

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 1470 OF 2021

Shree Samarth Vyayam Mandir, Dadar }
is a charitable trust duly registered }
under the Societies Act having its }
registered office at P.L. Kale Marge, }
Guruji Marg, Gokhale Road, Dadar } ...Petitioner
(West), Mumbai 400 028. }

V/s.

1. The Mumbai Municipal Corporation }
statutory body established under the }
Bombay Municipal Corporation Act, }
1988 and having its head office at }
Mahapalika Bhava, Mahapalika Marg, }
Fort, Mumbai-400 001. }

2. The Assistant Municipal }
Commissioner, "G/Ward", }
Harishchandra Yelve Marg, Behind }
Plaza Cinema, Dadar (W), Mumbai- 400 }
028. }

3. The Assistant Engineer }
G/North Ward, Harishchandra Yelve }
Marg, Behind Plaza Cineme, Dadar (W), }
Mumbai- 400 028. }

4. The State of Maharashtra }
through the office of the Government }
Pleader, Original Side, High Court, } ...Respondents
Mumbai. }

Mr. Vishwajeet Kapse and Mr. Sameer Bhalekar for the petitioner.
Ms. Pooja Yadav I.by Mr. S. K. Sonawane for MCGM.

Mr. Amit Shastri-AGP for State/Respondent N.4

**CORAM : SUNIL B. SHUKRE &
M.W. CHANDWANI, J.J.**

DATE : 1ST FEBRUARY 2023.

ORAL JUDGMENT : (PER SUNIL B. SHUKRE, J)

. Heard.

2. Rule. Rule made returnable forthwith. Heard finally by consent of the learned counsel for the parties.

3. It is not in dispute that the building in question is classified as C-1 category building, requiring immediate demolition, it being in a dangerous condition. If this is so, the Rationing office of respondent no.4, which is occupying first floor of the building in question, would have to immediately vacate the tenanted premises. Even if the Rationing office vacates tenanted premises, its interest would remain protected as such protection has been granted to a tenant like the Rationing office. The guidelines issued by the Municipal Corporation of Greater Mumbai under the directions of this Court in Writ Petition(O.O.C.J) No. 1080 of 2015 and one more petition, granted

protection to the tenants like Rationing office. After vacating C-1 category building, the tenant does not lose any right to be provided with permanent alternate accommodation. This is to be seen in guideline no. 1.15 relating to private buildings, which is reproduced below for the sake of convenience :

“The Corporation shall, while granting the sanction for redevelopment, the zonal building proposal department shall include a condition in Intimation of Disapproval (IOD) that “unless and until an agreement either providing a permanent alternate accommodation in newly constructed building or a settlement is arrived at by and between the tenants and / or occupier and the landlord, no Commencement Certificate (C.C.) will be issued under section 45 of M.R.&T.P. Act 1966”.

4. After the directions were issued by the High Court with a view to protect the interest of the tenants and the occupiers, certain amendments were also introduced to section 354 of Mumbai Municipal Corporation Act, 1888. By these amendments sub sections 3, 4, 5 and explanation were added by the Maharashtra 22 of 2017 w.e.f. 19.01.2017. Out of these amendments, the provisions made in sub sections 3, 4 and 5, read with Explanation are important and therefore,

they are reproduced as under:-

(3). If it shall appear to the Commissioner that any building is dangerous and needs to be pulled down under sub-section (1), the Commissioner shall call upon the owner, before issuing notice thereunder, to furnish a statement in writing signed by the owner stating therein the names of the occupiers of the building known to him or from his record, the area in occupation and location of premises in occupation, possession of each of the respective occupiers or tenants, as the case may be.

(4). If he fails to furnish the statement as required by sub-section (3) within the stipulated period, then the Commissioner shall make a list of the occupants of the said building and carpet area of the premises in their respective occupation and possession along with the details of location.

(5). The action taken under this section shall not affect the *inter se* rights of the owners or tenants or occupiers, including right of re-occupation in any manner.

Explanation – For the purposes of this section, “the tenant” shall have the same meaning as assigned to it in clause (15) of section 7 of the Maharashtra Rent Control Act, 1999).

5. The Guidelines referred to above and the provisions made in sub section 3, 4 and 5 read with explanation to section 354 show that even if building is pulled down in terms of the provisions made in section 354, the intersey rights of the owners or tenants or occupiers including right of re-occupation in any manner are not affected, that the term “tenant” has the same meaning as assigned to it in clause (15) of section 7 of the Maharashtra Rent Control Act,1999 and that the Commissioner is required to call upon the owner, before notice for demolition is issued, to furnish a statement in writing signed by the owner stating therein the name of the occupiers of the building known to him.

6. With these provisions in place and also the fact that the petitioner- the owner of the building is not disputing Rationing office’s claim as being tenant of the petitioner, the Rationing office must not be apprehensive of losing all rights while vacating the subject premises, as all its rights are already protected under the guidelines and in terms of the provisions made in section 354 of the Mumbai Municipal Corporation Act. In addition, such protection being enjoyed by the Rationing office, the learned counsel for the petitioner, on instructions,

submits that the petitioner would enter into an agreement with the rationing office regarding providing of permanent alternate accommodation in accordance with Guideline No. 1.15. The statement so made before this Court is accepted and it is treated as an undertaking given to this Court.

7. In support of the statement so made, on instructions, learned counsel for the petitioner tenders across the bar a copy of the letter received by him from the petitioner, which is taken on record and marked as document 'A' for the purpose of identification. In view of the above, we find that the purpose of the petition would be served by issuing directions to the respondent no.4- Rationing office to vacate the tenanted premises within a period of two weeks. Order accordingly.

8. As regards the need for providing transit accommodation, learned counsel for the petitioner, on instructions, submits that the rationing office has already shifted to another building and it is not in need of any transit accommodation, which fact is not disputed by the learned AGP.

9. In view of above, the petition is partly allowed. It is directed that respondent no.4-Rationing office shall vacate the tenanted premises within two weeks from the date of receipt of this order and shall handover the vacant and peaceful possession to the petitioner accordingly. Learned AGP, on instructions, submits that this would be done within a period of two weeks.

10. Rule is made absolute in above terms. The petition is disposed of accordingly. No costs.

(M.W. CHANDWANI, J)

(SUNIL B. SHUKRE, J)