

Arun

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 736 OF 2024

Princecare Amaraa LLP formerly known as ...Petitioner
(Neetnav Constructions)
Versus
Municipal Corporation of Greater Mumbai & Ors ...Respondents

WITH
WRIT PETITION NO. 737 OF 2024

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RAMCHANDRA
SANKPAL

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Date: 2024.04.03
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Mr Bhushan Deshmukh, with Sanjeel Kadam, Soham Salvi & Netra Jagtap, i/b Kadam & Co, for the Petitioners in both Petitions.
Ms Pooja Yadav, for the Respondent-BMC in both Petitions.
Ms Sneha Prabhu, for MHADA in both Petitions.
Mr Gauraj Shah, with SS Redkar, for Respondent No 4 in WP/737/2024.
Mrs Swati Sawant, for Respondent No 4 in WP/736/2024.

CORAM G.S. Patel &
Kamal Khata, JJ.
DATED: 2nd April 2024

PC:-

1. Rule in both Petitions.
2. By consent of the parties, Rule returnable forthwith and Petitions are taken up for final hearing.
3. Respondent No 4 in both Petitions, separate individuals, both sing the same usual tired song in our Court, viz., that they are not opposing redevelopment and then they add this incredible word ‘but ...’ which tells us that they are in fact opposing redevelopment tooth and nail. Both say that until their eligibility is decided redevelopment cannot take place. It does not matter that 40 other tenants are adversely affected or that the building is in a poor state or that these other tenants will have to wait indefinitely while this process of not opposing while still opposing redevelopment goes on.
4. There is simply no substance to these arguments. If these two Respondents believe that they are eligible, they are entitled to make every application available in accordance with law, if not already made and their eligibility will be decided in accordance with law.
5. The continuance of the structure or structures has nothing at all to do with a decision on eligibility. It is clear in every branch of the law that eligibility is decided on the basis of documents establishing occupation and possession prior to a date specified in the applicable policy.
6. Ms Prabhu on behalf of the Maharashtra Housing and Area Development Authority (“**MHADA**”) states that MHADA will

undoubtedly decide the eligibility application, if not already done in accordance with law. As far as Writ Petition No 737 of 2024 is concerned, where the 4th Respondent is Sunil Shantaram Shirke, the hearing has been concluded. Ms Prabhu states that an order on eligibility has been passed. A copy of this is given to Mr Shah on behalf of Mr Shirke in Court today. He is at liberty to take appropriate proceedings in regard to eligibility but this will not come in the way of removal of the structure in question.

7. Both Respondents have also filed civil suits. Ad interim reliefs have been refused. The Interim Applications have simply been kept pending. There is no question of the authorities refusing to proceed further in accordance with the Section 351 notices under the Mumbai Municipal Corporation Act, 1888 (“**BMC Act**”) and of which enforcement is sought.

8. Mr Shah has instructions to state that Mr Shirke will vacate the premises within three weeks from today. We accept that as an undertaking to the Court.

9. In Writ Petition No 736 of 2024, the 4th Respondent, Kailash Keshav Salvi is not in Court. His Advocate has no instructions to make a statement. We cannot treat the two Respondents differently. We grant Salvi time of three weeks to vacate the premises.

10. Rule is accordingly made absolute in these terms.

11. There will be no order as to costs.

12. It is of course clear and this is an undisputed position in law, that if found eligible, the Respondents in question will be entitled to all benefits of redevelopment, including a Permanent Alternate Accommodation Agreement, transit rent if any and other benefits exactly on parity with all other tenants.

(Kamal Khata, J)

(G. S. Patel, J)