

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO.231 OF 2016

Shri Surendra Vishnu Masurkar)
Citizenship : Indian)
Resident of : Demolished Gayatri Bhuvan)
Address for Correspondence :)
C/o. Arun G. Jogdeo,)
Flat No. 7, 2nd Floor, Gajanan Nivas)
Liberty Garden Road No. 2,)
Malad (West), Mumbai – 400 064) **Petitioner**

Versus

1. The Municipal Commissioner,)
Municipal Corporation of Greater Mumbai)
Mahapalika Marg, Mumbai 400 001)
2. Arvindkumar Hazarimal Jain,)
26, Vijay Villa, 2nd Floor, Jawahar Nagar,)
S.V.Road, Goregaon (West), Mumbai-400062) **Respondents**

Mr. Deven Jogdeo for the Petitioner.
Ms. Jaymala Ostwal with Ms. Rupali Adhate, for Respondent No.1.
Mr. Harshil Panchal i/by Mr. D.S.Jain, for Respondent No.2.

**CORAM: S.J. KATHAWALLA &
N.J. JAMADAR, JJ.**

DATE: 15th NOVEMBER, 2019

JUDGMENT (PER S. J. KATHAWALLA, J.) :

1. The grievance of the Petitioner in the above Writ Petition is that the

Respondent No. 2 – Arvindkumar H. Jain (**‘Landlord/Developer’**) has with the help of the Officers of the Municipal Corporation of Greater Mumbai (**‘MCGM’**) indulged in unfair and illegal conduct which has caused harm, injury and prejudice to the Petitioner/Tenant. It is alleged that though the building named ‘Gayatri Bhuvan’ at Malad (West), Mumbai was demolished by the MCGM pursuant to a Notice issued under Section 354 of the Mumbai Municipal Corporation Act, 1888 (**‘the Act’**), the MCGM has contrary to the conditions set out in its I.O.D., and also contrary to the Order of this Court dated 23rd June, 2014 passed in Writ Petition (L) No.1135 of 2014, and Clause 1.15 of the *“Guidelines for declaring private and Municipal buildings as C-1 category (Dangerous, Unsafe)”* framed by MCGM pursuant to the said Order, issued a Commencement Certificate under Section 45 of the Maharashtra Regional and Town Planning Act, 1966 to the Landlord/Developer in the absence of an agreement providing a permanent alternate accommodation to the Petitioner. It is submitted that such conduct on the part of the MCGM has emboldened the Landlord/Developer to the extent that he has now not only brazenly refused to provide alternate accommodation to the Petitioner on the terms offered to all the other tenants of the demolished building but has also in his Affidavit dared to deprive the Petitioner of his permanent alternate accommodation, which he is entitled to in law, unless the Petitioner undertakes to pay him the alleged expenses and penalty levied upon him by the MCGM for demolishing the building under Section 354 of the Act.

2. The MCGM has also filed an Affidavit admitting that the Landlord/Developer has before obtaining an Occupation Certificate from the MCGM qua the new construction, illegally and unauthorizedly put certain tenants in occupation of the same, for which the MCGM is in the process of taking legal action against the Landlord/Developer.

3. The Petitioner has interalia prayed for a direction to the MCGM to issue a 'Stop Work' Notice to the Landlord/Developer and to appoint a Court Receiver in respect of the project. However, since the construction is already completed and we are now informed that an Occupation Certificate has been issued by the MCGM on 24th October, 2018, we are not inclined to pass any order which will inconvenience the other tenants/flat purchasers. However, as we would like to ensure that justice is meted out to the Petitioner, we will be moulding the reliefs as set out hereinafter.

4. The brief facts in the matter are set out hereunder:

4.1 The Petitioner was the Tenant of Room No.7, situated on the first floor of a building known as 'Gayatri Bhuvan', at Liberty Garden Road No.2, Malad (W), Mumbai - 400 064. (Room No.7 of the Petitioner and the Gayatri Bhuvan Building shall be hereinafter referred to as '**the said Premises**' and '**the Subject Building**' respectively.)

4.2 The Subject Building was originally owned by one Smt. Kamlaben Mistry, who in the year 2006 sold and conveyed the same in favour of the

Landlord/Developer.

4.3 According to the Petitioner, the Landlord/Developer had purchased the Subject Building with an intention to develop/redevelop the same through M/s. Indra Realtors, which the Petitioner later discovered is an unregistered partnership firm, and the Partners of the said firm are the Landlord/Developer along with Mr. Santosh Trivedi and Mr. Harshad Rathod.

4.4 According to the Petitioner, sometime in the month of January/February 2006, the Landlord/Developer along with Mr. Santosh Trivedi and Mr. Harshad Rathod approached him and informed him that they were the new Landlords of the Subject Building and that they intend to redevelop the Subject Building. They also offered to the Petitioner a new flat on ownership basis on the 5th floor in the new building to be constructed.

4.5 The Petitioner was happy with the said proposal and asked the Landlord/Developer to show him the plans approved by the MCGM.

4.6 The Landlord/Developer refused to show any plans to the Petitioner. Instead through his Advocate's Notice dated 15th July, 2006, the Landlord/Developer interalia terminated the tenancy of the Petitioner and called upon the Petitioner to quit, vacate and handover to him peaceful possession of the said Premises upon expiry of one month.

