

Talwalkar

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 79 OF 2022

Fr Agnelo Fernandes & Anr ...Petitioners
Versus
The Municipal Corporation of Greater Mumbai
& Ors ...Respondents

Mr Sean Wassoodew, with Vijaya Ingule, Rupesh Madhare, Ashna Shah, for the Petitioners.

Mr AY Sakhare, Senior Advocate, with Pooja Yadav, for the Respondent -MCGM.

Mr Jamdar, Asst Engineer(Maintenance), present.

Mr Rekadge, Sub-Engineer(Maintenance), present.

**CORAM G.S. Patel &
Kamal Khata, JJ.**
DATED: 15th January 2024

PC:-

1. There is a further affidavit dated 11th January 2024 of one Mandar Chaudhari, Assistant Engineer, P North Ward. Paragraphs- 2, 3, 7, 8 and 9 of this affidavit are important. They are quoted below:

“2. These Respondents have undertaken the project of widening of Marve Road as per the sanctioned RL of 27.45 Mtrs (90 Feet) & the same is divided in two phases. Phase I is with respect to widening road from Fire Brigade to

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Nazarine Building in the said phase there were 76 structures affected out of which 76 structures are demolished. In Phase II there are 22 structures affected out of which 21 structures are demolished. There is only one structure remaining i.e. Structure no 15, Fathers Bungalow, St Anthony Church, which is affected in road widening of Marve Road from Fire Brigade to 'T' Junction, Malad (West) in "P/North" Ward.

3. In this case, these Respondents had offered monetary compensation amounting of Rs. 1,62,14,132.50/- (Rupees) in lieu of affected structure of "Father's Bungalow" i.e. structure No. 15 which is falling within alignment of R.L. of 27.45 Mtrs. Wide Marve road. The said amount of Monetary Compensation was calculated by considering CAP of 120.08 Sq. Mtrs. As per BMC's policy circular under No. AC/Estate/ 11635/AE(Imp.)-3 Dtd. 12/11/2021.

7. Accordingly; these Respondents had calculated revised amount of compensation as per the Hon. High Court's order Dtd. 15/12/2023 and obtained sanction from Municipal Commissioner under No. MGC/F/1845 Dtd. 05/01/2024; wherein no any CAP has been considered contrary to the present policy circular under No. AC/Estate/4702222/AE(Imp)-3 Dtd. 03/07/2023.

8. The details of calculation are as follows:

Compensation towards affected Father's Bungalow:

= Affected area X Construction Zone Factor X Ready Reckoner Rate 2023-24

= (287.31 X 1.2 X 112570) + (50.00 X 1.1 X 0.75 X 112570)

= 3,88,10,984/- + 4643512.50

= Rs. 4,34,54,496.50/-.

9. Accordingly, a letter is issued to the office bearers of The Petitioner, Fr. Agnelo Fernades & Anr., St. Anthony Church, Marve Road, Malwani, Malad (West), Mumbai - 400 095 on 09/01/2024. Accordingly they have been communicated regarding various compensations in lieu of affected structure and open land, as above. With respect to Compensation towards affected open land, in addition to the compensation for the affected Father Bunglow, this office will also provide the "Area Certificate" of open land affected in the R. L. of 27.45 Mtrs. Marve Road. Hereto annexed and marked at **Exhibit-D** is the copy of the communication dated 09/01/2024."
2. Mr Wassoodew states that on a without prejudice basis (explained below) the Petitioners will accept this revised compensation of Rs. 4,34,54,496.50/-.. He submits that Petitioners' remedies and rights to claim additional compensation should be expressly kept open. We believe that is justified.
3. Accordingly, the Municipal Corporation of Greater Mumbai ("MCGM") will pay the amount computed in paragraph 8 to the Petitioners within a period of four weeks from today. The Petitioners are at liberty to adopt appropriate proceedings if they claim any higher compensation. All contentions in that regard on both sides are kept open. In those proceedings, the MCGM will be entitled to urge that as an exceptional case and in exercise of discretion, special additional compensation has been given to the Petitioners on the basis that it is a religious institution.

4. The Petitioners have been asked to apply for relocation, reconstruction, and consolidation of all 13 plots. That application has been made.

5. The MCGM is directed to process that application on an expedited basis and, in any event, to dispose it off in accordance with law, one way or the other, within no more than 4 weeks from today.

6. The structure can thus be removed after the compensation is paid to the Petitioners. If the payment is made earlier than four weeks from today, the Petitioners will have until four weeks from today to vacate the structure and the plot. In any event, compensation must be paid and the structure vacated within four weeks from today. The Petitioners are not required to vacate if the compensation is not paid.

7. Removal of the structure need not await building permission because there will be undoubtedly a question of several other compliances demanded of which the Petitioners are today not even aware. This order does not dispense with the requirement that the Petitioners must meet all other compliances.

8. The Petition is disposed of in these terms. No costs.

(Kamal Khata, J)

(G. S. Patel, J)