

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
NOTICE OF MOTION NO.173 OF 2014
IN
WRIT PETITION NO.1251 OF 2014

Central Mumbai Developers Welfare Association and anr.	... Petitioners
v/s	
State of Maharashtra and others	... Respondents

WITH
WRIT PETITION (ST) NO.250 OF 2015

Gayatri Enterprises and anr.	... Petitioners
v/s	
Municipal Corporation of Greater Mumbai and others	... Respondents

WITH
WRIT PETITION NO.972 OF 2014

Mrs Vijayalakshmi and others	... Petitioners
v/s	
State of Maharashtra and others	... Respondents

WITH
WRIT PETITION NO.983 OF 2014

D.V.K. Real Estate Pvt.Ltd. and anr.	... Petitioners
v/s	
State of Maharashtra and others	... Respondents

WITH

WRIT PETITION NO.1251 OF 2014

Central Mumbai Developers Welfare
Association and anr. ... Petitioners
v/s
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**WITH
NOTICE OF MOTION NO.173 OF 2014**

Central Mumbai Developers Welfare
Association and anr. ... Petitioners
v/s
State of Maharashtra and others ... Respondents

**WITH
NOTICE OF MOTION NO.175 OF 2014**

Central Mumbai Developers Welfare
Association and anr. ... Petitioners
v/s
State of Maharashtra and others ... Respondents

**WITH
NOTICE OF MOTION (ST) NO.599 OF 2014**

Central Mumbai Developers Welfare
Association and anr. ... Petitioners
v/s
State of Maharashtra and others ... Respondents

**WITH
NOTICE OF MOTION (ST) NO.635 OF 2014**

Central Mumbai Developers Welfare
Association and anr. ... Petitioners

v/s
State of Maharashtra and others ... Respondents

**WITH
WRIT PETITION NO.2113 OF 2014**

Vikram Jethalal Joisher and anr. ... Petitioners
v/s
State of Maharashtra and others ... Respondents

**WITH
WRIT PETITION (ST) NO.2840 OF 2014**

Dattashram CHS Ltd. and others ... Petitioners
v/s
Municipal Corporation of Greater Mumbai
and others ... Respondents

**WITH
WRIT PETITION (ST) NO.3308 OF 2014**

Dilip Kumar Somaiya and anr. ... Petitioners
v/s
Municipal Corporation of Greater Mumbai
and others ... Respondents

Dr Milind Sathe, Sr. Counsel with Mr Rohan Rajadhyaksha, Mr Sanjay V. Kadam, Ms Apeksha Sharma and Mr Sanjeel Kadam i/b M/s Kadam and Co. for Applicants / Petitioners in NM(L) No.42 of 2015 in WP No.983 of 2014, NM No.173 of 2014 and NM(L) No.635 of 2014 in WP No.1251 of 2014 and WP No.2113 of 2014.

Mr Ravi Kadam, Sr. Counsel with Mr Rohan Kadam, Mr Sanjay V. Kadam, Ms Apeksha Sharma, Mr Sanjeel Kadam i/b M/s Kadam and Co. for Applicants / Petitioners in NM(L) No.599 of 2014 and NM No.175 of 2014 in WP No.1251 of 2014.

Mr Nitin Thakkar, Sr. Counsel with Mr Umesh Shetty and Ms S. D'Souza i/b M/s Flavia Legal for Petitioners in WP No.972 of 2014.

Mr A.A. Kumbhakoni, Sr. Counsel with Ms T.H. Puranik, Mr Ashutosh

Gavnekar and Mr Shardul Singh for Respondent – BMC.

Mr J. Reis, Sr. Counsel with Mr Yadunath Chaudhary i/b Ms Reena Salunkhe for Petitioners in WP No.2840 of 2014.

Mr J. Reis, Sr. Counsel with Mr Yadunath Chaudhary and Ms Reena Salunkhe i/b Mr Omkar Kulkarni for Petitioners in WP (ST) Nos.250 of 2015.

Mr H.S. Venegaonkar, AGP for Respondent – State in NM Nos.173, 175 of 2014, NM(L) No.599 of 2014 and WP No.1251 of 2014.

Mr J.S. Saluja, AGP for Respondent – State in NM(L) No.635 of 2014.

Ms G.R. Shastri, AGP for Respondent – State in WP No.983 of 2014.

