

Ashwini

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 3599 OF 2024

Bhanumati Mahendra Nagar,
Aged: 49 years, Occ. : Service, having
address at Room No. 17 B, Block, B.N.
Rathod Marg, Tulsiwadi, Tardeo,
Mumbai 400 034.

...Petitioner

~ versus ~

1. **The State of Maharashtra,**
represented by Government Pleader,
OS High Court, Bombay.
2. **The Municipal Corporation of Greater
Mumbai,**
a statutory authority constituted under
the provisions of MMC Act, 1888 and
having its headquarters at MCGM,
Mahapalika Marg, Opp. CSMT,
Mumbai 400 001.
3. **Savita wd/o Keshav Nagar,**
Aged: 56 years, Occ.: Service, residing
at Flat No. 1810, 18th floor, Building
No. B-1, Tulsi Sham Co-op. Hsg.

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Society, Tulsiwadi, Mumbai 400 034.

...Respondents

APPEARANCES

For the Petitioner	Mr Omar Khaiyam Shaikh
For Respondent No.3	Mr Ashwin Vasista.
For Respondent-BMC	Ms Sujata Puri.
For Respondent-State	Ms Jaymala O, Addl. GP, <i>with</i> <i>Dipesh Siroya, AGP.</i>

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

DATED : 23rd August 2024

ORAL JUDGMENT (Per MS Sonak J):-

1. Heard learned Counsel for the parties.
2. Rule. The rule is made returnable immediately.
3. The Petitioner challenges the order dated 30 November 2019 by BMC declaring that the 3rd Respondent is eligible for the flat on an ownership basis under the Tulsiwadi Redevelopment Scheme, in lieu of room no. 17, Chawl B, BN Rathod Marg.

4. There is a Suit pending between the Petitioner and the third Respondent. In this Suit, the Trial Court disposed of Notice of Motion No. 425 of 2018 in LC Suit No. 263 of 2018 on 22nd March 2019, restraining the BMC from dispossessing the third Respondent for the suit premises without following due process of law.

5. The BMC, by completely misinterpreting this interim order, has made the impugned order dated 30th November 2019. This order dated 30th November 2019 records that the Trial Court, in its order dated 22nd March 2019, *“has issued directions to party no. 2 (Municipal Corporation) by taking action as per prevailing laws to rehabilitate the applicant.”*

6. Until the dispute between the Petitioner and 3rd Respondent was adjudicated by the Civil Court, there was no occasion for BMC to make the order dated 30 November 2019. In any event, BMC was not justified in making the order without any notice to the Petitioner and without hearing the Petitioner. On the above grounds, the order dated 30 November 2019 is required to be set aside and is hereby set aside.

7. To our query as to why the order dated 30 November 2019 was being challenged by the Petitioner by filing a Writ Petition in 2024, the Learned counsel replied that the Petitioner was not aware of this order until it was produced before the Trial Court by the 3rd Respondent in July 2023. This explanation is reasonable and deserves to be accepted.

8. As a consequence of setting aside the order dated 30 November 2019, some orders were required regarding the 3rd Respondent's obtaining possession of flat No. 1810, 18th floor, in the Tulsi Shyam CHSL, Tulsiwadi, Mumbai, based inter alia on such order.

9. Learned Counsel for the 3rd Respondent, based on instructions from the 3rd Respondent present in the Court, states that the 3rd Respondent will, without prejudice to the rights and contentions in the Suit, pay the Petitioner an amount of Rs. 11,000/- per month from September 2024 until the decision in LC Suit No. 263 of 2018.

10. If the suit is decided in favour of the Petitioner, flat no. 1810 will have to be handed over to the Petitioner, subject to the third respondent's right to appeal such decree and obtaining interim reliefs on such terms as may be imposed by the appeal court. If the suit is decided in favour of the third Respondent, then subject to the petitioner obtaining any order for continuing the interim relief now granted from the appeal court, the third Respondent would not be liable to pay this amount of Rs 11000/- per month. However, the petitioner shall not be liable to refund the amount paid under this order because but for the impugned order dated 30 November 2019, the third Respondent could not have secured possession of flat no 1810.

11. The 3rd Respondent should pay the Petitioner Rs. 11,000/— per month on or before the 10th of each month. This means that

compensation for September should be paid on or before 10 October 2024.

12. Learned Counsel for the Petitioner states that he will share the Petitioner's bank details with the Advocate for the 3rd Respondent, and based upon the same, the 3rd Respondent will transfer this amount of Rs. 11,000/- to the Petitioner's bank account each month. In case of any two consecutive defaults, liberty is granted to the Petitioner to apply this Court to consider allotment of flat No. 1810, 18th floor, in the Tulsi Shyam CHSL, Tulsiwadi, Mumbai to the Petitioner on such terms and conditions as this Court might deem fit and appropriate.

13. Learned Counsel for the Petitioner, based upon instructions of the Petitioner who is present in the Court, again, without prejudice to the rights and contentions of the Petitioner who is a Defendant in the said Suit, agrees to accept this amount each month.

14. Accordingly, the third Respondent will have to pay the Petitioner Rs. 11,000/—each month for the occupation of flat No. 1810, 18th floor, in the Tulsi Shyam CHSL, Tulsiwadi, Mumbai, with effect from September 2024 until the disposal of LC Suit No. 263 of 2018.

15. The rights of the parties qua room no. 17 in the Chawl or flat no. 1810, 18th floor, in the Tulsi Shyam CHSL, Tulsiwadi, Mumbai, will be determined by the City Civil Court in LC Suit No.

263 of 2018. Depending upon the final decision in the Suit, the BMC will have to determine the issue of eligibility and allotment of flat no. 1810, 18th floor, in the Tulsi Shyam CHSL, Tulsiwadi, Mumbai.

16. The City Civil Court is directed to dispose of LC Suit No. 263 of 2018 as expeditiously as possible. The parties must cooperate with the City Civil Court to dispose of LC Suit No. 263 of 2018. This Suit must be decided without being influenced by the above arrangement made by the parties without prejudice to their rights and contentions. All parties' contentions on merits are left open to be decided by the Trial Court in LC Suit No. 263 of 2018.

17. With the above orders, the Rule in this Petition is disposed of. There shall be no order for costs.

18. All concerned to act on an authenticated copy of this order.

(Kamal Khata, J)

(M.S. Sonak, J)