4.7 The Petitioner through his Advocate's Notice dated 25th July, 2006

responded to the Legal Notice dated 15th July, 2006 received from the Advocate for the Landlord/Developer, wherein the Advocate for the Petitioner recorded that the Landlord/Developer was avoiding to furnish copies of the approved plans for the reconstruction of the Subject Building, and also the Agreement which he intends to enter into with the Petitioner. By the said reply to the notice, the Advocate for the Petitioner also recorded that in view of the conduct of the Landlord/Developer set out in the said reply, the termination of his tenancy was bad in law and not enforceable.

4.8 On 4th August, 2007 the Petitioner also wrote a letter to M/s. Indra Realtors, expressing his willingness to sign the Agreement and demanded compliance of the issues set out in his said letter. One of the issues pertained to forwarding a copy of the approved plans to the Petitioner.

4.9 The MCGM had issued an I.O.D. dated 26th April, 2007 to the Landlord/Developer. Condition No.10 of the I.O.D. required the Developer to submit a copy of the Agreement entered into with the existing tenants alongwith the plans, before issuance of the Commencement Certificate. Condition No.11 of the I.O.D. required the Developer to submit consent letters from the existing tenants for the proposed redevelopment of their tenement before issuance of Commencement Certificate. Condition No.12 of the I.O.D. required an undertaking from the Developer to not to create any nuisance and also to execute an indemnity bond indemnifying the MCGM against damages, risks, accidents, dispute in ownership etc.,

before issuance of the Commencement Certificate.

4.10 In October 2007, the Landlord/Developer filed a Suit being RAE Suit No. 537 of 2007 against the Petitioner in the Court of Small Causes at Bandra, Mumbai, seeking eviction of the Petitioner under Section 16(1) (i) of the Maharashtra Rent Control Act, 1999, i.e. for recovery of possession of the said Premises for the purpose of demolishing the Subject Building and erecting a new building.

4.11 The Court of Small Causes, Bandra, by its Judgment dated 18th March, 2009 dismissed with costs the said Suit filed by the Landlord/Developer against the Petitioner, interalia on the ground that though the Landlord/Developer has stated that he will accommodate all the eight tenants in the new building, it is observed from the sanctioned plan produced by the Landlord/Developer (Exhibit 23) that the same consists of only seven residential tenements. It is also stated in the Judgment (paragraph 25) that the Plaintiff's Witness No.2 has stated in his evidence that the Defendant (Petitioner herein) will be allotted Room No.501 on the 5th floor of the new building, however, in the sanctioned plan (Exhibit 23) there is no provision made for a 5th floor. The learned Judge reached a categorical finding in his Judgment (paragraph 31) that in his view the Landlord/Developer is not entitled to a decree of eviction and peaceful possession from the Petitioner herein (Defendant therein) because the Landlord/Developer has failed to satisfy the Court that he has complied with Sub-Clauses (b) and (c) of Sub-Section 6 of Section 16 of the Maharashtra Rent Control

Act, 1999.

4.12 Immediately after the Landlord/Developer failed to get any relief against the Petitioner in RAE Suit No.537 of 2007, MCGM served a Notice under Section 354 of the Act dated 15th April, 2009 for demolition of the Subject Building.

4.13 The Landlord/Developer filed an Appeal being Appeal No.118 of 2009 against the above Judgment dated 18th March, 2009 passed by the learned Single Judge of the Court of Small Causes, Bandra. Pending the Appeal, the Landlord/Developer on 16th April, 2011 (i.e. two years after filing of the Appeal) made an Application stating that he has now purchased TDR and has submitted the amended plans to the MCGM and that the additional facts and documents be taken on record.

4.14 The Appellate Court therefore by its Oral Judgment dated 14th March, 2013, set aside the Order dated 18th March, 2009 passed by the learned Single Judge and remanded the matter back to the learned Single Judge of the Court of Small Causes, Bandra, to record additional evidence as per Order 41 Rule 23 of the Code of Civil Procedure, 1908, and to pass fresh orders with regard to issue No.2, i.e. *“Whether the Plaintiffs have complied with the requirement of Section 16(6) of the Maharashtra Rent Control Act, 1999 ?”*

4.15 Thereafter, evidence commenced before the learned Single Judge of the Court of Small Causes, Bandra, during which the Landlord/Developer admitted that M/s. Indra Construction Co., Engineers and Contractors was his proprietorship

concern and M/s. Indra Realtors was an unregistered partnership firm. It is therefore clear that the draft Agreement for allotment of a permanent residential accommodation on ownership basis (tendered by the Plaintiffs and marked Exhibit 65 by the Court of Small Causes, Bandra on 21st January, 2009) was to be executed by the Petitioner with M/s. Indra Realtors, an unregistered partnership firm.

4.16 As stated earlier, immediately after the dismissal of the Suit being RAE Suit No.537 of 2007 filed by the Landlord/Developer, the MCGM had on 15th April, 2009 issued a Notice under Section 354 of the Act stating that the Subject Building was in a dilapidated condition and was required to be demolished.