Mr M.A. Sayeed, AGP for Respondent – State in WP No.2113 of 2014.

Mr R.J. Mane, AGP for Respondent – State in WP No.972 of 2014.

**CORAM: MOHIT S. SHAH, C.J. &
B.P. COLABAWALLA, J.**

DATE : 5 FEBRUARY 2015

P.C.:

1. In the previous round of litigation, four petitioners had challenged the demand of premium made by the Municipal Corporation of Greater Mumbai (MCGM) for transfer of leasehold rights as also imposition of penalty for effecting transfer of leasehold rights without obtaining prior permission of the MCGM. The lands involved in those petitions as well as in the present petitions are owned by the MCGM. The leasehold rights of those lands was granted by the MCGM.

2. In the previous round of litigation, it was the case of the petitioners therein that the MCGM was demanding premium on such transfer of leasehold rights on the ground that the transferor was getting the

benefit of unearned premium far in excess of the premium which was paid by the lessee at the time of execution of original lease deed. In some cases, the lease was for a period of 999 years and in some other cases, the lease was for 99 years. A Division Bench of this Court (D.K. Deshmukh and N.D. Deshpande JJ.) by judgment dated 15 February 2011 allowed the petitions on the ground that the demand of premium was without the authority of law and contrary to the provisions in the lease deeds. The Court also held that in none of the lease deeds before it there was any provision for obtaining prior permission of the MCGM for effecting transfer of the lease deed. On the contrary, in some of the lease deeds the Court found that it specifically permitted transfer of the leasehold rights. The Division Bench also relied on the decision of another Division Bench in case of Jaikumari Amarbahadursingh and others, v/s State of Maharashtra, reported in 2009(1) All MR 343 holding that premium or unearned income cannot be recovered in the absence of any law authorising the Government to do so. In the result, the Court set aside the demand for premium on transfer of lease as illegal, and quashed the demand notices. The Court also directed the MCGM to refund the amount of premium recovered from the petitioners.

3. Aggrieved by the above decision, the MCGM challenged the same before the Supreme Court by filing SLP (Civil) No.16197 of 2011 and connected matters. The learned counsel for the respondents before the Supreme court – Maharashtra Chamber of Housing Industry and others, stated that the respondents would confine their relief before the High Court to quashing of the concerned individual demand notices. The Supreme Court therefore clarified that the order of this Court shall remain confined

to the said prayer only and the other members of the Maharashtra Chamber of Housing Industry may seek their respective reliefs, as may be permissible in law. The SLPs were accordingly disposed of by an order dated 12 September 2011.

4. Thereafter by the Mumbai Municipal Corporation (Amendment and Validation) Act, 2011 (which came to be published in the Government Gazette on 14 August 2012), the State Government inserted clause (dddd) in section 92 of the Mumbai Municipal Corporation Act, 1888 w.r.e.f. 22 June 1993. It reads as under :-

“(dddd) All leases granted by the corporation of the immovable properties belonging to the corporation for whatever term shall be subject to the following conditions in addition to the conditions stipulated in the lease-deed or lease-agreement, executed by the corporation, namely -

- (i) Leasehold rights in respect of the properties belonging to the corporation and given on lease may be further assigned or transferred only with the prior permission of the Commissioner, on payment of such premium on account of unearned income and transfer fees or charges at such rates as may be specified by the corporation, from time to time.*
- (ii) In the case of any contravention of the provisions of sub-clause (i), the lessee or transferor of such leasehold rights, shall be liable to pay penalty in addition to such premium and transfer fees or charges, at such rates as may be specified by the corporation, from time to time.”*

5. By the said Act, the Legislature also validated the levy,

demand and collection of premium on account of unearned income and transfer fees or charges or penalty by the Corporation during the period commencing from 22 June 1993 and ending on the date of commencement of the Mumbai Municipal Corporation (Amendment and Validation) Act, 2011 on further assignment or transfer of leasehold rights by the lessee or transferor of such leasehold rights in respect of the properties of the Corporation given on lease, with or without the prior permission of the Commissioner.

