

psv

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

WRIT PETITION (L.) NO.4347 OF 2018

Premji Arjanbhai Chheda	..Petitioner
Vs.	
The Commissioner, MMC & Ors.	..Respondents

**WITH
WRIT PETITION (L.) NO.4348 OF 2018**

Nirav Ramesh Bhatt	..Petitioner
Vs.	
The Commissioner, MCGM & Ors.	..Respondents

**WITH
WRIT PETITION (L.) NO.4349 OF 2018**

Ansar Ahmed Shaikh	..Petitioner
Vs.	
The Commissioner, MMC & Ors.	..Respondents

**WITH
WRIT PETITION (L.) NO.4350 OF 2018**

Rajendra Ramlakhan Gupta	..Petitioner
Vs.	
The Commissioner, MMC & Ors.	..Respondents

**WITH
WRIT PETITION (L.) NO.4351 OF 2018**

Vasant Narayan Kokate & Anr.	..Petitioners
Vs.	
The Commissioner, MCGM & Ors.	..Respondents

**WITH
WRIT PETITION (L.) NO.4352 OF 2018**

Umesh Shriniwas Naik	..Petitioner
Vs.	
The Commissioner, MMC & Ors.	..Respondents

**WITH
WRIT PETITION (L.) NO.4379 OF 2018**

Javerben Khimji Shah ..Petitioner
Vs.
The Commissioner, MCGM & Ors. ..Respondents

Mr.Sameer Khedekar for Petitioners in all petitions.
Mr.Prakash Lad with Ms.Pooja Yadav for Municipal Corporation of Greater Mumbai.
Mr.Rajesh Sonone, Sub-Engineer (Maintenance) P/South Ward.

CORAM : G.S. KULKARNI, J.

DATE : 31st JANUARY, 2019

P.C.:

The petitioners, who were earlier conducting their businesses at the premises which were demolished for road widening and clearing of bottleneck situated at M.G. Road, Goregaon (W.), P/South Ward, are before the Court in the second round of litigation. In the first round of litigation, an order was passed by this Court on 28 November 2018 on a batch of petitions where the Court disposed of the petition in terms of the following order:-

- “(i) The Municipal Corporation shall take appropriate steps within a period of one week from today to issue fresh allotment letters to the petitioners for allotment of tenements at Ahimsa Nagar or at any other appropriate location as the Municipal Corporation so desires.
- (ii) The petitioners shall be offered and take inspection of their respective allotted premises within a period of one week from the receipt of the allotment orders.
- (iii) If the petitioners are agreeable to accept the alternate accommodation, the petitioners shall vacate their respective premises within a period of 10 days after inspection of their respective allotted premises is undertaken.
- (iv) All contentions of the parties on the fresh allotment are expressly kept open.”

2. As observed in the said order, the MCGM-respondent No.1 has now made available permanent alternate premises to the petitioners at Municipal Retail Market on Plot bearing CTS No.1170/E, 176/D, 1177/A to E, 1178/A, 1179/A to C, 1221/C & D etc. at Ahimsa Nagar, Malad (W.).

3. The present petitions have been filed making the following prayers:-

a. This Hon'ble Court be pleased to issue a Writ of Certiorari or any other appropriate writ, order or direction in respect of impugned letter dated 05.11.2018 (Exhibit-F) and impugned allotment letter dated 02.11.2018 (Exhibit-H) from Respondent No.2 and 4 and after examining the propriety, validity, and legality thereof quash and/or set aside the impugned letter dated 05.11.2018 (Exhibit-F) and impugned allotment letter dated 02.11.2018 (Exhibit-H) in respect to Commercial Structure of Petitioner;

b. This Hon'ble Court be pleased to issue a Writ of Certiorari or any other appropriate writ and direct Respondent No.2 and Respondent No.4 to provide alternate accommodation within the vicinity/locality i.e. Goregaon (West) where the existing structure of the Petitioner is situated. As per the Reported Judgment passed by this Hon'ble Court dated 17.09.2018 in an identical matter.

c. Pending the hearing and final disposal of this Writ Petition, this Hon'ble Court be pleased to forthwith stay the effect and operation of the impugned letter dated 05.11.2018 (Exhibit-F) and impugned allotment letter dated 02.11.2018 (Exhibit-H) in respect to Commercial Structure of Petitioner;

d. This Hon'ble Court may please to prevent the Respondents to take any coercive action against the Petitioner under the impugned letter dated 05.11.2018 (Exhibit-F) and impugned allotment letter dated 02.11.2018 (Exhibit-H) and maintain the status quo in respect to the commercial structure of Petitioner till the disposal of present Writ Petition.

e. Pending the hearing and final disposal of this Writ Petition this Hon'ble Court be pleased to restrain by an Order to the Respondents, their office bearers, agent, servant or any other person/s claiming through the Respondents from disturbing the exclusively use, Occupation and Possession of the Petitioner Commercial Structure situated at Shop No.10 M.G. Road, Goregaon (W), Mumbai.”

