

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

WRIT PETITION NO. 3514 OF 2019

Mukesh K. Lathia & Ors.

...Petitioners

Versus

Municipal Corporation of Greater
Mumbai & Ors.

...Respondents

Mr. Ramesh D. Soni a/w Mr. Chetan Yadav and Mr. Samarth Patel for
the Petitioners

Mr. Sagar Patil for the Respondent Nos.1, 3. 4 & 5–MCGM

Mr. Shamrao B. Gore, A.G.P. for the Respondent No.2-State

Mr. Amogh Singh i/b Mr. Gandhi Jeet Jaikumar for the Respondent
No. 6

**CORAM : REVATI MOHITE DERE &
SHARMILA U. DESHMUKH, JJ.
TUESDAY, 19th JULY 2022**

P.C. :

1 Learned counsel for the petitioners submits that during the
pendency of the aforesaid petition, the petitioner No. 2 has expired.
Learned counsel for the petitioners seeks leave to amend the petition
to implead Pratik Bharat Lathia, the only heir and sole legal

representative of the petitioner No. 2. None of the counsel appearing for the respective respondents have any objection, if the aforesaid amendment is allowed. Hence, leave to amend to implead Pratik Bharat Lathia as Petitioner No.2A is granted. Amendment be carried out forthwith. Re-verification is dispensed with.

2 During the pendency of the petition, there was a settlement between the petitioners and the respondent No. 6. Vide order dated 13th July 2022, in view of the settlement between the parties, we directed the respondent No. 6 to file an affidavit-cum-undertaking of the respondent No. 6 as to how the monies would be paid to the three petitioners, who are the only residents of the said building presently, all the other residents having vacated.

3 Today, learned counsel for the respondent No. 6 has tendered an affidavit-cum-undertaking on behalf of the respondent No. 6 dated 18th July 2022. The said affidavit-cum-undertaking is taken on record. In paras 10 to 12, the respondent No. 6 has stated

as to how the total consideration would be paid to all the three petitioners. As far as petitioner No. 1-Mukesh Lathia and petitioner No. 3-Kishan Sharma are concerned, they are the tenants of the building. As far as petitioner No. 2 is concerned it appears that during the pendency of the aforesaid petition he has expired and as such learned counsel for the petitioner states that the monies be paid to the petitioner No.2A-Pratik Bharat Lathia, who is the only heir and legal representative of the petitioner No. 2.

4 Mr. Soni, learned counsel for the petitioners submits that Mr. Pratik Lathia is the sole legal heir and representative of the petitioner No. 2 and that Pratik Lathia has no sibling and that his mother has also expired. He submits that the petitioner No.2A-Pratik Lathia is also ready to file an undertaking in this Court, to the effect that he is the sole heir and legal representative of the petitioner No. 2 and that, if the said statement is found to be incorrect, he will indemnify the others.

5 From the affidavit-cum-undertaking filed by the respondent No.6, it appears that a very small amount has been paid to the petitioners and that a substantial amount is to be paid to the petitioners on or before 15th September 2022. The respondent No. 6 in paras 10 to 12 of the affidavit-cum-undertaking has undertaken to pay Rs. 73,00,000/- to the petitioner No. 1; Rs. 64,00,000/- to the petitioner No. 2A and Rs. 81,00,000/- to the petitioner No. 3, on or before 15th September 2022. Learned counsel for the respondent No.6 submits that if the said amounts are paid prior to 15th September 2022, the petitioners be directed to vacate the said premises and handover clear, vacant and peaceful possession of their respective premises to the respondent No.6, within 24 hours of the receipt of the said amounts.

6 Learned counsel for the petitioners, on the instructions of the petitioners, who are present in Court, states that the petitioners, on receipt of the aforesaid amounts, will vacate the premises within 24 hours of receipt of the said amounts, handover clear, vacant and

peaceful possession of the respective premises, to the respondent No. 6.

7 The petitioners were directed to file an undertaking in this Court vide order dated 22nd December 2017 stating therein, that they will continue to occupy their respective structures at their own risk and that in the event of collapse of the building or any part thereof, the petitioners will be solely responsible for the loss or damage caused to the third parties. Learned counsel for the petitioners submits that the said undertaking have already been filed by the petitioners. Statement accepted. In addition, petitioner No.2A-Pratik Lathia to file an undertaking in the Registry of this Court, within two weeks from today, to the effect that he is the sole heir and legal representative of the petitioner No. 2 and that, if the said statement is found to be incorrect, he will indemnify the others.

8 As soon as peaceful and vacant possession is handed over by the petitioners to the respondent No. 6 on receipt of the aforesaid

amounts, the respondent No. 6 to inform the Corporation so as to enable the Corporation to take appropriate steps in accordance with the notice issued under Section 354 by the Corporation.

9 In view of the aforesaid order, nothing survives for further consideration in the petition. Petition stands disposed of accordingly.

10 All concerned to act on the authenticated copy of this order.

SHARMILA U. DESHMUKH, J.

REVATI MOHITE DERE, J.