

Prajakta Vartak

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.2391 OF 2021**

**William Peter D'Souza & Anr.
versus**

..Petitioners

**Kalyan Dombiwali Municipal
Corporation & Ors.**

..Respondents

.....
Mr.Suhas Deokar with Mr.Atmaram Patade for Petitioners.
Mr.A.S. Rao for Respondent No.1/KDMC.
Mr.G.S. Bhatt for Respondent No.3.
.....

**CORAM :- DIPANKAR DATTA, CJ &
G. S. KULKARNI, J.**

DATE :- JULY 09, 2021.

PC :

1. The challenge as laid in the petition is to a notice issued by respondent no.1-Kalyan Dombivli Municipal Corporation (for short "KDMC") dated March 25, 2021 issued under sections 268(1)(c), (2) and (5) of the Maharashtra Municipal Corporation Act, 1949 and a consequent communication of the KDMC dated June 21, 2021. By the impugned notice, the petitioners are called upon to vacate the premises occupied by the petitioners the details of which are set out in paragraph 2 of the writ petition (for short 'the premises').

2. The impugned notice and the communication were issued for the reason that the premises were rendered

dangerous for human habitation. Respondent No.3 is the landlord of the premises, also there are other structures on the land in question.

3. On the earlier occasion when we had heard this petition, it was contended by Mr.Deokar, learned counsel for the petitioners, that the Ward Officer had no authority to issue impugned notice. Mr.Rao, learned counsel for the Municipal Corporation had placed before us a decision of the Municipal Corporation which showed that the Ward Officer was delegated the powers to issue the impugned notice. Thus, the challenge to the notice on such ground could not be taken forward by the petitioners.

4. On this backdrop, we have heard learned counsel for the parties. It appears to us from the record that the premises which are in occupation of the petitioners are more than 50 years old and have become dangerous for the petitioners habitation and are likely to collapse as informed by the Municipal Corporation.

5. Mr.Deokar, learned counsel for the petitioners had submitted that the petitioners ought not to be called upon to

vacate the premises and that the petitioners should be permitted to undertake structural repairs, for the reason that respondent no.3 has so far not shown any willingness that the petitioners would be provided with alternate premises of an equivalent area in the redeveloped premises which would be constructed by the respondent no.3-landlord. We had accordingly called upon the respondent no.3-landlord to place on record its stand on such contention as urged on behalf of the petitioners. Accordingly, an affidavit of respondent no.3 dated July 06, 2021 is placed on record in which the respondent no.3 has agreed to provide to the petitioners accommodation of equivalent existing area in the newly constructed building. Such averment is made in paragraph 8 which reads thus:-

“8] I say that the Respondent No.3 agrees and undertakes to this Hon’ble Court to provide Accommodation of equivalent existing Area to the Petitioner in the newly constructed building in the said Property on tenancy basis as per law and in case the petitioners are interested in ownership, the deponent is ready to provide the same area at a subsidized rate of Rs.2000/- per sq. ft. where as the market value as on today is at about Rs.8000/- per sq. ft.”

We accept such statement as made on behalf of respondent no.3.

6. The other concern as raised by Mr.Deokar is in regard to the measurement of the area in occupation of the petitioners, He states that at a time the petitioners would vacate the premises, the Municipal Corporation ought to undertake measurement of the actual area in occupation of the petitioners. Mr.Rao, learned counsel for the KDMC has submitted that under the usual exercise as undertaken by the Municipal Corporation in regard to the structures which are called upon to be vacated, a measurement of the area in occupation is undertaken by the Municipal Corporation. We are of the opinion that it would be appropriate that a joint measurement of the area of the petitioners be undertaken by the KDMC in the presence of representative of the landlord and the petitioners, so that the same can be certified and put on the record of the Municipal Corporation as also furnished to the parties.

7. We accept the assurances of the respondents.

8. As both the apprehensions of the petitioners as noted by us stand satisfied, Mr.Deokar, on instructions, submits that the petitioners would intend to withdraw this petition, he however submits that considering the fact that the monsoon has already set in, the petitioners be permitted to occupy premises till September 30, 2021. In so contending Mr.Deokar states that for such period, the petitioners shall occupy the premises at their own risk and consequences. Mr.Bhatt, learned counsel for respondent no.3 would not have any objection to such suggestion as made by Mr.Deokar.

9. We accordingly permit the petitioners to occupy the premises till September 30, 2021, however, they shall do so at their own risk and consequences, and in the event of any untoward incident of building collapse, the petitioners shall not hold liable the municipal authorities and/or any other authorities and the landlord. The petitioners shall place on record within one week from today an undertaking that the petitioners shall vacate the premises on or before September 30, 2021. Copy of such undertaking by the petitioners shall be forwarded to the KDMC as well as to the advocate for respondent no.3. The impugned notice and communication

hence shall stand suspended till September 30, 2021. In the event such an undertaking is not furnished as directed, the KDMC is free to pursue the impugned notices.

10. Subject to the above terms, we permit the petitioners to withdraw this petition.

11. Disposed of. No costs.

(G. S. KULKARNI, J.)

(CHIEF JUSTICE)

corrected as per speaking to minutes order dated 14.07.2021.