

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O.O.C.J.**

WRIT PETITION NO.3659 OF 2018

Dattaram Dhondu Tanawade & Ors.

... Petitioners

Vs

Municipal Corporation of Greater Mumbai &
Ors.

... Respondents

Mr.Altaf Khan with Mr.Ashif Husain for the Petitioners

Ms.Sheetal Matakari for Resp. No.1

Mr.Prabhakar Jadhav i/b V.P. Sawant for the Respondent Nos.3, 5
& 6

Mr.S.U. Kamdar, Senior Advocate i/b Wadia Ghandy &
Co. for Resp. No.4

Ms.Geeta Shasri, AGP, for Resp. No.7 / State

**CORAM: AKIL KURESHI &
S.J. KATHAWALLA, JJ.**

DATED: JULY 3, 2019

P.C.:

1. The Petitioners, who are 61 in number, have made a grievance against Respondent No.4 / Developer not paying them the transit rent. This litigation has a long history. However, in the present petition, looking to the narrow controversy, it is not necessary to record the entire background. Suffice it to note the admitted facts that all the petitioners have vacated the premises

upon which the development work is going on. The petitioners, however, have not executed the Permanent Alternate Accommodation agreements (hereinafter referred to as 'the agreement') with the Developer. The stand of the petitioners projected before us through their learned Counsel was that the petitioners have dispute with certain clauses contained in the draft agreement. The petitioners have filed Writ Petition No.1254 of 2016 in which these disputes are taken up. This petition is pending. The Counsel for the petitioners, therefore, submitted that if the petitioners sign the said agreement, their pending disputes in the said Writ Petition No.1254 of 2016, would be prejudiced.

2. We, however, notice that the off-shoot of this litigation had reached the Supreme Court. The proceedings were disposed off by an order dated 29.3.2016 which reads as under:

“Heard learned senior counsel/learned counsel for the parties for some time.

Learned counsel for the petitioners submitted that most of the occupants, who are involved in these proceedings, have vacated the premises in question. However, if anybody has not vacated, he/she shall vacate within two weeks from today and handover peaceful and vacant possession of the premises in question to the Developer.

Legal questions/issues raised in the Writ Petition (L) No.294

of 2016, pending before the High Court with regard to the area for which the occupants are entitled to be allotted by the Developer, in view of the fact that it is putting up buildings even in the fungible area, after developing the property in question and certain other issues are required to be considered by the High Court. Learned senior counsel/learned counsel for the parties submitted that they would appear in the High Court and cooperate with the High Court for expeditious disposal of the pending writ petition.

In view of the aforesaid submission made at the Bar, we request the High Court to dispose of the matter in accordance with law within eight weeks after hearing all the concerned parties.

Be it noted that the agreement that may be required to be entered into between the parties shall be subject to the outcome of the decision in the pending writ petition before the High Court.

The special leave petitions are disposed of with the aforesaid directions.

All pending applications are disposed of.”

3. Therefore, as per this order, the agreement which the petitioners may enter into, would be subject to the outcome of the decision of the High Court in the pending Writ Petition No.1254 of 2016. The apprehension of the petitioners, therefore, that their entering into any such agreement would be prejudicial to their prayers in the pending writ petition, is ill-founded. It is because of this reason that the Counsel for the Developer stated that the Developer was unable to pay the transit rent. In fact, as soon as

the petitioners or any of them executes such agreement, the transit rent with arrears would be paid. The Counsel for the Developer placed on record a sheet containing details of all outstanding rent of the petitioners and stated that as soon as the agreement is executed, the rent would be paid in the following manner:

- i) The rent for the period between 8.2.2017 and 7.2.2018 will be paid immediately upon signing of the agreement.
- ii) The rent between 8.2.2018 and 7.2.2019 will be paid within 15 days after signing of that agreement.
- iii) The rent between 8.2.2019 to 7.2.2019 will be paid within further 15 days thereafter.

4. A copy of this document is taken on record and marked at 'exhibit X' for identification. We accept the statement of the Counsel for Developer. We, however, clarify that the details provided in this document are for our guidance and subject to any modification or correction if any of the tenants have dispute with the figures indicated therein.

5. Under such circumstances, we do not see any reason for the petitioners to object to signing of the agreement subject to keeping all their rights and contentions in the pending Writ Petition No.1254 of 2016 intact. They may also insist that such a narration may be included in the agreement itself. We also clarify that by way of signing and registration of such agreement, the challenge by the petitioners to any of the terms, pending in the Writ Petition No.1254 of 2016 would not become infructuous or get compromised.

6. Subject to above clarification, as and when the petitioners sign the said agreement and get it registered, the Developer shall pay the past as well as future rent, as stated before us by the Counsel for the Developer. It is clarified that if any of the petitioners refuse to sign and get the agreement registered, there shall be no obligation on the Developer to pay the rent.

7. Writ Petition is disposed of accordingly.

(S.J. KATHAWALLA, J.)

(AKIL KURESHI, J.)