6. In the present group of petitions, the petitioners have inter alia challenged the constitutional validity of the above Amendment and Validation Act inserting section 92(dddd) in the Mumbai Municipal Corporation Act, 1888 with effect from 22 June 1993. The petitioners have also challenged the demand of premium and/or transfer fees to record transfer / leasehold interest in favour of the assignees on the ground that the lease deeds in question did not require prior permission of the MCGM for such transfer / assignment. The petitioners have therefore challenged the demand notices issued by the MCGM.

7. In addition thereto, the petitioners have also inter alia challenged the resolution of the Municipal Corporation dated 11 November 2008 under which the Municipal Corporation has decided to increase the annual lease rent in relation to market value of the property as under :-

Sr.No.	Type of lease	Annual Ground Rent as per Municipal Corporation Resolution No.796 dated 11 November 2008
a)	Residential use by private organizations	Per year 2 % of the market value of the property computed on the basis of rate of the developed plots for residential use as per the prevailing ready reckoner chart.

8. The aforesaid resolution also provides for increased annual lease rent for lands of the Corporation used for industrial and commercial purposes where the annual lease rent to be demanded is fixed at 3% of the market value of the property as per the prevailing rate of ready reckoner chart. However, in this group of petitions, we are concerned with the properties or transfer of lands primarily for the use of residential purposes.

9. A further challenge in the writ petitions is to the decision of the Municipal Corporation to reduce the lease tenure from the original period as mentioned in the individual lease deeds, to a period of 30 years, wherever transfer / assignment takes place or any permission is required from the Municipal Corporation for development / redevelopment.

10. Since the constitutional validity of the Mumbai Municipal Corporation (Validation and Amendment) Act, 2011 is challenged, we

issue rule in each Petition. Notice shall also be issued to the learned Advocate General, returnable on 6 April 2015.

11. We have heard the learned counsel for the parties on the question of interim relief.

12. As regards the prayer for interim relief against levy, demand and collection of transfer premium, in view of the Mumbai Municipal Corporation (Validation and Amendment) Act 2011, which has been brought into force on 14 August 2012, we are not inclined to grant any interim relief against such levy, demand and collection of transfer premium. The learned counsel for the Municipal Corporation further states that the penalty of Rs.5,000/- for late filing of documents with the Estate Department of the Municipal Corporation is/ will be imposed. We are not inclined to grant any stay against such penalty also. In these circumstances, we direct that in addition to the penalty of Rs.5,000/- for late filing of documents, the respective parties shall pay transfer premium, if not already paid, in the amounts as mentioned in the table hereunder:-

Sr. No.	NM/WP No.	Name	Plot No.	Plot Area (Sq. YDS/Sq.Mtr.)	Registration date of documents	R.R. Rate in Rs.	Total Amount (R.R. Rate X area X 1.33)	10 % of Total Amount in Rs.	Transfer Premium Amount already paid (in Rs.)
	A	B	C	D	E	F	G	H	I
1	NM/173/14 1251/2014	Ilyas Ebrahim Mi	17, Dadar Naigaon (C.S. No.26/26 Dadar Naigaon Division)	688 Sq.Yds (575.25 sq.mtrs)	09.02.2010	34,800	2,66,24,870	26,62,487	Nil

2	NM/175/14 1251/2014	Dhruv Mahendra Rathod and others	210-E, Dadar Matunga (South) (C.S.No.189 -D/10 Matunga Division)	1437 Sq.Yds. (1201.51 sq.mtrs.)	06.08.2011	62,400	9,97,15,720	99,71,572	1,38,86,577
3	NM/599/20 14 1251/2014	Palai Developers	361, Dadar Matunga (South) (C.S.No.262 /10 Matunga Division)	1145 Sq.Yds. (957.36 sq.mtrs.)	02.01.1996	30,128	3,83,61,640	38,36,164	Nil
					24.10.1997	42,179	5,37,06,050	53,70,605	Nil
					18.10.2001	38,000	4,83,97,100	48,38,497	Nil
					18.10.2001	38,000	4,83,97,100	48,38,497	Nil
					25.08.2008	36,600	4,66,02,370	46,60,237	69,90,500
4	NM/635/20 14 1251/2014	Techno Realtors Pvt. Ltd.	155-A, Dadar Matunga (South) (C.S.No.159 A/10 Matunga Division)	716 Sq.Yds. (598.66 sq.mtrs.)	28.12.2007	31,400	2,50,01,240	25,00,124	Nil
5	972/2014	Mrs Vijayalakshmi and others	268, Sion Matunga (East) (C.S. No.568/6, Matunga Divison Table 19/126)	698 Sq.Yds. (583.61 sq.mtrs.)	02.11.2007	32,400	2,51,48,922	2514.892	39,35,410
6	983/2014 1251/2014	D.V.K. Real Estate Pvt.Ltd.	162-C, Dadar Matunga (South) (161-C/10 Matunga Division)	634 Sq.Yds. (530.10 sq.mtrs)	1) 20.11.1998	33,141	2,33,65,500	23,36,550	15750
					2) 4.6.2008	40,000	2,82,01,320	28,20,132	Nil
			162-D, Dadar Matunga (South) (161-E/10) Matunga Division)	638 Sq.Yds. (533.44 sq.mtrs.)	23.05.2008	40,000	28379008	2837901	Nil
			162-E, Dadar Matunga (South) (161-E/10 Matunga Division)	740 Sq.Yds. (618.73 sq.mtrs.)	20.08.2009	36,600	3,01,18,540	30,11,854	Nil

