

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.2450 OF 2018
WITH
CHAMBER SUMMONS NO.329 OF 2018
IN
WRIT PETITION NO.2450 OF 2018

Kishen H. Dhingra & Ors. ...PETITIONERS
V/S.

Municipal Corporation
Of Greater Mumbai & Ors. ...RESPONDENTS

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Dr.Vineet Naik, Sr.Counsel with Adv.Farhan Dubash, Adv.Chaitanya Chavan, Ms. Supriya Bhatkarand and Mr. Sagar Parab i/b. M/s.Vigil Juris for the Petitioners.

Mr.Vikram Walwalkar a/w Ms.Vandana Mahadik for the Respondent-MCGM.

Mr. S. B. Gore, AGP for the Respondent-State.

Mr.Jagdish Aradwad (Reddy) for the RespondentNo.6.

Mr. Yogesh Sankpal, Advocate for the Respondent No.8.

Mr. Sameer Khedekar for the Respondent No.9.

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CORAM : A.A. SAYED &

S.G.DIGE, JJ.

DATED : 11 OCTOBER 2021

P.C.:

We have heard learned Senior Counsel for the Petitioners and the learned Counsel for the Respondent-Corporation. The parties are agreed that no reasons be given for passing the following order:

ORDER

1. The Petitioners are allotted Final Plot No. 116 situated at Vile Parle (East), Mumbai under the Town Planning Scheme No. V in lieu of acquisition of their Original Plot No. 212 in terms of Rule 13(9) of the MRTP Scheme Rules, 1974. During the pendency of the present Petition, Respondent-MCGM has issued Notices dated 6th August 2021 and 18th August 2021 calling upon the Petitioners to take vacant possession of the Final Plot No. 116. By Notice No. ACKE/4264/AEM-I/Gen dated 30th August 2021, the Respondent-MCGM called upon the Petitioners to vacate the Original Plot No. 212 within a period of 30 days. However, considering the pending litigation being L.C. Suit No. 4321 of 2004 filed by the occupant of Final Plot No.116 before the Bombay City Civil Court at Dindoshi (the Respondent-MCGM is a Defendant in the said suit), the Petitioners expressed their inability to take the possession thereof on *as is where is basis*.
2. Having regard to the facts and circumstances of the case, we direct the Bombay City Civil Court at Dindoshi to dispose of the aforesaid pending litigation i.e. L.C.Suit No. 4321 of 2004, which we are told is part-heard, as early as possible and in any event before 28 February 2022.

3. The Petitioners undertake to accept the vacant and absolute possession of the Final Plot No. 116 upon the pending L.C.Suit No. 4321 of 2004 being dismissed. The Petitioners undertake to take vacant possession of the Final Plot No.116 within a period of 30 days from the date of receipt of the written intimation from the Respondent-MCGM along with a copy of the judgment and decree passed in the said L.C.Suit No.4321 of 2004. The Undertaking submitted by the Petitioners to vacate the original Plot No.212, is taken on record and marked Exhibit X for identification.
4. In the event of the said Suit being decreed in favour of the Plaintiff therein, and Petitioners are prevented from taking vacant and unencumbered possession of the Final Plot No.116, or in the event any favourable orders eventually being passed in Appeal, Revision or Writ Petition that may be filed by the Plaintiff in the said suit, the Petitioners shall be entitled to claim compensation in lieu of the Final Plot No.116 as per the prevailing market rate of the Final Plot No.116. In such event, the Respondent-MCGM shall be liable to either pay the monetary compensation in accordance with law or allot another suitable and similar Plot in the vicinity.

5. In light of the above the Respondent-MCGM shall not take any steps against the Petitioners based on the Notice dated 30th August 2021 No. ACKE/4264/AEM-I/Gen until 30 days from the receipt of written intimation as provided in para 3 above.
6. The Respondent-MCGM shall not seek any unnecessary adjournments in the said Suit and shall co-operate in the disposal of the said Suit within the stipulated time.
7. All the contentions of the parties are kept open.
8. The Petition to stand disposed of in the above terms.

(S.G.DIGE,J.)

(A.A.SAYED, J.)