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

WRIT PETITION (L) NO.3511 OF 2017

Amar Tukaram Parte and Ors.	... Petitioners
Vs.	
The Mumbai Municipal Corporation	... Respondent

Mr. Rishikesh Soni I/by Ashok Purohit & Co. for the Petitioners.
Mr. Sagar Patil for the Respondent – BMC.

CORAM : A.S.OKA AND
A.S. GADKARI, JJ.

DATE : 29th JANUARY 2019.

ORAL JUDGMENT (Per A.S. Oka, J.)

1 Heard the learned counsel appearing for the petitioners and the learned counsel appearing for the Mumbai Municipal Corporation. Rule was issued by the judgment and order dated 19th September 2018. As noted in the said order, the structures which are subject matter of this petition are required to be demolished for giving effect to the directions issued by this Court in PIL No.140 of 2006. Paragraphs 4 to 7 of the said order deal with the issue of eligibility and rehabilitation of the petitioners. Paragraphs 4 to 7 read thus :-

“4. As far as the Writ Petition (L) No. 3511 of 2017 is concerned, an affidavit of Mr. Prashant Rathod, Assistant Engineer (Maintenance) 'L' ward, filed on behalf of the first respondent discloses that out of 28 petitioners, 16

petitioners i.e. the petitioner Nos. 2 to 4, 12, 14, 22 to 28, 31, 34, 37 and 38 who are in possession of structures which are used for commercial purposes are found to be eligible for rehabilitation. By way of an ad-interim relief, we direct the first respondent to give an offer in writing to the said petitioners of rehabilitation. All the particulars of rehabilitation package offered to the petitioners shall be set out in the letter of offer. We must note here that once the said petitioners are found to be eligible, as per the directions issued in PIL No. 140 of 2006, they are entitled to be rehabilitated by grant of alternate accommodation or payment of monetary compensation. The rehabilitation cannot wait till revised Annexure-2 is finalised. The first respondent must note that there is an urgency involved to demolish structures within the distance of 10 meters from the main pipeline supplying water to the city.

5. We, accordingly, direct the first respondent to serve a letter of offer as aforesaid to the said 16 petitioners within a period of one month from the date on which this order is uploaded. Time of three weeks shall be granted to the said 16 petitioners to take benefit of the package of rehabilitation. Till the expiry of the period of three weeks from the date of service of the letters of offer to the said petitioners, their structures shall not be demolished. If the said petitioners have any grievance about the rehabilitation package offered to them, they will have to file appropriate proceedings in this pending petition within the said period of three weeks. On the expiry of the said period of three weeks, their structures shall be demolished by the first respondent-Municipal Corporation.
6. The petitioner Nos. 6, 7, 30, 9, 16, 19 and 20 have been held to be eligible after verification. To the said petitioners, the directions issued in paragraph 6 will apply. The petitioner Nos. 11, 15 and 39 are also held to be eligible. They shall be also entitled to the same relief. The said petitioners who are allotted residential accommodations at Mahul are free to accept residential accommodation at

Mahul without prejudice their rights and contentions. Those petitioners who are willing to accept the accommodation at Mahul shall issue a communication to that effect to the Designated Officer of the Corporation within a period of two weeks from the date on which a letter of offer/allotment is served upon them. The structures of those petitioners who communicate their unwillingness to shift to Mahul, shall not be demolished till further orders. Those petitioners who fail to communicate their willingness or unwillingness in writing to the designated officer within a period of two weeks from the date of the receipt of letter of offer/allotment, their structures will have no protection after expiry of two weeks from the date of service of offer / letter of allotment.

7. As regards the petitioner No. 15, it is stated that he will be entitled to the benefit of Kurar pattern. However, it is not the case made out by the Municipal Corporation that the land behind the present structure of the petitioner No.15 will be made available by the Municipal Corporation to the said petitioner to take benefit of Kurar pattern for carrying out construction. Hence, we direct that the petitioner No.15 shall be offered allotment of residential accommodation as stated above and his case will be governed by the petitioners mentioned in paragraph 6 above. In case of the petitioners who are found to be ineligible, copies of the orders recording reasons shall be served upon them. Till the date of service of the orders and for a period of one month thereafter, their structures shall not be demolished to enable them to adopt appropriate remedy. It is stated that the petitioner Nos. 32 and 33 are claiming in respect of the same structure bearing No. 680. By way of ad-interim relief we direct that the said structure shall not be demolished till the prayer for interim relief is disposed of.”

2 Shri Prashant Rathod, Assistant Engineer (Maintenance), ‘L’ Ward has filed an affidavit dated 10th January 2019 dealing with

compliance with the order dated 19th September 2018. Compliance reported and the response of the petitioners can be summarised as under :-

- A] The petitioner nos.2 to 4, 12, 14, 22 to 28, 31, 34, 37 and 38 who are in possession of the structures used for commercial purposes have been offered rehabilitation in terms of letters, the copies of which are annexed as Exhibit – A to the affidavit. The said letters record the area of the alternate accommodation which can be offered to them and the said petitioners were informed that the list of premises which can be allotted is available in the ward offices. The learned counsel appearing for the petitioners on instructions does not dispute receipt of the said letters by the said petitioners. However, he states that the petitioners have taken inspection of the premises offered to them and they have not accepted the premises as they have several objections. He states that those objections have not been submitted by the petitioners in writing.
- B] As regards petitioner nos.6, 7, 30, 9, 16, 19, 20 and 39, the affidavits states that they are held as eligible but rehabilitation cannot be provided to them without finalising annexure-2. There is already a direction issued under order dated 19th September 2018 that once persons in possession of structures which are required to be demolished in terms of the orders passed by this Court in PIL No.140 of 2006 are held eligible for rehabilitation,

their rehabilitation cannot be postponed on the ground that annexure – 2 is not finalised.

