

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

WRIT PETITION NO.375 OF 2019

Shubh Ashish Co-operative Housing
Society Limited and Anr.

... Petitioners

Vs

Municipal Corporation of Greater
Mumbai and Anr.

... Respondents

Mr.H.S.S.Murthy I/b Abhishek Patil for
the Petitioners.

Ms.Vandana Mahadik for Respondent
No.1.

Ms.Manasi Pandit I/b J.G.Damani for
Respondent No.2.

CORAM :- S. C. DHARMADHIKARI &
B.P.COLABAWALLA, JJ.

DATE :- APRIL 8, 2019

P.C. :-

1. We have heard both sides.
2. Rule. Respondents waive services. By consent, Rule is made returnable forthwith.
3. This writ petition challenges the refusal of the Occupation Certificate to the petitioners on the ground that after the old building was brought down and new building was constructed by the second petitioner, the first and the second petitioners have not ensured that the two occupants, out of twenty six in all, are permanently rehabilitated or accommodated.

4. The petitioners have stated in the writ petition as to how after great efforts and persuasion, everybody else agreed to vacate their premises and the developer-cum-owner and the petitioner No.1 finalised the arrangement for construction of new building and development of the property. The twenty four occupants were required to be evicted and in fact, Consent Terms were signed, duly executed and presented to this Court in terms of which, an Arbitration Petition No.251 of 2014 was disposed of.

5. Now, the construction work is complete, but respondent No.2 is holding up the issuance of the Occupation Certificate by complaining to the Municipal Corporation that she is not rehabilitated or permanently accommodated in the new construction.

6. The argument of Mr.Murthy is that the Occupation Certificate could not have been withheld for one non co-operative person as the Certificate is sought by the legal entity, namely, the Co-operative Housing Society. The right, title and interest of the Co-operative Housing Society in the building and the land underneath is not in dispute. The petitioners have jointly developed the property and as such were entitled to the Occupation Certificate. If the owner/developer has not complied with the terms and conditions of the agreement executed with the

two tenants allegedly, then, according to Mr.Murthy it is not the business of the Municipal Corporation to assist them for these persons have independent legal remedies, which they can resort to for enforcement of their alleged legal rights. The other conditions on which the Occupation Certificate is withheld would definitely be complied with, in the event they remained to be complied with.

7. The Municipal Corporation has tendered an affidavit and has supported the notice impugned in the petition, copy of which is at page 33 of the paper-book. The Corporation submits that it apprehends that it would be pushed or dragged into litigation and its officials will be proceeded against unnecessarily. The Corporation and its officials do not desire to be the part of any private dispute or legal proceedings arising out of the same. Hence, the Corporation's stand is fair, just and proper.

8. Having perused the entire petition and this affidavit, we are of the view that the writ petition can be disposed of with a direction to the Municipal Corporation to consider the application of the petitioners for issuance of the Occupation Certificate and on the petitioners' indemnifying the Municipal Corporation and its officials against all legal actions and proceedings that may be brought by the second respondent to this petition and

undertaking that they will not be held responsible in any manner for the outcome of the same, the request of the petitioners can be considered.

9. Mr.Murthy says that the indemnity to the aforesaid effect would be executed in favour of respondent No.1 as expeditiously as possible and in any event, within a period of two (2) weeks from today. On the receipt of this indemnity, the application for issuance of Occupation Certificate be processed in accordance with law and without insisting on the petitioners' executing any agreement with the two persons claiming to be the tenants. That condition should be relaxed on account of the indemnity that would be furnished in favour of respondent No.1. The petitioners shall comply with any other conditions imposed on them and the matter shall be finalised as expeditiously as possible and in any event, within a period of four (4) weeks from today.

10. The writ petition is disposed of by clarifying that we have not expressed any opinion on the contentions insofar as right, title and interest in the immovable property claimed by the petitioners and the second respondent.

(B.P.COLABAWALLA, J.)

(S.C.DHARMADHIKARI, J.)