

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

WRIT PETITION (L) NO.2912 OF 2019

Mr.Abdul Haque Abdul Razzak Munshi ... Petitioner
versus
Executive Engineer, C-1 Division,
Mumbai Building Repairs and
Reconstruction Board, Mumbai and Ors. ... Respondents

Mr.Shikur G. Kudle for the Petitioner.

Mr.Abhay L. Patki, Additional
Government Pleader for Respondent No.4
(State).

Mr.P.G.Lad a/w Ms.Sayli Apte for
Respondent Nos.1 to 3 (MHADA).

Mr.Pravin Samdhani-Senior Counsel,
Mr.Chirag Kamdar-Counsel a/w Nanki
Grewal, Paridhi Saraf i/b Wadia Ghandy &
Co. for Respondent No.5.

Mr.C.A. Bagul, Sectional Engineer,
MHADA present.

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

DATE :- OCTOBER 22, 2019

P.C. :-

1. The petitioner in this petition says that he is the proprietor of his business carried on from Shop No.1/5A/5B, ground Floor, Galabhai Chawl, City Survey No.3663, 153-153, Saifee Jublee Street, Bhendi Bazar, Mumbai 400 003. The business is a small hotel. The petitioner has been carrying on the same since 1938.

2. The first respondent before this Court is the Executive Engineer, C-1 Division, Mumbai Building Repairs and Reconstruction Board (for short, **“the Mumbai Board”**). The second respondent is the Chief Officer of this Board, whereas, the Deputy Chief Engineer of the Municipal Corporation is the third respondent. The fourth respondent is the State of Maharashtra and the fifth respondent is the Saifee Burhani Upliftment Trust.

3. The fifth respondent is entrusted with the work of Cluster Redevelopment Scheme. The Bhendi Bazar is an area known to everybody in Mumbai inhabited by thousands of people as also small, petty and medium scale businesses. In other words, there are shops and residential structures. The trust was entrusted with redevelopment work bearing in mind that the buildings were decades old, dilapidated and the occupants were not able to even afford regular maintenance and repairs. Thereafter, a decision was taken to pull down the existing structures, take advantage of the beneficial provisions in the Development Control Regulations for Greater Mumbai and Welfare Schemes of the Maharashtra Housing and Area Development Authority (**for short, “MHADA”**) implemented through the unit, namely, the Mumbai Board. That is how everybody was requested to hand over vacant and peaceful possession of the existing premises, to shift into transit

accommodation or to take compensation in lieu thereof and facilitate redevelopment. There are thousands of people awaiting the fruits of such redevelopment and the expectation is that the occupants like the petitioner co-operates by voluntarily handing over the possession.

4. The apprehension of the petitioner's counsel Mr.Kudle is that the petitioner has not been assured any alternate accommodation, much less on permanent basis. Secondly, after demolition of the existing premises, he does not know where he will be shifted and from where he will carry on his existing business and which is the only source of his livelihood.

5. Our attention was invited to paras 7 and 8 of the writ petition by Mr.Kudle.

6. Mr.Kudle has then invited our attention to the communications from the Executive Engineer. It is stated that the petitioner is not oblivious or unaware of the scheme of Cluster Redevelopment. However, when the petitioner addressed a communication to respondent No.5-Trust, he referred to a certain understanding. That is recorded in an agreement. After that, the petitioner was expecting a response from the Trust. Instead, the petitioner was served with a notice under Section 95 A(1) of the

Maharashtra Housing and Area Development Act, 1976 (for short, **“the MHAD Act”**). That says that the Government of Maharashtra has given approval in principle for redevelopment project of Bhendi Bazaar area. On 22nd July, 2011, this in principle approval was given. The letter of intent was issued to the fifth respondent by the Deputy Chief Engineer of the Municipal Corporation of Greater Mumbai on 10th August, 2011 and in terms of this letter of intent, the fifth respondent has allotted the transit accommodation to the eligible occupants/tenants of sub-cluster II or paid compensation in lieu of transit accommodation. Thereafter, the petitioner was requested to vacate and shift in the transit accommodation at Shop No.129, First Floor, Mufaddal Shopping Arcade, Noor Baug, Ramchandra Bhatt Marg, Umerkhadi, Dongari, Mumbai 400 009. This direction was reiterated on 3rd July, 2017. At page 53 of the paper-book is the communication from the petitioner addressed to all respondents and he says that though he is willing and ready to attend the hearing, but the transit accommodation offered at Shop No.129, first floor is not acceptable. The nature of business does not permit him to carry on the business from this premises.

7. Since there was no response, the petitioner was informed by an order of 26th July, 2017 that he is liable to be evicted from the

existing premises. He must shift to the transit accommodation or accept the compensation in lieu thereof. The fifth respondent has stated before the Executive Engineer and which statement is reiterated before us by Mr.Samdhani, the learned senior counsel, that on petitioner's vacating and handing over peaceful possession of the premises and post its demolition, the intimation of disapproval (IOD)/commencement certificate is issued by the Municipal Corporation in favour of the fifth respondent. The permanent alternate accommodation agreement would be duly executed with the petitioner on par with others. It is clarified before us that presently the petitioner can carry on business from the transit accommodation and the details of which have already been set out.

8. To our mind, though there is some basis for the petitioner's apprehension, ultimately the respondents have resolved the issue and now have directed the petitioner to shift to the transit accommodation. The petitioner has mentioned the address in the cause title of the petition, but that is of the existing premises which is no longer at site. It is demolished. The transit accommodation is Shop No.129, First Floor, Mufaddal Shopping Arcade, Noor Baug, Ramchandra Bhatt Marg, Umerkhadi, Dongari, Mumbai 400 009. In the event, the petitioner is not

ready and willing to shift there, the final communication at page 59 of the paper-book also refers to Shop No.11, 39, 40, Ground Floor and 81, 82 , First Floor, D-Block, Cluster 2A Transit, Bhendi Bazar, Mumbai 400 003. This accommodation is also available for the petitioner to shift himself and if the petitioner is ready and willing, he can shift to this transit accommodation as well.

9. We are of the firm opinion that if neither of the above premises are acceptable to the petitioner and he is not interested in occupying them, on par with similarly situate occupants, the petitioner will be paid compensation/rent in lieu of transit accommodation. The petitioner will be extended all the benefits of such a scheme of offering compensation in lieu of the transit accommodation on par with others. The petitioner can also be paid advance rent should the petitioner desire to do so and make a request in that behalf so that he can tide over the immediate financial crisis. We do not think that single business or occupant or party like the petitioner can hold up the scheme or the construction activity at site. More so, when the fruits of the redevelopment, in pursuance of the Cluster Redevelopment policy of the Government of Maharashtra 2011, have yet to be received by the occupants. Now more than eight years have lapsed from the date of issuance of letter of intent. Shortly, we are going to

enter 2020. If more than ten years are not enough for the redevelopment project to take shape and effect, then, possibly a large number of people would be uprooted and displaced in life. Surely, none would like to face such a situation and it is in the interest of the petitioner as well if the Cluster Redevelopment Scheme goes ahead and as per the schedule.

10. Needless to clarify that we accept the statement of Mr.Samdhani, made on instructions, that within two months from the date of issuance of letter of intent/commencement certificate, the permanent alternate accommodation agreement would be executed with the petitioner, as an undertaking given to this Court.

11. The writ petition stands disposed of accordingly. There would be no order as to costs.

(G.S.PATEL, J.)

(S.C.DHARMADHIKARI, J.)