



IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION (L) NO.19177 OF 2024

Jeevan Apsara Co-op. Housing Society Ltd. ... Petitioner

V/s.

Municipal Corporation of Greater Mumbai ... Respondent

WITH

WRIT PETITION NO.2804 OF 2023

The Pentecostal Mission Society through
Pastor Saji Joseph & Ors. ... Petitioners

V/s.

Mumbai Municipal Corporation & Ors. ... Respondents

WITH

INTERIM APPLICATION (L) NO.9497 OF 2024

IN

WRIT PETITION NO. 2804 OF 2023

John Philip Bamadas ... Applicant

V/s.

Municipal Corporation of Greater Mumbai ... Respondent

WITH

INTERIM APPLICATION (L) NO.18723 OF 2023

IN

WRIT PETITION NO.2804 OF 2023

Anselam S/o. Fabian Misquitta ... Applicant

V/s.

The Pentacostal Mission Society & Ors. ... Respondents

Mr. Pradeep J. Thorat a/w Ms. Aditi S. Naikare for Petitioner in Writ Petition (L) No.19177 of 2024.
Mr. Shriram S. Kulkarni a/w Adv. Pranjal M. Khatavkar for Petitioner in Writ Petition No.2804 of 2023.
Mr. Rajshekhar Govilkar, Senior Advocate a/w Adv. K.H. Mastakar for Respondent Nos. 1 and 2-MCGM.
Mr. A.Y. Sakhare, Senior Advocate a/w Adv. K.H. Mastakar for Respondent-MCGM in Writ Petition No.2804 of 2023.
Mr. Ajit Kenjale a/w Mr. Azharuddin Khan for Applicant in Interim Application (L) No.9497 of 2024.
Ms. Nazia Sheikh, A.G.P for State in Writ Petition (L) No.19177 of 2024.
Mr. Milind More, Addl. G.P for State in Writ Petition No.2804 of 2023.
Mr. Sushil S. Upadhyay i/b Ashok Saraogi for Respondent No.5.
Mr. Sandeep Salunkhe, Ex-Engineer, K/W Ward of MCGM.
Smt. Shradha Bharate, Road Engineer, K/W Ward of MCGM.
Mr. Ganesh Kudale, Junior Engineer, K/W Ward of MCGM.

**CORAM : A. S. GADKARI AND
KAMAL KHATA, JJ.**
DATE : 15th October 2024.

P.C. :

- 1) The case in hand is a classic example, as to how Officers of the Respondent-Municipal Corporation of Greater Mumbai now Brihanmumbai Municipal Corporation (BMC), have disgracefully deceived the Judicial System.
- 2) BMC have not only blatantly failed to comply with solemn statements made through Counsel in open Court and so recorded, but also miserably failed to comply with directions issued by this Court from time to time on grounds they ought to have been aware (and probably were aware) on the date when orders were passed.
- 3) Mr Thorat for the Petitioner pointed out that the BMC had still

not complied with the Orders. On being asked the learned Senior Counsel stated that there were some technical issues and thus the same could not be done.

4) Having heard both Counsel we started dictating the order.

4.1) When order was being dictated and the previous Order of 2015 was being reproduced, the learned Senior Counsel interrupted to inform us that there was no D P Road and that we should not record the construction of D P Road.

We are extremely peeved with the BMC and thus would like to record our displeasure. A bare perusal of the earlier orders evince that, the BMC had agreed to construct a D P Road and now after a period of nine years its Counsel suggests that there was no D P Road that was to be constructed and we should not record the same. A bare perusal of the past Orders in these proceedings evince the fraud played on the Court if there was no question of constructing a D P Road.

5) In Order dated 13th October 2015, our predecessors have observed as under :

“1. It is true that, Municipal Corporation is under obligation to construct the Development Plan Road.”

“3. By way of interim relief, we direct the Municipal Corporation to take all possible steps to remove the encroachments on the land covered by the Development Plan Road and to ensure that the Development Plan Road is constructed at the earliest in

accordance with law. If there are private properties which are covered by the Development Plan Road, the Municipal Corporation shall take steps in accordance with law to acquire the private properties. “

6) The Petition indicates that, D.P. Road in question was sanctioned as per the Draft Development Plan of 1991.

7) The Order of 13th July 2017 reads as under:

“1. The learned senior counsel for the Mumbai Municipal Corporation on instructions of Shri Inderjit Basankar, Sub Engineer (Maintenance), K/W ward states that 35 feet D. P. Road will be constructed within a period of six months from today. List the Chamber Summons on 16th August 2017.”

8) The relevant part of Order dated 25th September 2017 reads as under:

“13. We are, inclined to pass aforesaid order for two reasons. Firstly, the petitioners who are directly affected were not impleaded as party respondents in the petition filed by the respondent No.5 and secondly the proposed D.P. of 2034, apart from taking care of petitioner’s interest, also substantially takes care of interest of respondent No.5 of providing access to its property.

