

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

WRIT PETITION (LDG.) NO. 3610 OF 2017

Mushtaaq Mujjawar and others. ... Petitioners.

V/s.

Municipal Corporation of Greater Mumbai
and others. ... Respondents.

Mr.A.PKhanduri for the petitioners.

Ms.Shital Mane for respondent No.1.

Mr.Milind More with Ms.Aarti Taware for respondent No.2.

Mr.U.S.Upadhyay, AGP for respondent No.3- State.

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

DATE : 13th April 2018.

PC.:

Heard the learned counsel appearing for the petitioners, the learned counsel appearing for the first respondent, the learned counsel appearing for the second respondent and the learned AGP for the State. Considering the narrow controversy involved in the petition, the same is forthwith taken up for final disposal. The structures which are the subject matter of this petition are required to be pulled down for giving effect to the decision of this Court in PIL No.140/2006 as the same fall within the distance of 10 meters from the main water pipeline supplying

water to the city of Mumbai. Clause- 1 of the order dated 19th December 2017 reads thus:

“1 Heard the learned counsel appearing for the petitioners and the learned counsel appearing for the first respondent. The learned counsel appearing for the petitioners states that if the petitioners are held as eligible they are willing to shift to alternate accommodation which may be offered by the first respondent. We accept the said statement. Place the Petition high upon board on 25th January, 2018. Till the next date, the structures occupied by the petitioners shall not be demolished.”

Thus, there is a solemn statement made that if the petitioners are offered alternate accommodation, they will shift to the said alternate accommodation by vacating the structures in their possession.

2. The affidavit-in-reply has been filed by the first respondent of Shri Mangesh Palve, Sub Engineer (Maintenance), L-Ward. The affidavit discloses that the first and ninth petitioners who are in possession of the structures for non-residential purpose are held to be eligible for alternate accommodation/ rehabilitation. Similarly, sixth petitioner is also held to be eligible for grant of alternate accommodation who is in possession of a residential structure. The affidavit notes that the second, third, fourth, eighth and tenth petitioners are held to be ineligible for grant of alternate accommodation/ rehabilitation. As regards fifth and seventh petitioners, annexure to the affidavit shows that they are held to be eligible subject to the verification of documents.

3. In view of the statement made on behalf of the petitioners as recorded in the order dated 19th December 2017, this petition need not be kept pending and the same can be disposed of by passing the following order:

(i) We direct the first respondent- Municipal Corporation to offer an alternate accommodation to the first, sixth and ninth petitioners by a written communication as expeditiously as possibly and, in any event, within a period of three weeks from the date on which this order is uploaded. Time of three weeks shall be granted to the said three petitioners to shift to the alternate accommodation from the date on which the letters of allotment are served to them. Therefore, till the expiry of period of three weeks from the date of service of letters of allotment to first, sixth and ninth petitioners, action of demolition shall not be taken in respect of the structures of the said petitioners. Thereafter, the first respondent is free to take action of demolition of their structures.

(ii) As regards second, third, fourth, eighth and tenth petitioners, we direct the first respondent- Municipal Corporation to communicate to the said petitioners the reasons in brief for their ineligibility. The reasons shall be communicated to the said petitioners within a period of three weeks from the date on which this order is uploaded. From the date of communication of the reasons, within a

period of three weeks it will be open for the said petitioners to prefer appeals before the appropriate Appellate Authority of the first respondent on the issue of eligibility which shall be decided within a period of four months from the date of preferring the appeals. The orders passed in the appeals shall be communicated to the said petitioners. If the appeals are allowed, needless to say that the directions issued as regards first, sixth and ninth petitioners will apply to such petitioners who are held to be eligible from the date of communication of the appellate order to them. In the event the said petitioners or any of them is held to be ineligible, the action of demolition shall not be taken for a period of three weeks from the date on which the orders of the Appellate Authority are communicated to the respective petitioners;

(iii) Final decision on the issue of eligibility of fifth and seventh petitioners shall be taken by the first respondent within a period of four weeks from today. The final decision shall be communicated to the said petitioners. Till the date of communication of the final decision to the said petitioners, the action of demolition shall not be taken in respect of structures in their possession. In the event, the said petitioners or any of them is held to be eligible, the directions issued as regards first, sixth and ninth petitioners will apply in respect of the said petitioner/s from the date of the decision of the Appellate Authority on the issue of

eligibility. In the event the said petitioners or any of them is held to be ineligible for alternate accommodation/rehabilitation, the directions issued as regards second, third, fourth, eighth and tenth petitioners will apply to such cases.

(iv) The petition is disposed of on the above terms.

(v) We make it clear that we have not made any adjudication on the issue of eligibility of such petitioners in whose cases no final decision is taken by the first respondent.

(RIYAZ I. CHAGLA, J.)

(A.S.OKA, J.)