7	2113/2014	Vikram Jethalal Joisher and other	292, Dadar Matunga (South) (C.S. No.233/10 Sion Division)	1481 Sq.Yds. (1238.30 sq.mtrs.)	12.08.1974	-	1,11,000	11100	Nil
8	2840/2014	Dttashram CHS Ltd.	62, Dadar Matunga (South) (C.S. No.60/10 of Matunga Division)	1215 Sq.Yds. (1015.89 sq.mtrs.)	20.09.2011	62,400	8,43,10,740	84,31,074	Nil
9	3308/2014	Dilip Kamal Somaiya and another	341, Dadar Matunga (South) C.S. No.268/10 of Matunga Division)	659 Sq.Yds. (551 sq.mtrs.)	16.06.1992	10,652	78,06,100	7,80,610	Nil
10	250/2015	Gayatri Enterprise and another	676, Dadar Matunga (South) (C.S. No.676/10 of Matunga Division)	674 Sq.Yds. (563.54 sq.mtrs.)	23.02.1988	-	1,25,000	12500	Nil

13. The learned counsel for the Municipal Corporation, however, submits that apart from the penalty for late submission of documents, the petitioners are also liable to pay interest at the rate of 18 % p.a. on the amount of transfer premium calculated for the period commencing from the date of registration of the assignment / transfer / or similar agreement, upto to the date on which the application is filed with the Municipal Corporation for such transfer.

14. The learned counsel for the petitioners have vehemently opposed the said submission and submitted that since the levy and demand of transfer premium was struck down by this Court as unconstitutional vide its judgment dated 15 February 2011, and the Mumbai Municipal

Corporation (Validation and Amendment) Act, 2011 came into force only on 14 August 2012, there can be no question of levying and demanding interest. In any event, no demand for interest can be made for the period prior to 14 August 2012, was the submission.

15. Having heard the learned counsel for the parties on the demand for interest, we direct that wherever the transfer / assignment of leasehold rights of land belonging to the Municipal Corporation has taken place prior to 14 August 2012, interest at the rate of 12% per annum will be paid on the transfer premium (calculated at 10%), for the period commencing from 14 August 2012 till the date of payment. Obviously, where the transfer premium is already paid prior to 14 August 2012, there will be no question of charging any interest. This exercise of calculating interest shall be undertaken by the Estate Department of the MCGM within a period of four weeks from today and the MCGM shall thereafter inform the respective parties of their liability, if any, to pay the interest. Needless to mention that this interim arrangement is without prejudice to the rights and contentions of all parties and subject to the final outcome in these petitions.

16. It is brought to our notice that in some cases and at some point of time, the Municipal Corporation had demanded transfer premium at the rate exceeding 10% and in some of these cases, the petitioners had even paid transfer premium at the rate higher than 10%, even though ultimately the transfer premium rate has been fixed at 10 % of the market value as per the ready reckoner chart. By this interim order, we do not propose to direct the Municipal Corporation to refund any transfer premium paid by the

petitioners in excess of 10% and the same shall be retained by the Municipal Corporation subject to the final outcome of these petitions. Contentions of all parties are kept open in this regard.

