

Wadhwa

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 1496 OF 2019**

Bhavna Kunj Cooperative Housing Society Ltd & ...Petitioner
Anr

Versus

The Municipal Corporation of Greater Mumbai ...Respondents
& Ors

WITH

WRIT PETITION NO. 1010 OF 2024

Vinod Infrastructure Pvt Ltd ...Petitioner

Versus

The Municipal Corporation of Greater Mumbai ...Respondents
& Ors

Mr Rakesh Agrawal, *for the Petitioner in both Petitions.*
Ms Smita Tondwalkar, *for the Respondent-MCGM.*
Mr Virendra B Maurya, *Intervenor-in-person, is present.*
Mr PD Sandikar, *DFO (Fire Department), is present.*
Mr Abhay Y Pednekar, *SE (M), P/N Ward, is present.*

**CORAM M.S. Sonak &
 Kamal Khata, JJ.**

DATED: 18th June 2024

PC:-

1. Heard learned counsel for the parties and Mr Virendra B Maurya who appears in person.
2. The Petitioner's main grievance is that the Fire Safety Department ("FSD") of the Brihanmumbai Municipal Council ("BMC") is not issuing a No Objection Certificate ("NOC") to enable the BMC to grant the Petitioner's building an Occupancy Certificate ("OC"). The Fire Department has stated that the road which leads to the building has encroachments due to which it will be difficult for the fire tender to reach the building in the event of any unfortunate mishap.
3. Admittedly, the FSD is of the BMC. The BMC is responsible for preventing encroachments. If encroachments have taken place, the BMC is responsible for removing them in accordance with the law.
4. Prima facie, for no fault of the Petitioners, OC is being delayed for the building, which was completed in 2018. The BMC must, therefore, solve this problem as soon as possible because this is not a problem of the Petitioner's creation. Still, rather, this is a problem that is created or at least tolerated by the BMC by its inaction.
5. Pursuant to our order dated 6th September 2023, Mr Ujjwalsing D Jamadar, Assistant Engineer (Maintenance) P/North Ward, has filed an Affidavit on behalf of the BMC. The Affidavit reports that 23 structures encroach on the public road. The Affidavit

states that several structures could benefit from the Corporation's bottleneck policy. Therefore, notices are already issued to the owners/occupiers of such 23 structures on 21st April 2023. The Affidavits state that verification of documents is in progress, and the eligibility of the structure holders will be decided at the earliest in terms of the bottleneck policy dated 20th March 2017. By now, this exercise should have been completed.

6. Ms Tondwalkar, learned counsel for the BMC, placed before us the chart indicating that about 19 of the 23 structures are found to be occupied by persons eligible to benefit from the bottleneck policy dated 20 March 2017. There is an issue of eligibility in respect of 4 of the structures.

7. The issue of eligibility or ineligibility is one thing, but once it is admitted that the structures encroached upon the road, it is imperative that BMC takes immediate action to remove these encroachments. The removal of such encroachments is necessary not only to protect the interest of the Petitioners before us but also the interest of all the residents in the locality. If the encroachments continue, and the fire tenders cannot access this area, then a piquant and perhaps an unfortunate situation would arise. Therefore, the encroachments must be removed at the earliest in the interest of all concerned. Certainly, those of the encroachers who are found to be eligible for the benefits of the bottleneck policy should be extended such benefits. However, merely because the issue of eligibility or ineligibility with respect to four encroachers is pending, the

encroachments cannot be permitted to continue for this length of time to the detriment of all concerned.

8. Mr Virendra B Maurya, who appears in person, seeks an adjournment on the ground that he wishes to intervene in this Petition. He says that he has an interest in all these 23 structures and claims that these are legal structures. The BMC Affidavit states that notices have been issued regarding the 23 structures. It is, therefore, open to Mr Virendra B Maurya to respond to these notices and put up his version of the matter before the BMC. If such a response is filed by documents, we are sure that the BMC will consider the same in accordance with the law and on their own merits.

9. For the present, we post this matter after two weeks, i.e., on **4th July 2024**. By this date, the BMC must initiate action to rid this road of all its encroachments. Ms Tondwalkar states that in addition to 23 structures, there are some compound walls that are also encroaching on the public road. If that is so, necessary notices must be issued to the parties who have put up these compound walls so that their response is obtained and further action is taken in the matter. Besides, we are quite surprised that there was no reference to these walls in the affidavits filed by BMC.

10. The Petitioners, or for that matter further residents in the locality, cannot be made to suffer on account of such encroachments on the public road. If such encroachments continue, they will constitute serious hazards, particularly if the fire tenders cannot access this locality. Besides, it is also not fair that the Petitioner has

to wait for over six years to obtain occupancy for no fault of theirs, even though the Petitioner claims to have complied with all the requirements of the municipal laws for constructing the building in question.

11. The BMC must file progress reports/Affidavit of compliance by 2nd July 2024.

12. Stand over to 4th July, 2024

(Kamal Khata, J)

(M. S. Sonak, J)