14. In the facts and circumstances, we expect that the Corporation would expedite the matter with the authorities in charge of acquisition of the land and make an attempt to complete the road as far as possible within a period of one year from today.”

9) Then order on 28th February 2020 recorded as under:

*“3. The learned Senior Advocate appearing for the Corporation on instructions states that Annexure II will be complied with a period of three weeks from today. The learned Senior Advocate, on instructions further states that the possession of the plot shall be taken by the Corporation from the society within a period of six weeks from today; **the 12.2 meter D.P Road will be constructed, within six months from today; and upon completion of construction the Petitioner Society will have access to the said Road. The statements are accepted. The Petition as well as the Interim Application are accordingly disposed off.***

10) On 9th December 2021 Order recorded as follows:

“d. In the event the Petitioners fail vacate the structure standing in the proposed D.P Road within a period of 8 weeks from publication of the final Annexure-II in respect of the Petitioner Nos. 2 to 37 the Respondent No. 1-MCGM will be entitled to take necessary steps to remove the said structures, so long as the Respondent Nos. 1-MCGM, 7-SRA and 8-Developer have complied with their aforesaid obligations.

e. The Respondent No. 1-MCGM is at liberty to construct the D. P Road as proposed after a period of 8 weeks from the date of publication of the Annexure-II in respect of the Petitioner Nos.2 to 37. The Respondent No. 1-MCGM is directed to construct the same in the manner contemplated by the Order dated 28 February 2020 passed by the Division Bench of this Hon’ble Court in Writ Petition No. 3101 of 2014 so as to provide access to Respondent No. 9 Co-operative Housing Society by way of this proposed D. P Road.”

- 11) On 20th April 2022 Order recorded as under:
- “4. In the meantime, it would be open for Respondent-Corporation to start the construction of the road between the Respondent No. 9-Society and St. Francis Road.”*
- 12) On 4th May 2022 in paragraph no. 3 it is recorded that:
- “3. Learned Senior Counsel for the Respondent Corporation states on instructions, that the process of construction of road between the Respondent No. 9 – Society and St. Francis Road shall commence immediately.”*
- 13) On 19th January 2023 Order recorded as under:
- “2. We have heard learned counsel for the Petitioners and learned counsel for Respondent No.8. Despite repeated orders and extensions of time granted by this Court, the Corporation has not complied with the directions issued by the Court on 9th December, 2021. The Corporation has also not placed on record any affidavit-in-reply to show that it has taken any bonafide efforts for making compliance with the directions issued by this Court on 9th December, 2021. Prima-facie, we are of the view that the officers of the Corporation have deliberately and intentionally not complied with the order of this Court and therefore we direct Respondent No.1 to place on record the names of the officers against whom contempt action be initiated by this Court latest by 18th January, 2023, failing which, Respondent No.1 shall have to remain personally present before this Court on 18th January, 2023 at 2.30 p.m.*
- 3. In addition to the above, learned counsel for Respondent No.8 and also Respondent No.9 point out*

that the orders passed by this Court on 20th April, 2022, 4th May, 2022 and 29th August, 2022 have also not been complied with by the Corporation. The Corporation shall place on record its affidavit- in-reply showing compliance with the orders passed by this Court on 20th April, 2022, 4th May, 2022 and 29th August, 2022, failing which, this Court shall initiate contempt proceedings against the officers responsible for the same.”

14) Order dated 3rd July 2023 reads as under:

“1. Heard.

*2. The immediate issue that needs to be addressed by this court, as pointed out by Mr. Sakhare, learned Senior Advocate for respondent no.1-MCGM as also learned counsel for the petitioners in both the petitions, is of construction of that portion of the D.P Road, which connects St. Francis Road with Jeevan Apsara Co-op. Housing Society premises. It is pointed out that there are 25 structures of slum dwellers, of which 15 are eligible for alternate accommodation and the remaining are not eligible for alternate accommodation and accordingly Annexure-II has also been prepared. **These ineligible structures need to be demolished and without their demolition, this much portion of the D.P Road cannot be constructed and completed.***

3. Learned counsel for the petitioners in both the petitions submit that because of such incomplete work, the residents of Jeevan Apsara Co-op. Housing Society are facing tough time because of accumulation of rain water on the approached road and if immediate steps are not taken, the difficulty being faced by the inhabitants of the said society would get worsen.

4. Mr. Sakhare, learned Senior Advocate submits that the Municipal Corporation had sought police

protection, at-least on two occasions, for the purpose of demolition of these structures but in vain. He submits that if appropriate directions are issued to the Commissioner of Police, Mumbai for providing adequate police protection, through Santacruz Police Station, Mumbai, the Municipal Corporation would do it's job. He also points out that the Developer has already agreed to rehabilitate the 9 out of 15 eligible slumdwellers by paying them monthly rent and the Municipal Corporation has received a letter in this regard from the Developer, which is of the date of 22nd May 2023.

