

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

WRIT PETITION NO. 3271 OF 2021

Sandeep Ghate and Anr. ... Petitioners
Versus
Assistant Engineer & Ors. ... Respondents

Ms. Ronita Bhattacharya for the Petitioners.
Adv. V. Mahadik for the Respondent-BMC.
Mr. Vaibhav Kamble, JE present.

**CORAM : A. A. SAYED &
ABHAY AHUJA, JJ**

DATED : 16th DECEMBER, 2021

P.C.:

The Petition is filed seeking the following relief:

“(b) That this Hon’ble Court be pleased to issue a writ of mandamus or any other appropriate writ, order or direction in the nature of mandamus directing the Respondent Nos. 1 and 2 to ensure the Petitioners are allotted appropriate alternate premises, in writing, in lieu of their existing structures in terms of the provisions of “Bottleneck/missing links of the DP roads” Policy of the Municipal Corporation of Greater Mumbai bearing Circular No. Ch.E./DP/199922/ES dated 20.03.2017 prior to the demolition of their existing structure.”

2. At the outset, we note that the Petitioners are willing to shift from their commercial structures which are affected by bottleneck/missing link of DP Road/ TP Road / RL. The guidelines in

respect of the said bottleneck/missing link of the DP Road / TP Road / RL Policy are specified in the Circular dated 20.03.2017 of the Respondent-Corporation (page 37 of the Petition) and the Circular dated 06.02.2019 (copy of which has been tendered across the bar by learned Counsel of the Respondent-Corporation).

3. So far as Petitioner No. 2 is concerned, learned Counsel for the Respondent-Corporation, on instructions from Mr. Dattatray Shingare, JE, Market, states that the Petitioner No. 2 has been offered alternate premises admeasuring 647 sq.ft. on the ground floor, CTS No. 66 (pt.), 90 (pt) of village Vikhroli, Municipal Market Building, Firoz Shah Road, behind Ambrapali Building, Vikhroli (East), pursuant to the Application submitted by the Petitioner No. 2. She, however, states that some articles are lying in the said alternate premises and the same shall be removed at the earliest. Learned Counsel for the Petitioners states on instructions that the said alternate premises is acceptable to the Petitioner No. 2, however the same may be made and given in a habitable condition.

4. We accept the statements of both the learned Counsel and direct the Respondent-Corporation to issue the allotment letter and handover vacant possession of the alternate premises

admeasuring 647 sq.ft. on the ground floor, CTS No. 66 (pt.), 90 (pt) of village Vikhroli, Municipal Market Building, Firoz Shah Road, behind Ambrapali Building, Vikhroli (East) to the Petitioner No. 2 within four weeks from today. The Respondent-Corporation shall ensure that the alternate premises is in a habitable condition and carry out any works, if necessary. Upon the Petitioner No. 2 being handed over the alternate premises, the Petitioner No. 2 shall simultaneously handover possession of the premises presently in his occupation to the Respondent-Corporation.

5. So far as the Petitioner No. 1 is concerned, learned Counsel submits that the alternate premises and/or compensation offered are not acceptable to the Petitioner No. 1 and what is being offered is not in accordance with the policy of the Respondent-Corporation as specified in the Circular dated 20.03.2017 and Circular dated 06.02.2019. Learned Counsel for the Petitioners has tendered two Compilation of Documents. She has invited our attention to a copy of Inspection Extract issued by the Respondent-Corporation. According to learned Counsel for the Petitioners, this document reflects that the 1st date of assessment of the premises presently occupied by the Petitioner No. 1 is prior to 1961-62. It appears that the said document was not produced

before the Authority. It is not in dispute that the Petitioner No. 1 has been held eligible for alternate premises.

