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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

INTERIM APPLICATION NO. 491 OF 2024

IN

WRIT PETITION NO. 1573 OF 2023

Netrekrishan Devraj Puri & Anr

...Applicants

In the matter between

Netrekrishan Devraj Puri & Anr

...Petitioners

Versus

The Mumbai Municipal Corporation & Ors

...Respondents

Mr Mohit Arora, with Rubin Vakil, Heena T & Shivam Trivedi, i/b
Vimadadal & Co, for the Applicants/Original Petitioners.

Mr Chetan Kapadia, Senior Advocate, with Y Singh, Amrut Joshi,
 Bharat Jain, Romin Sangoi & Ashutosh Agarwal, i/b IC Legal,
for Respondent No. 3.

Mr Milind More, AGP, for the Respondent-State.

Ms Rupali Adhate, for the Respondent-MCGM.

**CORAM G.S. Patel &
 Kamal Khata, JJ.**

DATED: 20th March 2024

PC:-

1. The Interim Application is without substance. The two Applicants are not entitled to all preferential treatment. We will not entertain any disputes about the area so as to give these Applicants any special advantage.

2. Mr Kapadia for the developer maintains that every person who is being re-accommodated has an area that is computed as per municipal certification, etc. This will be applied to the Applicants as well.

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3. We reject the submission that because some draft with some larger area was shown in previous proceedings or on affidavit or even was reflected in an order of a court this amounts to the Court over-riding the statutory process of municipal certification and sitting in appeal on facts over a municipal certification of the area. To put it differently, had the same argument been made in reverse by the developer (contending that the applicants were entitled to a smaller area than that certified by the BMC), we would have unhesitatingly rejected such an argument by the developer. The tenant can enjoy no superior protection. What applies to one applies to the other. In an IA in a disposed Writ Petition we are not going to entertain factual disputes about area or the factual accuracy of the municipal area certification.

4. The Applicants then demand hardship compensation. Not a single other Permanent Alternate Accommodation Agreement (“PAAA”), Mr Kapadia says, has this provision. We will not permit it for these Applicants.

5. The Applicants want us to make an order in regard to a sharing of the fungible FSI and the corresponding built-up areas. We refuse to do anything of that kind.

6. It is enough to note that the Applicants will be treated on parity with all others in every respect neither less and not in the slightest bit more.

7. The Applicants have already vacated.

8. We give the Applicants time until 28th March 2024 to execute the required PAAAs. If they fail to do so, they will get none of the benefits under the PAAAs. But to safeguard their interests if they are eligible, the flats to which they are entitled will be kept aside and will not be disposed nor possession parted with except upon an order of the Court that may be obtained by the developer in an Interim Application filed after giving adequate notice to the Applicants.

9. This will also mean that without PAAAs the Applicants cannot possibly expect to receive transit rent. The developer will retain an amount of transit rent that would be payable and we accept the statement by Mr Kapadia on instructions that within one week of execution of the PAAA all pending amounts of transit rent and all other financial benefits available to other tenants so far will be paid over to Applicants.

10. No further orders are required.

11. The Interim Application is disposed of in these terms.

(Kamal Khata, J)

(G. S. Patel, J)