Respondents
Ors

Dr B Saraf, *with Mr Sanjeev Sawant, i/b AP Deshmukh, for the
Petitioner.*

Mrs Manisha Jagtap, *for Respondents Nos. 1 to 3.*

Mr Karl Tamboly, *i/b M Chheda, for Respondent No. 4.*

CORAM: G.S. PATEL, J
DATED: 10th January 2018

PC:-

1. Heard.

2. The Petitioner claims to be entitled to re-accommodation or allotment in the reconstructed building in question at Bhavani Shankar Road, Dadar (West) in a unit with frontage on that road. The entire basis of the claim is that the Petitioner and his predecessor use to run a hotel in what was earlier known as Shop No. 5 on the ground floor of Radha Niwas on that road.

3. It is not in dispute that the Petitioner was a tenant of Shop No. 5 and ran a hotel in those premises. It is also not in dispute that this restaurant had a frontage along Bhavani Shankar Road. On a plan that Dr Saraf for the Petitioner shows me this area is indicated as 9'5" x 30'6". The Petitioner claims that in the reconstructed building, accommodation with an enclosed WC has been allotted to him not on Bhavani Shankar Road but at the rear with access from an internal road approached through the driveway from a gate that leads off Bhavani Shankar Road.

4. The Petitioner's allotment in the reconstructed building is in conformity with the certification by MHADA as to entitlement and area. It appears that at least as regards the area, the Petitioner demands larger premises or accommodation, but that is not a dispute that can be entertained in a writ petition for reasons that are self-evident. The first is of course that the Petitioner cannot show that he has any such entitlement to an additional area and it is not demonstrated before me that the MHADA certification as to the area earlier occupied by the Petitioner as a tenant of Shop No. 5 is in any way inaccurate.

5. This leaves the question of the location of the Petitioner's unit in the reconstructed building. One of the arguments advanced is that new occupants, i.e., those who are not tenants in the cessed structure, have been given premises with a frontage on Bhavani Shankar road.

6. Mr Tamboly, on instructions from his clients, the 4th Respondents, a representative of which is in Court, states that this is not so, and that the only persons given frontage are those who were tenants in the old cessed building.

7. There is also a pending proceeding in the Court of Small Causes. Dr Saraf for the Petitioner submits that the developer must make provision for the additional area claimed in those proceedings. He says that in some hearing before the Executive Engineer, G/North, it was noted that the decision of the Court would be binding on all. This is an argument of not much substance or persuasive value. The Executive Engineer only said the obvious, for, evidently, an order of a Court will bind the parties who are before it. That observation of the Executive Engineer certainly cannot determine the exercise of discretion of the High Court under Articles 226 or 227 of the Constitution of India.

8. Due regard has been had to the fact that the Petitioner has been running a restaurant and needs some walk-in access. I do not think it is remotely possible to contend that it is a legally enforceable right to every person to demand on reconstruction that he or she be given premises in a defined location. They are required to be accommodated in a reasonable fashion in premises that are not less than what they are earlier occupying and in conformity with other legal stipulations. In this particular case I noticed that the configuration and alignment of the old new building seems to be exactly mirror imaged, and the straight portion that earlier fronted Bhavani Shankar road has now been reversed. This is evidently to optimize FSI and space utilization. The consequence necessarily is,

and this is inevitable in many such cases, that all cannot be accommodated in the premises with frontage on that road. If the question is one of deciding priority then that again is not something that, in my view, lends itself to the exercise of discretion under Article 226 or 227 of the Constitution of India.

9. I see no merit in the petition. The writ petition is rejected. No costs. All previous interim/ad-interim orders are vacated forthwith.

10. Mr Tamboly clarifies that the restaurant will be constructed and fitted out in conformity with the applicable Development Control Regulations. Mr Tamboly also clarifies that the transit accommodation and transit compensation and other benefits will be provided to the Petitioner as they are to all other tenants.

11. Mr Sawant submits that the earlier protection granted may be continued. The request is refused.

(G. S. PATEL, J)