4.17 The Petitioner had through his Letter dated 2nd December 2013 filed before the Court of Small Causes, Bandra, set out in detail how the Landlord/Developer of the Subject Building with malafide intention of getting the Subject Building fully vacated, was damaging the suit structure.

4.18 Five years after the MCGM issued Notice dated 15th April, 2009 under Section 354 of the Act stating that the Subject Building was in a dilapidated condition and required to be demolished, the MCGM in April 2014 demolished the Subject Building. On the date of demolition also, there was no agreement or arrangement to provide temporary alternate accommodation or to pay compensation in lieu of temporary alternate accommodation between the Petitioner and the Landlord/Developer.

4.19 In July 2014 i.e. upon demolition of the Subject Building, the Landlord/Developer withdrew the Suit filed by him against the Petitioner on the ground that the same had become infructuous.

4.20 The Petitioner by his Letter dated 27th August, 2014 informed the MCGM that no agreement for permanent alternate accommodation is executed by and between him and the Landlord/Developer, and therefore in view of Clause 10 of the I.O.D. dated 26th April, 2007 issued by the MCGM to the Landlord/Developer, and Clause (p) of paragraph 9 of the Order of this Court dated 23rd June, 2014 passed in Writ Petition (L) No.1135 of 2014, the Landlord/Developer should not be issued a Commencement Certificate.

4.21 The MCGM did not respond to the said Letter of the Petitioner dated 27th August, 2014.

4.22 According to the Petitioner, the Landlord/Developer has executed agreements with the other tenants in the name of M/s. Indra Realtors, which is an unregistered partnership firm. Exhibit 65 i.e. a copy of the Draft Agreement seeking to provide permanent ownership accommodation to the Petitioner by the Landlord/Developer, and produced before the Court of Small Causes, Bandra in the year 2009, was also between M/s. Indra Realtors and the Petitioner. It is only during the additional evidence/cross-examination of the Landlord/Developer in the year 2013, which took place after the Appellate Court remanded the matter back to the

learned Single Judge of the Court of Small Causes, Bandra for leading additional evidence, that it was revealed for the first time that M/s. Indra Realtors is an unregistered partnership firm. It is for this reason that the Petitioner had not executed the Agreement with the Landlord/Developer.

4.23 On 20th February 2015, the Advocate for the Landlord/Developer without the knowledge of the Petitioner submitted a Letter dated 5th February, 2015 to the MCGM, alleging that the Petitioner is not co-operating with him and that a Commencement Certificate be issued to him on his statement/assurance that he has reserved a flat admeasuring 250 sq.ft. in the proposed building for the Petitioner and is even prepared to give an undertaking to this effect. The Advocate also recorded that the Landlord/Developer is prepared to handover the proposed flat to the MCGM after construction for allotting the same to the Petitioner. The Advocate further recorded that the Landlord/Developer has also given an indemnity bond indemnifying MCGM and its officers from damage etc., arising out of the Petitioner approaching a Court of law against the MCGM and its officers.

4.24 Upon receipt of the said Letter dated 5th February, 2015 from the Advocate for the Landlord/Developer, the Executive Engineer, B.P. (W.S.) P/N Ward prepared a Note stating that the I.O.D. issued in the year 2011 had lapsed and that the Architect of the Landlord/Developer had requested for revalidation of the proposal. The Architect was asked to submit an amended plan as per the modified Development

Control and Promotion Regulations-2034 and as per the submission of the amended plans, the same were approved after obtaining necessary concessions required for approval. It was stated in the Note that, “now the Architect has complied with **most** of the IOD conditions for Commencement Certificate and has requested for Commencement Certificate.” The Executive Engineer also recorded in the said Note that, “the plan showing the flat reserved is submitted by the Architect”. The Executive Engineer requested the Deputy Law Officer, City Civil Court (W.S.) to guide the Office of the Executive Engineer, as to whether it can grant a Commencement Certificate to the Landlord/Developer without the Landlord/Developer submitting the Agreement with all the tenants and if yes, to send a draft of the undertakings/indemnity bond to be taken from the Landlord/Developer of the Subject Building in this respect.

4.25 The Deputy Law Officer, City Civil Court (W.S.) by his Note dated 26th February, 2015 recorded that the Landlord/Developer has reserved one flat admeasuring 250 sq.ft. for the Petitioner and the plan showing the reserved flat is also submitted. In view thereof, the Office of the Executive Engineer may grant a Commencement Certificate to the Landlord/Developer.

