



Darshan Patil

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 607 OF 2023

Mohammed Javed Shaikh ...Petitioner
Versus
Municipal Corporation for Greater Mumbai and ...Respondents
Ors.

Mr Nitesh Acharya, a/w Akash S Bhogil, for the Petitioner.
Mr G S Godbole Senior Counsel, a/w R M Hajare i/b Sunil
Sonawane, for the Respondent-BMC.
Ms Vaishali Choudhari, Addl GP, for the Respondent-State.

CORAM M.S. Sonak &
Kamal Khata, JJ.
DATED: 09th July 2024

PC:-

1. Heard learned counsel for the parties.
2. This is the case where the petitioner's premises were demolished in November 2017 in the context of the Tansa Pipeline. The petitioner has been held to be eligible for receiving benefits of Permanent Alternate Accommodation ("PAA"). To date, however, the petitioner has neither been provided with any PAA nor any compensation or rent in view of the PAA.

3. Mr Godbole, learned senior advocate for BMC, submitted that the petitioner was offered PAA at Mahul, but the petitioner refused to accept the same. He submitted that the BMC is in the process of acquiring alternate tenements. In terms of the queue system, which is operating, as and when such alternate tenements are acquired, the petitioner will be offered PAA. He, however, states that for the present, there is a shortage of such tenements, and the BMC is not in a position to say when the alternate tenements will be acquired and the petitioner will be provided PAA.

4. Learned counsel for the petitioner submits that the petitioner should at least be paid rent/compensation in lieu of the accommodation. He submitted that such relief was granted by the judgement and order dated 23 September 2019 in Writ Petition NO. 14102 of 18 and connected matters.

5. Mr Godbole submitted that the BMC has appealed against the above decision, and the Hon'ble Supreme Court has directed that the said decision should not be treated as a precedent. He admitted that the direction in the said petition had not been stayed by the Hon'ble Supreme Court.

6. The decision relied upon by the learned counsel for the petitioner holds that there was a serious air pollution problem at Mahul and Ambapada, where the petitioner was earlier offered accommodation by the BMC. The decision then holds that no person can be forced to accept the accommodation at the PAP colonies in Mahul and Ambapada, and even those who were allotted such accommodation at Mahul or Ambapada should now be offered accommodation elsewhere. Till alternate accommodation is made

available, they should be paid Rs.15,000/- (Rupees Fifteen Thousand) per month as transit rent with a security deposit of Rs.45,000/- (Forty-Five Thousand).

7. Even without referring to the decision dated 23 September 2019, we think that the BMC cannot claim that it is presently not in a position to offer PAA and will not pay any rent or compensation in lieu of the said PAA. At least, prima facie, such contention will involve infringement of Articles 14 and 21 of the Constitution of India.

8. The petitioner's house was admittedly demolished in November 2017. The BMC does not dispute its liability to offer PAA. If the BMC is presently unable to provide PAA, at least some rent or compensation deserves to be paid to the petitioner.

9. In the return filed by the BMC, it is stated that the petitioner was held eligible as per Annexure 2 and was also offered allotment at Mahul. It is further stated that the PAPs who have accepted the tenements at the Mahul are now given the option to shift. Until the BMC is able to provide them with alternate accommodation, the BMC is directed to pay a monthly compensation of Rs.15,000/- (Rupees Fifteen Thousand) and a security deposit of Rs.45,000/- (Rupees Forty-Five Thousand). Mr Godbole is presently unable to make any statement about whether Rs.15,000/—is being paid to those covered by the Division Bench's decision. This is despite the fact that the Hon'ble Supreme Court has declined to stay this Court's order.

10. Thus, the only distinction between the petitioner and the other eligible persons is that the other eligible persons actually moved to Mahul, but the petitioner did not. Considering that the NGT has also accepted the position about the bad air quality at Mahul, no discrimination can be practised based on such a circumstance.

11. Mr Godbole states that a detailed reply will be filed pointing out the steps that BMC takes to acquire alternate tenements and the financial implications that BMC might have to face. He states that such a reply would be filed on or before 19 July 2024. If the petitioner wishes to file a rejoinder, the petitioner may do so by 29 July 2024.

12. The record shows that this Court directed BMC on 23 September 2022 to file an affidavit within three weeks. Still, on 5th June 2023, no affidavit was filed and the counsel for BMC reported no instructions. On 5th June 2023, this Court once again requested the Municipal commissioner to impart proper instructions and to file a proper reply in this matter. On 13th March, again Mr Godbole was requested to seek proper instructions. Even today, we find that there are no proper instructions nor is any reply filed. The BMC, after having demolished the Petitioner's house in November 2017 and adjudged the Petitioner eligible to receive the permanent alternate accommodation, cannot treat this matter so casually. The BMC is unable to say when it would allot permanent alternate accommodation and, at the same time, is resisting payment of compensation or rent in lieu of accommodation. The BMC, which is the richest municipal corporation in the Country, cannot act

arbitrarily and completely ignore the plight of the petitioner whose house they demolished in November 2017.

13. Therefore, by way of ad-interim relief, we direct BMC to pay the petitioner an amount of Rs.10,000/- (Rupees Ten Thousand) per month. The first such payment should be made on or before 12 July 2024.

14. Stand over to 29 July 2024 for further consideration and confirmation of ad-interim relief.

(Kamal Khata, J)

(M.S. Sonak, J)