5. In view of the above, we request the learned Government Pleader to request the Commissioner of Police, Mumbai to issue necessary directions to the Santacruz Police Station, Mumbai for providing adequate police protection / bandobast to the Assistant Municipal Commissioner, K/West Ward, Municipal Corporation of Greater Bombay, Andheri (West), Mumbai on the date and at the time indicated to the police station in-charge of Santacruz Police Station by Mumbai Municipal Corporation within two weeks from the date of the order. We would also request learned AGP to place on record compliance report in this regard, to be obtained from the Commissioner of Police, Mumbai and also from the Police Station in charge of Santacruz Police Station, Mumbai on the next date.

6. Stand over to 31st July, 2023.”

15) Order dated 22nd August 2023:

“4. This is Mr Thorat’s immediate concern because he says that the debris from that removal still lies on site and has not been cleared by the MCGM. Mr Sakhare for the MGCM says that that work is undoubtedly pending and needs to be attended to. On instructions he states that this will be done, but

requests two weeks' time, which is reasonable given that progress at site might be somewhat slower than usual because of the monsoon."

16) Order dated 4th September 2023:

"7. At this stage, Mr Thorat for Respondent No. 9 says an order should be passed compelling the Municipal Corporation of Greater Mumbai ("MCGM") to complete construction of this road. But while this submission is apparently innocuous, in actuality it is anything but. The completion of this road in haste will undoubtedly affect Mr Saraogi's client, Misquitta and Mr Kulkarni's client, the Pentecostal Mission, both of which have filed independent Writ Petitions. Those Petitions may be adversely affected or rendered infructuous. The 9th Respondent to the original Petition has filed no proceedings whatsoever of its own that are as yet pending. We do not see how it can demand peremptory compliance on the basis that at the time of disposal of the Writ Petition, the MCGM had been directed to complete the construction of the road. Indeed, that was the direction but there was no direction that this road had to be completed by literally bulldozing or steamrolling the contentions and the claims raised by Mr Saraogi's client and Mr Kulkarni's clients. Those have to be considered and adjudicated one way or the other before we will permit any society, let alone any builder to compel completion of a road. This is not a case where the road in question is entirely unobstructed or where there is no controversy about the alignment of the road and the structures affected by that alignment."

17) Order dated 25th September 2023:

"1. Ms Mahadik's instructions are to state that now

that the structures have been removed and the debris has been cleared, the planned road will be developed and built by the Municipal Corporation in accordance with all applicable guidelines, standards and specifications within a reasonable time. The statement is accepted. No further orders are required.”

18) Thus Several Orders thereafter were passed from time to time. The Officers, who used to be present in the Court made statement that, the said D P Road will be constructed within stipulated period. Illustratively, on 13th July 2017, Mr. Inderjit Basankar, Sub-Engineer (Maintenance), K/W Ward had made a solemn statement before this Court that, the D.P. Road will be constructed within a period of six months from 13th July 2017. Similar statement was made on 9th December 2021. As a matter of fact, all the concerned Officers, who made solemn statements before this Court, did not comply with their said statements and said D P Road is not yet completed.

19) Today, Officers present in the Court tried to take advantage of the observations made in para No.7 of Order dated 4th September 2023, by placing before us numerous difficulties in not complying with their own solemn statements earlier.

20) In this background, it be noted that, on 25th September 2023, the learned Advocate for the MCGM had made a statement that, “the planned road will be developed and built by the Municipal Corporation in accordance with all applicable guidelines, stands and specifications within a

reasonable time". The said statement was accepted by this Court. Despite of making such statement, in last more than a year, the road is not completed. It is this reason, the Petitioners have to file present Petition under Article 226 of the Constitution of India.

21) In view of the above, we deem it appropriate to bring the sorry state of affairs at the end of the Officers of the MCGM to the kind notice of the Commissioner of the MCGM for adopting appropriate remedial measures in that behalf. We therefore are left with no other alternative but to direct the Commissioner of the MCGM to file his detailed Reply-Affidavit to the Petition, placing on record, why the solemn statements made before this Court from time to time and directions of the Court are not complied with by all the concerned Officers, making mockery of the judicial system.

21.1) We direct the Commissioner of the MCGM not to delegate his powers to any subordinate Officer(s) for filing the Reply-Affidavit. We expect, the Commissioner of the MCGM to peruse the entire record of the present Petition and file the Reply-Affidavit. The said Reply-Affidavit be filed on or before 26th November 2024.

22) Stand over to 3rd December 2024.

23) Petitioners in Writ Petition No.2804 of 2023, are permitted to circulate the Petition in case of exigency.

(KAMAL KHATA, J.)

(A.S. GADKARI, J.)