5. The learned Advocate appearing for the Petitioner has pointed out the above facts and has submitted that he is not only wronged by the Landlord/Developer but also by the MCGM, which had proceeded to issue a Commencement Certificate to the

Landlord/Developer on 13th March, 2015 in violation of the I.O.D. Conditions, the Order of this Court dated 23rd June, 2014 passed in Writ Petition (L) No.1135 of 2014 and also its own guidelines issued pursuant to the said Order dated 23rd June, 2014. The Advocate for the Petitioner submitted that despite him having addressed a Letter dated 27th August, 2014 to the MCGM, drawing their attention to Condition No.10 of the I.O.D. and also enclosing a copy of the Order dated 23rd June, 2014 passed in Writ Petition (L) No.1135 of 2014 and calling upon the MCGM not to issue a Commencement Certificate to the Landlord/Developer, the MCGM without taking cognizance of his Letter, proceeded behind his back to entertain correspondence received from the Advocate/Architect of the Landlord/Developer, and without informing him about the receipt of such correspondence, or giving him a hearing, issued a Commencement Certificate to the Landlord/Developer on a mere statement of the Landlord/Developer that he shall retain a flat admeasuring 250 sq.ft. for the Petitioner. No such condition is found in the Commencement Certificate. In fact, without informing the Petitioner, the Architect of the Landlord/Developer has also submitted a copy of the sanctioned plan to the MCGM, delineating thereon the flat that his client proposed to reserve for the Petitioner. It is submitted that having received the Commencement Certificate in the aforesaid manner from the MCGM, the Landlord/Developer is now harassing the Petitioner by not handing over possession of the new premises to him on the terms on which he/they have allotted

and handed over the new premises to the other seven out of eight tenants. The Landlord/Developer has also filed an Affidavit stating that he will give the flat to the Petitioner on rental basis, that too upon the Petitioner undertaking to pay him expenses and penalty levied upon him by the MCGM for demolishing the Subject Building. It is submitted that in view of such illegal and unfair conduct, the reliefs sought in the Petition be granted.

6. The MCGM first filed an Affidavit of Mr. Sunil Hari Bharambe, Sub Engineer dated 11th August, 2017, stating that the construction of the new building is completed and the Occupation Certificate is also granted by the Office of the Executive Engineer (B.P.), W.S. P/N Ward to the Landlord/Developer. More than one year thereafter, the same Mr. Bharambe filed another Affidavit dated 16th October, 2018 stating that there is no Occupation Certificate issued by the MCGM till date to the Landlord/Developer, and that the Landlord/Developer has, in breach of the provisions of law, already put the individuals in possession of the new construction without obtaining an Occupation Certificate, for which the MCGM is in the process of initiating legal action against the Landlord/Developer. In the course of the hearing, we are informed that instead of initiating legal action against the Landlord/Developer, the MCGM has issued the Occupation Certificate to the Landlord/Developer.

7. The Landlord/Developer has filed an Affidavit dated 19th September, 2018 i.e. three years after the filing of the Writ Petition and more than one year after some

draft amendments were carried out to the Petition. The Landlord/Developer in his Affidavit has stated that the Petitioner had refused to sign the Agreement for permanent alternate accommodation because the Landlord/Developer refused to succumb to the unreasonable demand of the Petitioner for extra area and monetary consideration. Since the Petitioner was the only non-cooperative tenant, the Landlord/Developer had to file a Suit being RAE Suit No.537 of 2007 against the Petitioner under Section 16(1)(i) of the Maharashtra Rent Control Act, 1999 for recovery of possession of the said Premises for the purpose of demolishing the Subject Building and erecting a new building. He has stated that after the Subject Building was demolished in the year 2014, a Commencement Certificate was issued to him in the year 2015 and he has given an undertaking to the MCGM to reserve one flat admeasuring 250 sq.ft. for the Petitioner, which he is ready and willing to give on tenancy basis to the Petitioner subject to the Petitioner repaying him all the expenses and penalty levied upon him by the MCGM for demolishing the Subject Building under Section 354 of the Act. He has therefore submitted that the Writ Petition be dismissed.

8. We have considered the facts in the matter and submissions made on behalf of the parties. In our view, the Petitioner was absolutely justified in not signing the permanent alternate accommodation agreement without being provided with a copy of the sanctioned plans or the plans proposed to be submitted to the MCGM seeking

sanction, which he was entitled to in law. The correspondence placed before the Court, some of which is referred to hereinabove, shows that the only demand made by the Petitioner was that he should be shown the approved plans for reconstruction of the Subject Building and also the Draft Agreement which the Landlord/Developer intends to enter into with the Petitioner. However, the Landlord/Developer has not bothered to reply to any of the letters addressed by the Petitioner and/or his Advocate in response to his Notice dated 15th July, 2006 and in the year 2007, straight away proceeded to file a Suit against the Petitioner under Section 16(1)(i) of the Maharashtra Rent Control Act, 1999 in the Court of Small Causes, Bandra. The allegation now made in the Affidavit filed on 19th September, 2018 that the Petitioner was making illegal demands, appears to have been made for the first time by the Landlord/Developer, since such allegation/s is/are not found in the correspondence annexed to the Petition or in the submissions of the parties recorded in the Judgments of the Court of Small Causes, Bandra.

