

Shephali

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 1088 OF 2014
AND
WRIT PETITION NO. 2665 OF 2015

Bridget Anthony Rosario Pereira & Anr	...Petitioners
<i>Versus</i>	
Mumbai Municipal Corporation & Ors	...Respondents

Mr Bhavesh Parmar, *i/b Mr Devmani Sukla, for the Petitioners in both Petitions.*

Mr NV Walavalkar, *Senior Advocate, with Ms Rupali Adhate, for the Respondent-MCGM.*

**CORAM: S. C. DHARMADHIKARI &
G.S. PATEL, JJ**

DATED: 12th July 2019

PC:-

1. In this Petition under Article 226 of the Constitution of India. The reference to the prayers is enough to reach a conclusion. The Petitioners in Writ Petition No. 1088 of 2014 prayed as follows:

“(b) For a writ or an order in the nature of writ directing the Respondents to immediately and forthwith ensure that the Petitioners being senior citizens are provided with a health and safe environment in and around their residential premises including vehicular access road to their residential premises for vehicular movement of vehicle such as

ambulance, fire brigade, police van, etc. in case of emergencies.

(c) For a writ or an order in the nature of writ directing the Respondents to immediately and forthwith ensure that the benefits conferred upon the Petitioners through late Mr Francis Noronha in the vacant and tenancy conferred vide Corporation order No MCP/8104 of 4.5.1974 are not interfered in any manner whatsoever without due process of law and principles of natural justice being followed by the Respondent Corporation and its officials.

(c-i) for a writ or order in the nature of a writ directing the BMC to immediately and forthwith monetarily compensate the Petitioners for the physical and mental harassment and trauma the Petitioners have undergone for the last many years including during the pendency of the Petition from the year 2014 and if required the said amount be recovered from the officials of the BMC found responsible for the same;

(c-ii) for a writ or an order in the nature of a writ directing the Commissioner of the BMC or any other senior official of high reputation and integrity in the BMC to reside with the Petitioners in the Petitioners premises for a single day to understand the miserable conditions in which the Petitioner is being subjected to due to the various wrongful and illegal acts of the BMC.

(c-iii) for a writ or an order in the nature of a writ appointing an independent officer of this Hon'ble Court which may be an Architect or Advocate or employee of this Court to ascertain the factual position in and around his Petitioners premises and submit a factual report for further directions by this Hon'ble Court to ensure that the Petitioners legal and fundamental rights are not further

violated and the Petitioner can lead her remaining life in a peaceful manner in her premises.

(c-iv) for a writ or an order in the nature of a writ directing the BMC to immediately and forthwith stop the construction activities carried out if any on the plot of land immediately adjoining the plot of land upon which the Petitioners premises are located.”

2. Similarly, the Petitioners in Writ Petition No. 2665 of 2015 prayed as follows:

“(b) For a writ or an order in the nature of writ of this Hon’ble Court directing Respondent No. 1 and/or 2 to immediately and forthwith personally conduct a detailed enquiry into the facts of the present Petition within a fixed time schedule and upon completion of the said enquiry submit a report to this Hon’ble Court for appropriate directions thereafter for prosecution and punishment of the concerned official sand/or private persons found guilty of wrongs and illegalities.

(c) For a writ or an order in the nature of writ this Hon’ble Court directing the Respondent No. 1 and /or 2 to immediately and forthwith cease and desist from entering into any agreement whatsoever including the draft agreement suggested by the Respondent No. 7 vide letter dated 25.8.2014 without prior permission of this Hon’ble Court. ”

3. First of all, the 1st Petitioner says that the property more particularly described in the Writ Petition has been allotted to his father, late Francis Noronha, some time on or about 16th October 1973. Undisputedly, the father was an employee of the Municipal

Corporation of Greater Mumbai. The application was made by him to allot the structure. The claim is that there is a residential structure constructed by the Petitioner's father treating himself as a vacant land tenant. Ground rent has been paid and thereafter the claim is that this land has been allotted. Reliance is placed upon an order of allotment dated 4th May 1974. It is common ground that on 24th November 1974 Francis Noronha retired from the services of the Municipal Corporation and thereafter on 17th February 1981 he expired.

4. The Petitioners claim that on 10th September 2012, a written complaint was lodged against alleged physical and mental harassment. A Writ Petition was filed in this Court being Writ Petition No. 1088 of 2014 for more or less identical reliefs.

5. However in March 2014 the Petitioner gathered information with regard to misappropriation of public money by the 7th Respondent. That misappropriation is highlighted at pages 14 to 16 of this Petition.

6. The Petitioner says that he is worried as a responsible resident of Mumbai and citizen of this country that there is substantial loss of public money to the tune of Rs. 1.60 crores. A project estimated at R. 30.63 crores of the Municipal Corporation has allegedly resulted in a bonanza for the 7th Respondent consultant.

7. We do not think that we can enter this controversy. There are several shades to this, one of which takes the garb of information being in possession of the Petitioners, and by using which the Petitioners seek gain for themselves. They have already filed a suit in this Court seeking to protect their right, title and interest in the immovable property. If there is an obstruction caused to it or there is an undue interference therewith by a construction activity of the Municipal Corporation and carried out at its behest by 7th Respondent, then, all the more in such pending suit every relief can be claimed if not already claimed. None of the facts that are set out in the Petitioner are admitted.

8. We have a Reply Affidavit of the Municipal Corporation which not only denies all allegations but sets out the background in which the work had been commenced at site. It is claimed that the proposed work or construction of H/West Ward office building for which the 7th Respondent is the consultant has commenced and is being carried out in accordance with law and following the prescribed norms. The justification for the award of contract is also provided in the Affidavit. There is nothing suspicious and dubious about it, is the response of the Municipal Corporation.

9. It is claimed that the structure of the Petitioner is adjoining a railway boundary and is within 31 meter wide buffer zone required to be kept open from the Western Railway boundary as per the Development Control Regulations. It is in these circumstances that the Petitioners used this litigation as an attempt to stop the construction activity at site which is undertaken to sub-serve the larger public interest. It is also said that there is enough space left

for the Petitioners and for vehicles to enter and exit from the premises. In an emergency, the required emergency vehicles can also enter. The Municipal Corporation denies the Petitioners' allegations that an ambulance cannot enter the property. It says the Petitioners were rendered full assistance.

10. We do not think that in the light of this reply we should entertain the Writ Petition.

11. The 7th Respondent has filed an affidavit with supporting documents confirming the Corporation's version. He does not admit any of the allegations, let alone admit being criminally involved or having misappropriated public funds. On the contrary, he asserts that he has been granted recompense for his work of only 3% of the consultancy fees, and not the amount alleged by the Petitioner. Further, he is rendering consultancy services.

12. For all these reasons we are reluctant to interfere in a factual dispute and controversy. The Writ Petition is not the remedy for the Petitioners. It is dismissed.

(S. C. DHARMADHIKARI, J)

(G. S. PATEL, J)