- C] As regards petitioner nos.11 and 39, it is stated that they did not attend Lottery process.
- D] As regards petitioner no.15, it is stated that about 24.59% of his existing structure is required to be demolished and therefore, the benefit of Kurar pattern can be made available. The learned counsel appearing for the Municipal Corporation states that a letter in writing offering benefit of Kurar pattern is not served to the petitioner no.39.
- E] As regards other petitioners, the statement in the affidavit is that the orders dated 13th December 2017 holding them as ineligible have been served upon them.

3 In view of the factual position which emerges from the affidavit of Shri Prashant Rathod, this petition need not be kept pending and the same is disposed of by passing the following directions :-

ORDER

- (i) It will be open for the petitioner nos.2 to 4, 12, 14, 22 to 28, 31, 34, 37 and 38 to address a letter in writing to Assistant Commissioner, L-Ward specifically recording their objections to the alternate accommodation offered to them. If such objections in writing are submitted by the petitioners within four weeks from the date on which this order is uploaded, the

concerned Assistant Commissioner shall apply his mind to the objections and pass appropriate order either rejecting the objections or offering a different accommodation. Such decision shall be taken by the Assistant Commissioner within a period of two months from the date on which the objections are submitted by the aforesaid petitioners;

- (ii) The decision taken by the Assistant Commissioner on the objections shall be communicated to the aforesaid petitioners as expeditiously as possible and in any event within a period of two weeks from the date on which the decision is taken by the Assistant Commissioner. Till the date of communication of the decision by the Assistant Commissioner and for a period of one month from the said date, the structures occupied by the aforesaid 16 petitioners shall not be demolished. We, however, make it clear that this protection will not apply to those petitioners out of the aforesaid 16 petitioners who fail to submit their objections in writing to the Assistant Commissioner within stipulated time. In case of such petitioners, the action of demolition shall be taken on expiry of period of one month from the last date fixed for submission of the objections;
- (iii) We direct the Mumbai Municipal Corporation to offer the petitioner nos.6, 7, 30, 9, 16, 19, 20 and 15 a rehabilitation package by a communication in writing. Such communication shall be served upon the said petitioners within a period of

one month from the date on which this order is uploaded. The petitioners may either accept the rehabilitation package or in the event they are dissatisfied, they will be entitled to challenge the communication issued by the Municipal Corporation within a period of one month from the date on which rehabilitation package is offered to them. Till the date of communication of the rehabilitation package in writing to the petitioners and for a period of one month thereafter, the structures occupied by the petitioners shall not be demolished. Those petitioners who fail to accept the rehabilitation package or fail to file proceedings for challenging the rehabilitation package within a period of one month from the date on which the rehabilitation package is communicated to him shall not be entitled to any other protection and on expiry of period of one month, the structures occupied by them shall be demolished;

- (iv) We direct the petitioner nos.11 and 39 to communicate in writing to the Assistant Commissioner of 'L' ward whether they are willing to accept alternate accommodation at Mahul. If they accept the alternate accommodation at Mahul, within a period of one month from the date on which they communicate their acceptance, the possession of the tenements at Mahul shall be handed over to them. In such event, if they fail to take possession of the tenements either at Mahul within a period of one month from the date on which

the premises are offered to them, their structure shall be demolished by the Municipal Corporation. If the petitioner nos.11 and 39 fail to issue any communication to the Assistant Commissioner within a period of one month from the date on which this order is uploaded, their structures shall be demolished on the expiry of the said period. In the event the petitioners raise objection to allotment of tenements at Mahul by addressing a letter within a period of one month from the date on which this order is uploaded, their structures shall not be demolished till the issue about the premises at Mahul is finally decided by this Court;

- (v) We direct the Municipal Corporation to issue a communication to the petitioner no.15 offering him the benefit of Kurar pattern. Such communication shall be issued within a period of one month from the date on which this order is uploaded. Till the date of service of communication to the petitioner no.15 and for a period of two months thereafter, the structure of the said petitioner shall not be demolished. If within a period of two months from the date of communication of offer to the petitioner no.15 he fails to avail the benefit of Kurar pattern, the Municipal Corporation shall demolish the structure possessed by him;
- (vi) As regards rest of the petitioners who are held to be ineligible, we direct that action of demolition of their respective structures shall not be taken for a period of one

month from the date on which this order is uploaded to enable them to adopt appropriate proceedings in accordance with law for challenging the orders holding them ineligible. On completion of the said period of one month, their structures shall be demolished by the Municipal Corporation. This order will be subject to interim order, if any, which may be passed in proceedings which may be adopted by the petitioners;

(vii) We make it clear that in case of those petitioners who are held to be ineligible, all issues concerning their eligibility are kept open. We also make it clear that in case of the petitioners who are held to be eligible, the issue whether rehabilitation package offered to them is in accordance with law is also kept open;

(viii) Rule is partly made absolute on above terms.

(A.S. GADKARI, J.)

(A.S.OKA, J.)