9. The Landlord/Developer has admitted that in the year 2007 he filed a Suit before the Court of Small Causes, Bandra being RAE Suit No.537 of 2007 against the Petitioner under Section 16(1)(i) of the Maharashtra Rent Control Act, 1999, **for recovery of possession for the purpose of demolition of the Subject Building and erecting a new building thereon.** Sub Clause 6 of Section 16 of the Maharashtra Rent Control Act, 1999 is relevant and is reproduced hereunder :

“(6) No decree for eviction shall be passed on the ground specified in Clause (i) or (j) of sub-section (1), unless the court is satisfied-

(a) that the necessary funds for the purpose of the erection of new building or for erecting or raising of a new floor or floors on the terrace are available with the landlord;

(b) that the plans and estimates for the new building or new floor or floors have been properly prepared;

(c) that the new building or new floor or floors to be erected by the landlord shall, subject to the provisions of any rules, bye-laws or regulations made by municipal authority contain residential tenements not less than the number of existing tenements which are sought to be demolished;

(d) that the landlord has given an undertaking :

(i) that the plans and estimates for the new building or new floor or floors to be erected by the landlord include premises for each tenant with carpet area equivalent to the area of the premises in his occupation in the building sought to be demolished subject to a variation of five per cent in area;

(ii) that the premises specified in sub-clause (i) will be offered to the concerned tenant or tenants in the re-erected building or, as the case may be, on the new floor or floors;

(iii) that where the carpet area of premises in the new building or on the new floor or floors is more than the carpet area specified in sub-clause (i) the landlord shall, without prejudice to the liability of the landlord under sub-clause (i), obtain the consent 'in writing' of the tenant or tenants concerned to accept the premises with larger area; and on the tenant or tenants declining to give such consent the

landlord shall be entitled to put the additional floor area to any permissible use;

(iv) that the work of demolishing the premises shall be commenced by, the landlord not later than one month, and shall be completed not later than three months, from the date he recovers possession of the entire premises; and

(v) that the work of erection of the new building or new floor or floors shall be completed by the landlord not later than fifteen months from the said date:

Provided that, where the Court is satisfied that the work of demolishing the premises could not be commenced or completed, or the work of erection of the new building or, as the case may be, the new floor or floors could not be completed, within time, for reasons beyond the control of the landlord, the Court may, by order, for reasons to be recorded, extend the period by such further periods, not exceeding three months at a time as may, from time to time, be specified by it, so however that the extended period shall not exceed twelve months in the aggregate.”

Admittedly, the said Suit filed by the Landlord/Developer seeking possession of the said Premises from the Petitioner for the purpose of demolition of the Subject Building and erecting a new building thereon, was tried by a learned Single Judge of the Court of Small Causes, Bandra and dismissed by his Judgment and Order dated 18th March, 2009, wherein it is clearly held that though according to the Landlord/Developer, he is going to construct a new building where he would

accommodate all the eight tenants, he has a sanctioned plan which consists of only seven residential tenements. It is also stated in the Judgment (paragraph 25) that the Plaintiff's Witness No.2 has stated in his evidence that the Defendant (Petitioner herein) will be allotted room No.501 on the 5th floor of the new building; however, in the sanctioned plan (Exhibit 23) there is no provision for the 5th floor. The learned Single Judge thus categorically held in his Judgment (paragraph 31) that in his view the Landlord/Developer is not entitled to a decree of eviction and peaceful possession from the Petitioner herein (Defendant therein), because the Landlord/Developer has failed to satisfy the Court that he has complied with Sub Clauses (b) and (c) of Sub Section 6 of Section 16 of the Maharashtra Rent Control Act, 1999.

10. After the Court of Small Causes, Bandra dismissed the Suit filed by the Landlord/Developer by its Judgment dated 18th March, 2009, the MCGM issued a Notice dated 15th April, 2009 under Section 354 of the Act. The Petitioner who was not informed of the exact premises that he would be allotted in the new building by the Landlord/Developer, and therefore, had no agreement in place qua his permanent alternate accommodation, was certainly not expected to vacate the said Premises then under his occupation and be on the streets. The Petitioner therefore continued to be in possession of the said Premises. Nothing happened to the Subject Building even in the next five years. It is only after the Petitioner wrote to the MCGM on 27th November, 2013, setting out how the Landlord/Developer was causing damage to the

Subject Building in order to have the same vacated by the Petitioner/tenant/s, that the MCGM demolished the Subject Building in the year 2014. Consequently, the Petitioner alongwith his family members were virtually on the streets.

11. The Landlord/Developer filed an Appeal, being Appeal No.118 of 2009 before the Division Bench of the Court of Small Causes, Bandra, impugning the Judgment of the learned Single Judge dated 18th March, 2009.

12. On 16th April, 2011, the Landlord/Developer made an Application before the Appellate Court to take on record the subsequent facts and documents showing that the Landlord/Developer has now purchased and loaded TDR on the Subject Building and has submitted the amended plans to the MCGM for approval.

13. By its Oral Judgment dated 14th March, 2013, the Appellate Court in light of subsequent events remanded the matter to the learned Single Judge of the Court of Small Causes, Bandra to decide Issue No.2 afresh i.e. *“Whether the Plaintiffs have complied with the requirement of Section 16(6) of the Maharashtra Rent Control Act, 1999 ?”*, by giving both the parties an opportunity to lead evidence, if any.

14. Thereafter, recording of further evidence did commence before the learned Single Judge of the Court of Small Causes, Bandra. In the course of cross-examination, it was revealed for the first time that M/s. Indra Realtors with whom the tenants were admittedly made to execute permanent alternate accommodation agreements, was an unregistered partnership firm.

15. However, before Issue No.2 could be decided by the learned Single Judge of the Court of Small Causes, Bandra as set out earlier, the MCGM sometime in April 2014 demolished the Subject Building.