4. These petitions were moved before the learned Vacation Court on 26 December 2018 when this Court passed the following order:-

“1. Writ Petition Lodging No.4382 of 2018 is not on board. Taken on board.

2. In furtherance of the order dated 28th November 2018, when this matter was listed before the Court on 24th December 2018, and submission was made by the learned counsel for the petitioner that they have not been offered an alternate accommodation at Ahinsa Nagar and no fresh allotment letter was issued to the petitioners for allotment of any tenements. The petitioners make a grievance that the allotment was offered to them only by the communication of the Assistant Commissioner on 02nd November 2018.

3. When the matter was heard on the last date, in order to enable the learned counsel for the petitioner and his client to have an inspection of the premises which the respondent proposes to offer to them, it was mutually decided they would visit the said premises and satisfy themselves about its suitability. Today, the learned counsel for the petitioner makes a categorical statement before the Court that they have visited the premises which consists of open hall located on the first and second floor of a place which is authorized to be used as a Municipal Market. The objection of the learned counsel for the petitioner is that it is big open hall and not demarcated or partitioned.

4. Upon this statement the learned counsel for the Corporation makes a categorical statement that they have left the space open so that according to the allotment and the eligibility of each of the tenant, the area would be demarcated, and the partition walls would be installed. The learned counsel for the Corporation makes a statement, that on the offer being accepted, the said hall would be demarcated and partition walls be put in after measuring and demarcating the eligibility of the each of the petitioner as well as the other tenants who are sought to be removed in light of the bottleneck situation and the policy of the

Corporation.

In such circumstances, I am of the express opinion that the petitioner do not deserve anything more than this since the Corporation itself has offered an alternative premises and the objection of the learned counsel for the petitioner that the premises are not road facing and are not easily accessible for common people thereby posing difficulties for carrying out their business is apparently erroneous.

In light of the photographs that have been placed on record by the Corporation. The photograph produced by learned counsel for the Corporation are taken on record and exhibited as Exhibit-A. Another objection of the learned counsel for the Corporation that the new premises are not located in the vicinity is also countered by the Corporation by stating that it is located approximately 1 k.m. from the premises where the petitioners are presently carrying their business.

5. In light of the aforesaid observation, it is upto the petitioners to take the said premises which are offered by the Corporation and if they are ready and willing to do so, they can express their willingness and choose the space in the said hall which is been offered within a period of three days from today. In such contingency those of the petitioner's who accept the premises are granted 7 days time to relocate themselves. However, in a contingency whether the petitioner's do not accept the offer, then, on expiry of 3 days from today, the Corporation is at liberty to initiate appropriate action.

6. Let the matter be listed on 11th January 2019.”

5. On the above background, today, the limited grievance as urged on behalf of the petitioners is that though formal allotment letters are received, however, the Municipal Corporation is not so far clear in regard to three issues which are contained in the allotment letters. Attention of the Court is drawn to one of such allotment letter dated 9 January 2019 addressed to Shri. Vasant Narayan Kokate as placed on record on the following conditions of the allotment letter, the petitioners have raised a concern:-

“(i) That you shall construct internal 4 ½” thick light weight partition wall, provide electric wiring & fixtures etc. entirely at your own cost. The demarcation will be given by A.E. (Market) in due course, before starting construction work.

(ii) That you can choose any Commodity specified in Sch. JJ of the MMC Act.

(iii) That this allotment is made purely as a licensee of Market Department and not on tenancy or ownership basis.”

6. Mr.Lad, learned Counsel appearing for the MCGM, on instructions, submits that in regard to the first condition pertaining to the construction of the partition wall, in the peculiar facts and circumstances of the present case and without the same being treated as precedent, the Municipal Corporation shall undertake construction of the “internal appropriate partition walls within two weeks from today as also the Municipal Corporation will permit the petitioners to apply for electricity connection”. As regards the second condition on the nature of the business, Mr.Lad on instructions submits that the petitioners would be permitted to carry out the same business as they were conducting prior to the demolition of their original premises situated at M.G.Road and that the petitioners would be permitted to make a fresh application and the said application shall be considered and licences would accordingly be issued.

7. As regards the third contention that the allotment in the fresh premises would be merely as the licencees, Mr.Lad, learned Counsel

appearing for the MCGM on instructions submits that the petitioners are being accommodated in the new premises under these allotment letters on the same terms and conditions as they stood at the premises situated at M.G. Road.

8. All the above statements as made on behalf of the Municipal Corporation are accepted.

9. In the above circumstances and in view of the fair stand taken by the Municipal Corporation, further adjudication of these petitions is not called for.

10. The petitions are accordingly disposed of in the aforesaid terms.
No costs.

[G.S. KULKARNI, J.]