17. This brings us to the question of levy of enhanced lease rent by the MCGM. It appears from the Municipal Commissioner's letter dated 22 September 2008 that the tenure of lease granted by the Municipal Corporation in different cases is as under :-

Sr No.	Tenure of Lease	Total properties
1	in perpetuity	1247
2	999 years	2148
3	120 years	1
4	99 years	584
5	25 to 70 years	192
6	10 years	4
	Total	4174 (approx)

18. On the question of increase in the annual lease rent, the learned counsel for the Municipal Corporation has submitted that once the original lessee transfers the leasehold rights, the Municipal Corporation is entitled to levy the annual lease rent at such rate as may be determined. This argument proceeds on the footing that there is a novatio and therefore the Municipal Corporation is not bound to demand lease rent on the basis of the original lease deed.

19. On the other hand, the learned counsel for the petitioners have submitted that the lessees were not required to obtain any permission of the

Municipal Corporation for transferring the leasehold rights. In fact, the lease deeds contained clauses indicating that section 108(j) of the Transfer of Property Act, 1882 was applicable to the said leases. Section 108(j) reads as under :-

“(j) in the absence of a contract or local usage to the contrary, the lessee may transfer absolutely or by way of mortgage or sub lease the whole or any part of interest in the property and any transferee of such interest or part may again transfer it. The lessee shall not by reason only of such transfer cease to be subject to any of the liabilities attaching to the lease.”

20. It is submitted that in view of the above position, neither was the lessee required to obtain permission of the Municipal Corporation for transferring the lease nor is the assignee or transferee required to pay any higher lease rent than the rate already determined as per the lease deed. The learned counsel for the petitioners further submitted that there is no provision in the Act that would entitle the Municipal Corporation to enhance the annual lease rent contrary to the terms and conditions of the original lease deed. The assignees have already paid or are in the process of paying substantial charges to the Municipal Corporation for the purpose of redevelopment under different heads and that such payments are in the region of Rs.6,000/- to Rs.7,000/- per sq.ft. It is therefore submitted that over and above the 10 % transfer premium, the Municipal Corporation has already got or is in the process of getting substantial amounts in case where the lands have been used for redevelopment purpose.

21. As and by way of illustration, the learned counsel for the petitioners in Writ Petition Nos.1251 of 2014 and 893 of 2014 submitted

that for the land admeasuring 600 sq.mtrs., which is used for redevelopment, the Co-operative Society / Developer has already been required to pay more than Rs.7 crores by way of various charges including transfer premium and premium for additional FSI after separately demanding enhanced lease rent. It is therefore submitted by the learned counsel for the petitioners that the petitioners may not be required to pay any additional amount of annual lease rent over and above the rent which is payable under the lease deed.

22. We have heard the learned counsel for the parties on this issue at quite some length. The Municipal Corporation was unable to point out any provision of law which permits the Municipal Corporation to enhance the annual lease rent contrary to the terms and conditions of the original lease deed. Considering that we are fixing all the petitions for final hearing on 6 April 2015 and in view of the above submissions, we are inclined to grant interim relief against the levy / demand / collection of enhanced lease rent. We therefore direct that till the disposal of the writ petitions, MCGM shall not levy/demand/collect enhanced lease rent from the petitioners on the basis of the Municipal Corporation Resolution No.796 dated 11 November 2008.

23. As regards the other amounts claimed by the Municipal Corporation, such as scrutiny fees and legal charges, we are not inclined to grant any stay and the same shall be paid by the petitioners as and when a demand is made for the same.

24. In the result, by way of this interim order and subject to the payments being made by the respective parties as indicated herein, we direct the Municipal Corporation to consider the pending applications for grant of NOC by the Estate Department and to take decision on the pending applications for building permissions, occupation certificate etc. in accordance with law.

25. Many of the matters in this group are listed for hearing before this Court since April 2014. The Court has already granted time to the State Government and Municipal Corporation for filing affidavit in reply. However, no affidavit in reply has been filed. The petitions are therefore heard only for admission and interim relief. Since the petitions are now fixed for final hearing on 6 April 2015, the state Government and the Municipal Corporation shall file their respective affidavits within eight weeks from today. Rejoinder if any, may be filed within two weeks thereafter. Stand over to 6 April 2015 at 3.00 p.m.

26. Parties to act on the authenticated copy of this order by the Associate.

CHIEF JUSTICE

B.P. COLABAWALLA, J.