16. On 25th July, 2014 the Landlord/Developer withdrew his Suit pending before the Court of Small Causes, Bandra on the ground that the same had become infructuous. The Petitioner opposed the withdrawal but the Court allowed the Landlord/Developer to withdraw the Suit.

17. Thus, it is because of the Suit filed by the Landlord/Developer against the Petitioner in the year 2007, and also since the Landlord/Developer had not obtained any ad-interim/interim reliefs therein against the Petitioner, the Landlord/Developer was unable to obtain vacant possession of the said Premises in occupation and possession of the Petitioner. In fact, between the period 2009 and 2013, the Judgment passed by the Court of Small Causes, Bandra dismissing the Suit of the Landlord/Developer seeking possession of the said Premises from the Petitioner for the purpose of demolition of the Subject Building and erecting a new building was in force. The Appellate Court remanded the matter back to the learned Single Judge of the Court of Small Causes, Bandra in the year 2013 only because pending the Appeal, the Landlord/Developer had purchased/loaded TDR and had submitted amended plans to the MCGM for approval. The MCGM demolished the Subject Building in the year 2014 and the Landlord/Developer withdrew his Suit on 25th July, 2014. In view of

the withdrawal of the Suit by the Landlord / Developer, the issue as to whether the Landlord / Developer has complied with clauses / conditions (a) to (d) of Sub Section 6 of Section 16 of the Maharashtra Rent Control Act, 1999 to the satisfaction of the Court remained to be decided.

18. The Petitioner therefore immediately addressed a Letter dated 27th August, 2014 to the MCGM and drew their attention to Condition No.10 of the I.O.D. issued by the MCGM itself which made it mandatory for the Landlord / Developer to submit the agreement with the existing tenants along with plans before issuance of the Commencement Certificate and also to the decision of this Court in Writ Petition (L) No.1135 of 2014 wherein it was held that :

“In case privately owned buildings are demolished by the Corporation in exercise of power under Section 354 read with the present order, then the Corporation shall, while granting sanction of redevelopment, impose a condition in IOD (Intimation of Disapproval) that no Commencement Certificate will be issued under Section 45 of the MRTP Act, 1966, unless and until an Agreement either providing a Permanent Alternate Accommodation in a newly constructed building or a settlement is arrived at by and between the tenants and/or occupiers and the landlord in respect of the said demolished premises, is filed with the Corporation at the earliest.”

In fact, based on the said Order, the MCGM has framed *“Guidelines for declaring private and Municipal buildings as C-1 category (Dangerous, Unsafe)”*. Clause 1.15 of the Policy reads thus :

“The Corporation shall, while granting the sanction for redevelopment, the zonal building proposal department shall include a condition in intimation of Disapproval (IOD) that “unless and until an agreement either providing a permanent alternate accommodation in newly constructed building or a settlement is arrived at by and between the tenants and/or occupier and the landlord, no commencement certificate (CC) will be issued under Section 45 of the M.R. & T.P.Act, 1966”.

19. As stated earlier, the MCGM simply ignored the Letter dated 27th August, 2014 received from the Petitioner, stating that the MCGM should not issue a Commencement Certificate in violation of Condition No.10 laid down in the I.O.D. already issued to the Landlord/Developer and the Order passed by this Court dated 23rd June, 2014. Instead, the MCGM proceeded to issue a Commencement Certificate to the Landlord/Developer in the following manner :

(i) The Advocate for the Landlord/Developer on 20th February, 2015 submitted a Letter dated 5th February, 2015 to the MCGM wherein the Landlord/Developer suppressed :

(a) that the Landlord/Developer had himself filed a Suit in the year 2007 against the Petitioner, seeking possession of the said Premises in the occupation of the Petitioner, to enable him to demolish the same ; the said Suit was dismissed with costs by the Court in the year 2009 interalia on the ground that the Landlord/Developer has failed to satisfy the Court that the requirements under Sub-Clause (b) to (c) of Sub

Section (6) of Section 16 of the Maharashtra Rent Control Act, 1999 are met ;

(b) that an Appeal was filed therefrom being Appeal No.118 of 2009 by the Landlord/Developer and in the year 2011, an Application was made therein to take additional facts and documents on record ;

(c) that in view thereof, on 14th March, 2013 the Appellate Court remanded the matter to the learned Single Judge of the Court of Small Causes, Bandra to give an opportunity to the parties to adduce further evidence and decide Issue No.2 i.e., *“Whether the Plaintiffs have complied with the requirement of Section 16(6) of the Maharashtra Rent Control Act, 1999 ?”* ;

(d) that in the year 2014, the MCGM demolished the Subject Building after which the Landlord/Developer withdrew his Suit on the ground that it has become infructuous ; and

(e) in view of the withdrawal of the Suit, the issue as to whether Clauses (a) and (d) of Sub Section 6 of Section 16 of the Maharashtra Rent Control Act, 1999 were complied with by the Landlord/Developer remained to be decided by the Court.

