

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

WRIT PETITION NO.1322 OF 2012

Apurva Co-operative Housing Society Ltd...Petitioner

Vs.

The Municipal Corporation of Greater
Mumbai & Ors.

...Respondents

Mr. Pankaj A. Savant with Mr. Vishal Talsania, Khushrood Akhtar with Leri Rubens i/b. Vigil Juris for the petitioner.

Mr. Ashutosh A. Kumbhakoni with Ms. Sharmila Modle for respondent-
B.M.C.

Mr. Geeta Shastri, A.G.P, for respondent State.

**CORAM : MOHIT S. SHAH, C.J. &
M.S. SANKLECHA, J.**

DATE : 01 August 2013

P.C.

Rule. To be heard with Writ Petition No.2243 of 2011.

2. Notice to the learned Advocate General, returnable on 23 September 2013.

3. Heard the learned counsel for the parties on the question of interim relief.

4. Since this order is being passed with consent of the learned counsel for the petitioner and the learned counsel for the Municipal Corporation, it is not necessary to set out the facts leading to filing of this Writ Petition or rival submissions which were urged earlier.

5. During pendency of this petition, the Municipal Corporation shall consider the application of the petitioner society for occupation certificate for the newly constructed building on condition that the

petitioner society deposits the balance 25% of the premium being the sum of Rs.78,80,875/-, without prejudice to the rights and contentions of the petitioner.

6. The learned counsel for the petitioner society states that without prejudice to the rights and contentions of the petitioner, the petitioner society agrees to deposit the said amount by way of deposit only, in this Court, but the 5 persons who were tenants before the redevelopment project was taken up may be permitted to occupy their flats as soon as the Municipal Corporation processes the application for occupation certificate and they may not be made to wait till the amount of Rs.78,80,875/- is deposited in this Court.

7. Accordingly, it is directed that the Municipal Corporation shall consider the application of the petitioner society for occupation certificate of the building on plot No.662, Sohrab Palamkot Road, Parsi Colony, Dadar, Mumbai-400 014 as expeditiously as possible and in any case within four weeks from today. Once the occupation certificate is issued by the Municipal Corporation, the original five tenants will be permitted by the petitioner society to occupy the newly constructed flats, but the remaining six flats will be put into possession of the transferees only after the petitioner society deposits the aforesaid amount of Rs.78,80,875/-. It is clarified that this order is passed without prejudice to the rights and contentions of the parties.

8. We make it clear that though the respondent-Municipal Corporation is seeking to enforce recovery of the transfer premium in the petitioner's case at the rate of 50% of the consideration/ready reckon price (whichever is higher) inspite of the fact that the petitioner has already paid transfer premium at the rate of 25%, the Municipal Corporation does not appear to have taken any steps for recovery of such

transfer premium from other parties who had succeeded in Writ Petition No.166 of 1997 and companion matters and other writ petitions filed from time to time, even after enactment of the Maharashtra Act No.XX of 2012, Mumbai Municipal Corporation (Amendment and Validation) Act, 2011, which has already come into force with effect from 14 August 2012. It is, therefore, necessary for the Municipal Corporation to take necessary steps for implementation of the provisions of the above Act as expeditiously as possible and the Municipal Corporation shall do so within two months from today.

9. The amount to be deposited by the petitioner shall be invested in fixed deposit with any nationalised bank for a period of three years or for such period for which maximum rate of interest is available. Upon expiry of such period/s, the fixed deposit will be renewed from time to time without any further orders of the Court.

10. The learned counsel for the respondents waive service of notice.

CHIEF JUSTICE

M.S. SANKLECHA, J.