

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION (L) NO. 4004 OF 2020

Mohammed Hanif Yakub Patel ... Petitioner

Versus

The Municipal Commissioner, Municipal Corporation
of Greater Mumbai and others ... Respondents

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Mr. Vasim Siddiqui alongwith Mr. M.H. Mulla for the Petitioner.

Ms. Manisha Jagtap for Respondent No.4.

Mr. Vishal Kanade alongwith Mr. Mohan Salián instructed by MGS Legal for
Respondent Nos.7 and 8.

Ms. Vandana Mahadik instructed by Ms. Aruna Savla for the MCGM.

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CORAM : S.J. KATHAWALLA AND

RIYAZ I. CHAGLA, JJ.

DATED : DECEMBER 10, 2020.

P.C. :-

1. By the above Writ Petition, the Petitioner has sought the following reliefs :-

“(a) That this Hon’ble Court be pleased to issue the writ of mandamus under Article 226 of the Constitution of India or any other appropriate writ/order and direct Respondents to:

(i) Direct the Respondent Nos.1 to 6 to withhold/stop issuance of Occupation Certificate in respect of under construction rehabilitation building situated on the piece and parcel of land admeasuring 626.26 sq.meter, bearing C.S. No.1760 of Byculla Division, E Ward No.3996, situated at Street No.23 & 27 Sankli Street Cross Lane, Mumbai – 400 008, until the Respondent Nos.7 and 8 execute agreement for allotting permanent alternate

accommodation as per clause 23 of the NOC dated 19.12.2012 and until the allotment of the shop/NR No.5 being made to the Petitioner, as shown in layout plan annexed at Exhibit-C hereto

AND

(ii) Direct the Respondent Nos.7 & 8 to pay to the Petitioner the pending temporary transit accommodation charges, due and payable from June 2020 and be ordered and directed to pay the transit accommodation charges till the Respondent Nos.7 & 8 having handed over possession of permanent alternate accommodation to the Petitioner AND

(iii) Restrain the Respondent Nos.7 & 8 by writ/order/direction of the Hon'ble Court from causing allotment of Shop/NR No.5 of layout plan annexed at Exhibit-C hereto, to any other tenant/allottee or any third party, until hearing and final disposal of the present petition."

2. As far as the relief seeking permanent alternate accommodation is concerned, the developer states that he will execute a Permanent Alternate Accommodation Agreement with the Petitioner within a period of one week from today. The statement is accepted as an undertaking given to the Court. A copy of the draft Permanent Alternate Accommodation Agreement shall be forwarded to the Advocate for the Petitioner by 5.00 p.m. today.

3. As far as the compensation in lieu of temporary alternate accommodation is concerned, the developer has admittedly paid the same upto November 2020. He undertakes to pay the monthly compensation as agreed under the Development Agreement on or before the 10th day of each month until he gets the occupation certificate and/or puts the Petitioner in possession of his permanent alternate

accommodation. As far as Shop/NR No.5 is concerned, it is specified in the possession letter that Shop No.9 will be allotted to the Petitioner. The developer undertakes to handover Shop No.9 to the Petitioner upon receiving the Occupation Certificate. However, the Petitioner states that there is an oral Agreement by which the developer has agreed to allot Shop No.5 to the Petitioner. It is not possible for us to determine this issue whilst exercising our jurisdiction under Article 226 of the Constitution of India. If the Petitioner wants to pursue his argument/submission qua the alleged oral Agreement, he may do so by filing a Suit against the developer seeking appropriate reliefs. In the event of any such suit being filed by the Petitioner, the same shall be decided on its own merits. The above Writ Petition is accordingly disposed off.

(RIYAZ I. CHAGLA, J.)

(S.J. KATHAWALLA, J.)