Instead, the Advocate for the Landlord/Developer in his said Letter sought waiver of Condition No. 10 of the I.O.D. and requested for grant of Commencement Certificate, without entering into an Agreement for permanent alternate accommodation with the Petitioner, by recording that the Petitioner is not co-operating and that his client has

reserved one flat admeasuring 250 sq.ft. in the proposed building for the Petitioner herein and is even prepared to give an undertaking to this effect and is further prepared to handover the proposed flat to MCGM after construction for allotting the same to the Petitioner. The said Letter of the Advocate for the Landlord/Developer further recorded that his client has also given an indemnity bond indemnifying the MCGM and its officers from damage etc., arising out of the Petitioner approaching a court of law against the MCGM and its officers.

(ii) Pursuant thereto, the Executive Engineer, B.P. (W.S.) P/N Ward to whom the said Letter dated 5th February, 2015 was forwarded on 20th February, 2015 by the Advocate for the Landlord/Developer, prepared a Note stating that the I.O.D. issued in the year 2011 had lapsed as the Commencement Certificate was not granted within a period of four years and the Architect of the Landlord/Developer had requested for revalidation of the proposal ; the Architect of the Landlord/Developer was asked to submit the amended plans for the proposed building as per the modified Development Control and Promotion Regulations – 2034 and upon submission of the amended plans, the same were approved after obtaining necessary concessions required for approval ; that, “now the Architect has complied with **most** of the I.O.D. conditions for Commencement Certificate and has requested for Commencement Certificate” ; that the plan showing the flat reserved for the Petitioner is submitted by the Architect. The Executive Engineer by his Note requested the Deputy Law Officer, City Civil

Court (W.S.) to guide the Office of the Executive Engineer, as to whether the Office can grant a Commencement Certificate to the Landlord/Developer without the Landlord/Developer submitting the Agreement with all the tenants and if yes, to send a draft of the undertakings/indemnity bond to be taken from the Landlord/Developer of the flat in this respect.

(iii) The Deputy Law Officer, City Civil Court (W.S.) by his Note dated 26th February, 2015 recorded that the Landlord/Developer has reserved one flat admeasuring 250 sq.ft. for the Petitioner and the plan showing the reserved flat is also submitted. In view thereof, the Deputy Law Officer, City Civil Court (W.S.) opined that the Office of the Executive Engineer can grant a Commencement Certificate to the Landlord/Developer and that the undertaking/indemnity bond is already submitted by the Landlord/Developer, whereby the Landlord/Developer has undertaken to indemnify the MCGM against any litigation/claims.

20. The MCGM is unable to show the provision under which the Executive Engineer of the MCGM is empowered to waive the I.O.D. conditions and/or the policy of the MCGM. In any event, only to ensure complete protection to the tenants of a building, which is demolished pursuant to a Notice under Section 354 of the Act, that in the I.O.D. issued to the Landlord/Developer a clear condition is laid down that the Developer has to submit to the MCGM the Agreements executed with the existing tenants alongwith plans before a Commencement Certificate is issued. The

importance of this condition becomes clear from the direction to the same effect given by this Court in its Order dated 23rd June, 2014 passed in Writ Petition (L) No.1135 of 2014 and implemented by the MCGM by incorporating the same condition in Clause 1.15 of its said Policy. There is no provision for waiver of this condition in the I.O.D., or in the Order of this Court dated 23rd June, 2014, or in the said Policy of the MCGM. We would like to clarify that Condition No.12 of I.O.D., i.e. to provide indemnity to the MCGM against damages, risks, accidents, dispute in ownership etc., is in addition to Condition Nos.10 and 11 and not in substitution of the said Condition.

21. In our view, the MCGM certainly cannot accept the mere allegation of non-cooperation made against a tenant by a Landlord/Developer, and waive an important condition concerning the tenant without asking the Landlord/Developer to obtain an Order from the Court or atleast calling upon the Landlord/Developer to serve a copy of his Application to the concerned tenant to enable the tenant to file his say before the MCGM, or to approach the Court and seek necessary reliefs within a reasonable period. In the absence of the MCGM exercising any such caution, the entire purpose of the protection sought to be given to the tenants is defeated, and ruthless and unscrupulous builders will without the knowledge of the tenant/s get the I.O.D. condition waived by the MCGM, without executing an agreement for alternate accommodation, by a mere allegation that the tenant/s is / are not cooperating and by making a statement that the Developer has reserved flat/s for the tenant/s, without

the tenant/s being shown which flat is reserved for him/her/them. The indemnity issued is not to protect the tenant, but the MCGM. In the instant case, despite a Letter written by the Petitioner to the MCGM dated 27th August, 2014 pointing out Condition No.10 of the I.O.D. issued in the year 2007 and also pointing out direction given to the MCGM to the same effect, and requesting the MCGM not to grant Commencement Certificate to the Landlord/Developer, the MCGM deemed it fit to accept the allegation made by the Advocate for the Landlord/Developer in his letter qua the non-cooperative conduct of the Petitioner and without exercising caution by ensuring that the Advocate for the Landlord/Developer atleast serves a copy of his Letter seeking waiver of I.O.D. conditions or informs the Petitioner that the MCGM is proceeding to grant a Commencement Certificate by waiving the I.O.D. conditions, straightaway waived the I.O.D. conditions and issued a Commencement Certificate to the Landlord/Developer in the absence of any permanent alternate accommodation agreement executed by and between the Landlord/Developer and the Petitioner.