6. We have gone through the policy of the Respondent-Corporation as specified in the Circular dated 20.03.2017 (page no. 37 of the Petition) and the Circular dated 06.02.2019. Paragraph no. 7 of the Circular dated 20.03.2017 lays down the eligibility criteria. It reads as follows:

ELIGIBILITY CRITERIA:

i) Category-A: Authorized structures, Tolerated structures, residential existing prior to 17.04.1964 and commercial existing prior to 1.4.1962.

ii) Category-B: Structures protected under State Govt. Policy existing prior to 1.1. 2000. (As per GOVT. gazette issued u/no. SRS-1001/C NO.125/14/SRA-1 DT 16.05.2015). Or the dates as per the Notification/Gazette issued by GOM from time to time under the Maharashtra slum Areas (Improvement, Clearance and Rehabilitation) Act 1971 as amended up to date.

iii) Documents to be considered for eligibility

Sr. No.	Category	Documents to be considered for eligibility
1	A	Old City Survey Plan, First date of assessment;, Licenses issued by License Deptt. And Health Deptt. Etc. On or before datum line i.e. 17.4.1964 for residential user and 1.4.1962 for commercial user and other relevant and authentic documents thereof.
	B	Photo passes issued by the competent authorities. Censuses verification letter issued by the competent authorities. Ration Card /Electricity bill/Electoral roll/first date of assessment etc. And other relevant and

		authentic documents for residential structures existing prior to 1.1.2000. License issued by Shops & Estt. Electricity Bills, license from Health Deptt. And License Deptt; date of assessment etc. And other relevant and authentic documents for commercial structures existing prior to 1.1.2000 as applicable as per Govt. gazette issued u/no. SRS-1001/C NO.125/14/SRA-1 DT 16.05.2015 Or any other documents prescribed as per notification/Gazette/Circulars issued by the GOM from time to time under the Maharashtra slum Areas(Improvement, Clearance and Rehabilitation) Act 1971 as amended up to date.
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The documents for deciding eligibility for structures under category A & B shall be scrutinized by the Ward staff.

7. In the present case, we find that the area occupied by the Petitioner No. 1 as reflected in the survey carried out by the Respondent-Corporation (page no. 48 of the Compilation) shows 52 sq.mtrs. i.e. 560 sq.ft. (approx). The other documents in the Compilation of documents show different areas. There are discrepancies in the area based on which the Petitioner No. 1's entitlement for alternate premises and/or compensation is offered to the Petitioner No. 1. Moreover, we find that there is no clarity on whether the Petitioner No. 1's premises fall in Category (A) or

Category (B) (of the Circular of 2017) and what is the quantum of compensation being offered to the Petitioner No. 1. Moreover, it is stated in paragraph 4 of the Petition, the landlord of the Petitioner has filed a suit in the City Civil Court which has granted ad-interim protective reliefs. It is not clear if any compensation is being offered to the said landlord.

8. Having regard to the controversy involved and discrepancy in the area entitlement of the Petitioner No. 1 and/or compensation and other factual aspects involved, we are of the view that the following order would meet ends of justice:

ORDER

(i) We permit the Petitioner No. 1 to make representation to the Respondent No. 2 annexing thereto all the documents.

(ii) The Respondent No. 2 shall decide the representation of the Petitioner No. 1. The Respondent No. 2 shall take a decision on (1) the area on the basis of which the entitlement of the Petitioner No. 1 is arrived at (2) whether Petitioner No. 1 falls in Category (A) or Category (B) of the Circular of 2017 and the area being offered to the Petitioner No. 1 as alternate premises (3)

the alternate premises being offered to Petitioner No. 1 and their availability for inspection (4) the compensation (with calculations i.e. break-up of area and rate per sq.mt.) being offered to the Petitioner No. 1 in lieu of alternate premises (5) the compensation, if any, offered to the landlord.

(iii) The Petitioner No. 1 shall appear before the Respondent No. 2 alongwith his representation on 30.12.2021 at 11.00 AM. The Respondent No. 2 shall hear the Petitioner No. 1 (and the landlord, if necessary), and pass a speaking order expeditiously and in any event by 4th January, 2022. We make it clear that the representation shall be decided without being influenced by the earlier orders of Authorities of the Respondent-Corporation.

(iv) Until the representation of the Petitioner No. 1 is decided, status quo in respect of the present premises occupied by the Petitioner No. 1, shall be maintained.

(v) The Petitioner No. 1 shall file an Undertaking in this Court on or before 30th December, 2021 stating that subject to the remedies available to him in law to seek

reliefs, he shall vacate the structure occupied by him within 2 weeks from the date of the decision of the Respondent No. 2.

10. The Petition to stand disposed of in the aforesaid terms. We make it clear that we have not expressed any opinion on merits and all contentions are kept open.

(ABHAY AHUJA, J.)

(A. A. SAYED, J.)