

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION (L) NO.3622 OF 2017**

Mohd. Tayab Haji Mohd. Isaque Qureshi

..Petitioner

vs.

The Commissioner, MCGM and 3 Ors.

...Respondents

Mr. M.A. Choudhari for the Petitioner.

Ms. K.H. Mastakar for the Respondent-BMC.

Mr.Hemant Haryan, AGP for the Respondent-State.

CORAM : A.S. OKA & P. N. DESHMUKH, JJ.

DATE : 19th JANUARY, 2018

P.C.:

. Heard the learned counsel for the Petitioner, the learned AGP for the Respondent No.4 and the learned counsel for the Respondent Nos.1 and 2. Rule. The learned counsel for the Respondents waive service. By consent, the Rule is made returnable forthwith. The Writ Petition is taken up for hearing and final disposal, by consent.

2. It is not in dispute that an appeal preferred by the Petitioner on the issue of eligibility for rehabilitation is pending with the Appellate Authority constituted by the Municipal Corporation. According to the case of the Petitioner, the structure subject matter of the Petition is used for commercial purposes. Learned counsel appearing for the Municipal Corporation states that there are large number of appeals preferred and therefore it may take some time to decide the appeals preferred by the Petitioner.

3. Mr.Choudhari, the learned counsel for the Petitioner states that if the Petitioner is held to be eligible for rehabilitation, the Petitioner is willing to accept the rehabilitation offered by the Municipal Corporation

provided the Petitioner is not allotted a tenement at Mahul.

4. It is obvious that unless and until the issue of eligibility is decided, the Petitioner cannot be evicted. In the facts of the case, we pass the following order:

ORDER

- i) We direct the Appellate Authority of the Municipal Corporation to decide the appeal preferred by the Petitioner within a period of 8 weeks from today;
- ii) The order passed by the Appellate Authority shall be communicated to the Petitioner. Till the date of communication of the order, the Petitioner shall not be evicted on the basis of the impugned notice by demolishing the structure. If the Petitioner is held ineligible, the said protection shall continue to operate for a period of 2 weeks from the date of communication of the order to the Petitioner;
- iii) If the Petitioner is held to be eligible, the Municipal Corporation shall offer rehabilitation by giving all particulars by a written communication to the Petitioner within a period of 6 weeks from the date on which the appeal is decided;
- iv) The Municipal Corporation shall give time of atleast 2 weeks to vacate the said structure to enable the Petitioner to enable him to avail the benefit;
- v) We make it clear that we had made no adjudication as to in what manner the Petitioner can be rehabilitated;
- vi) Rule is accordingly made partly absolute on the above terms.

(P.N. DESHMUKH, J)

(A.S. OKA, J.)