22. Again, issuing a Commencement Certificate by waiving an important condition in the I.O.D. which is made mandatory in the Order passed by this Court dated 23rd June, 2014 in Writ Petition (L) No.1135 of 2014 and the said Policy of the MCGM, by accepting a mere statement made by the Advocate for the Landlord/Developer that the Landlord/Developer will reserve a flat admeasuring 250 sq.ft. for being allotted to the Petitioner and that the Landlord/Developer is ready to

handover the flat admeasuring 250 sq.ft. to the MCGM for being allotted to the Petitioner and by delineating the flat on the sanctioned plan which would be allotted to the Petitioner, all without the knowledge and behind the back of the Petitioner/Tenant, is in gross violation of the protection provided to him under the I.O.D. conditions and in the said Policy of the MCGM framed pursuant to the Order of this Court dated 23rd June, 2014. What we find more troublesome is that despite the Advocate for the Landlord/Developer having written in his Letter addressed to the MCGM dated 5th February, 2015 that his client is also willing to give an undertaking that he will handover the flat reserved for the Petitioner to the MCGM upon completion, to enable the MCGM to allot the same to the Petitioner, no such undertaking is given by the Landlord/Developer nor is the same insisted upon and accepted by the MCGM. The MCGM has not only not bothered to protect the Petitioner by calling upon the Landlord/Developer to obtain appropriate orders from the Court, or to atleast serve his Application seeking waiver of the I.O.D. condition to enable the Petitioner to file his say before the MCGM, or to obtain necessary orders from Court, but has not even bothered to obtain an undertaking from the Landlord/Developer that the said flat shall be allotted to the Petitioner on the same terms and conditions on which the flats have been allotted to the other seven out of eight tenants.

23. It is because of the aforestated conduct of the MCGM that the

Landlord/Developer who had through his Advocate's Letter dated 5th February, 2015 informed the MCGM that he is willing to handover the flat to the MCGM upon completion for being allotted to the Petitioner, is now emboldened to take a stand before this Court that he shall handover the flat to the Petitioner only on tenancy basis (despite him having handed over flats to all other seven tenants on ownership basis) that too only subject to the Petitioner undertaking to this Court to repay all the expenses and penalty levied upon him by the MCGM for demolition of the Subject Building under Section 354 of the Act. In short, since the MCGM issued a Commencement Certificate to the Landlord/Developer without protecting the rights/interest of the Petitioner and behind his back, the Landlord/Developer is now determined to deny the roof over the head of the Petitioner, which the Petitioner is entitled to on the same terms and conditions on which the Landlord/Developer has handed over the flats to the remaining seven out of eight tenants. If the Landlord / Developer is allowed to give flats to the tenants as per his choice i.e. on tenancy or ownership basis, the landlords will use the same as a tool to make the tenants sign agreements for permanent alternate accommodation on the dotted line, without the tenants/occupants raising any grievance, which will tantamount to sheer blackmail.

24. The MCGM instead of being sensitive in such matters has adopted a completely callous approach. The Officer of the MCGM in his first Affidavit in Reply dated 11th August, 2017 filed in the above Writ Petition made an incorrect

representation to the Court that an Occupation Certificate is already issued to the Landlord/Developer. The litigants as well as the Courts rely on the statements made by statutory bodies like the MCGM more particularly on an Affidavit. However, a year thereafter, the MCGM filed another Affidavit dated 16th October, 2018 not only stating that no Occupation Certificate is granted to the Landlord/Developer in respect of the Subject Building, but has gone ahead to state that the Landlord/Developer has illegally and unauthorizedly put individuals in occupation of their respective premises without obtaining an Occupation Certificate and that the MCGM is in the process of initiating legal action against the Landlord/Developer. Interestingly, we are now informed that within two days from the date of the said Affidavit, an Occupation Certificate was granted by the MCGM to the Landlord/Developer with regard to the newly constructed building.

25. In view of the above conduct, in normal circumstances we would have passed an order setting aside the Commencement Certificate issued by the MCGM to the Landlord/Developer. However, we are conscious of the fact that by doing so, all the individuals who are entitled to the premises in the Subject Building will suffer and not get a roof over their heads for several years. In view thereof, we mould the reliefs and pass the following Order :

(i) The flat reserved by the Landlord/Developer for the Petitioner shall be forthwith taken possession of by the MCGM and the same shall be handed over to the

Petitioner by the MCGM.

- (ii) The Landlord/Developer shall within a period of 15 days from the date of this Order being uploaded, execute an Agreement with the Petitioner on the same terms and conditions as is done with the other seven out of eight tenants and will comply with the same.
- (iii) This Order will not preclude the Landlord/Developer to pursue any remedy available to him in law for claiming any monetary relief from the Petitioner qua his alleged claims.
- (iv) This Order shall also not preclude the MCGM from taking any action available in law qua the Landlord/Developer and/or the occupants for committing breach of any provisions of law.
- (v) The Writ Petition is accordingly disposed of in the above terms.

(N.J. JAMADAR, J.)

(S.J. KATHAWALLA, J.)