

Ashwini

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION (L) NO. 21683 OF 2022**

Subodh M Joshi ...Petitioner
Versus
Municipal Corporation of Greater Mumbai & Ors ...Respondents

Mr AM Saraogi, *with Sahil Ansari, for the Petitioner.*
Mr Bipin Joshi, *for the Respondent.*
Mr Sukanta Karmakar, AGP, *for the State.*
Mr Sagar Patil, *for the MCGM, is present.*
Mr Suyash Balip, SEBP 'N' Ward, *with Bhakti Mane, QSEWW*
'N' Ward, are present.
Mr SK Dhekale, *Court Receiver, is present.*

**CORAM G.S. Patel &
 Gauri Godse, JJ.**
DATED: 17th August 2022

PC:-

1. It is entirely possible that the state of affairs reflected in this Writ Petition is symptomatic of all development and redevelopment in this city.
2. The project in question is something called Integrated 'Arya' at village Kirol, Narayan Nagar, Ghatkopar West, Mumbai 400 086. The Petitioner is concerned with one flat. We are told that this is flat C-501, i.e., flat No. 501 on the fifth floor of Wing 'C'. This is not a

free sale building but is a rehab building to which the Petitioner is entitled. That is undisputed. It is also undisputed that the Petitioner is presently in transit accommodation being paid for and provided by the 3rd Respondent, Integrated Spaces Limited.

3. The building owner/developer claims that five of the six buildings in this project, including Wing ‘C’, with which we are concerned, are ‘complete’ and ‘ready for occupation’. We are told that 30 persons are already in occupation and have taken up their respective tenements.

4. The reality is entirely different. Annexed to the Petition from page 317 at Exhibit “L” are photographs said to be of 31st May 2022. We see unfinished flooring, exposed wiring, lifts that are in no sense ready, raw concrete slabs, staircases without hand rails, water-logging and more. Particularly astonishing are the photographs at pages 317, 319, 320, 321, 322, 325, 327, 328 and 329. This building is in no sense ready for occupation — at least not by human beings.

5. There is another set of photographs tendered by Mr Joshi for the 3rd Respondent. It shows a completed façade. But these photographs have no date. It is impossible to identify which of the six buildings we are being shown. We say this because from this very compilation when we pointed out that the photographs at pages 9, 10, 14, 15 and 16 did not show any sign of readiness, we were told that these are photographs of some other building. When a flat occupant comes to court and says that despite promises his flat has not been made available on time, there is little point in showing us

photographs of stack parking in the basement, a matter presently of monumental irrelevance.

6. On 12th August 2022 we passed the following order:

“1. Mr Joshi on behalf of Respondent No. 3 states that the redeveloped building called ‘Integrated Arya’ is ready in all respects. There is a residential accommodation to which the Petitioner is entitled and of which he is at liberty to take possession. Mr Joshi contends that the building is ready in all respects and has an Occupation Certificate.

2. The Petitioner is at present in transit accommodation. This has been provided by Mr Joshi’s client.

3. We permit Mr Saraogi’s client, the Petitioner, to take possession of his allotted Unit No. C-501 in the redeveloped building on a without prejudice and no-equities basis. We are not expecting him on the eve of a four-day weekend to vacate his present transit accommodation. Mr Saraogi states that the redeveloped unit does not have municipal water supply. Mr Joshi maintains that all facilities including a lift etc have been provided.

4. We require Mr Sagar Patil for the MCGM to confirm whether there is a functioning water supply and whether a full or part Occupation Certificate has been issued. An Occupation Certificate is annexed to the Petition at page 330. The reason we are asking Mr Saraogi to check is that it is prima facie difficult to conceive of a situation where an Occupation Certificate has been issued without municipal water supply.

5. Mr Patil’s instructions are to say that on 19th May 2022 certain requisitions have been issued by the MCGM to the 3rd Respondent developer. So far there is non-compliance. We will require particulars on the next date. At

this stage, we do not require MCGM to formally file an Affidavit. We will consider that on the next date if required.

6. It goes without saying that once we are satisfied that the redeveloped premises are ready in all respects, Mr Saraogi's client will have to vacate the transit accommodation currently occupied by him. In no circumstances will Mr Saraogi's client be entitled to occupy both the transit accommodation and the final permanent accommodation. We do not require an undertaking from the Petitioner for this purpose. We are confident that we will be able to ensure it.

7. List the matter high on board on Wednesday, 17th August 2022."

7. We were told then, as we were told earlier today, that 'there is water supply'. On further questioning, we were then informed, almost reluctantly, that there is no municipal potable water supply. What the 3rd Respondent is doing is providing tanker water and, apparently as some gesture of goodwill or generosity, 20-litre Bisleri drinking water jars. That is not our understanding of 'water supply' to a residential building. This is not what we understand when we are told that 'everything is in readiness'. The only water connection that seems to have been made available is for construction work. We do not think that it is possible to accept the argument that residents must use construction water supply even for their domestic needs, leave alone drinking water.

8. At this point matters get worse and considerably uglier. Mr Patil tell us that there is something called a Part Occupancy Certificate. By 'part' he means that it is given for five of the six

buildings in the project and for up to the sixth floor in the sixth building, Wing F. There is an officer of the building proposals department to instruct Mr Patil. We have been shown a copy of the Part Occupancy Certificate dated 19th May 2022. A copy is at Exhibit 'M' to the Petition at page 330. It is surprising that this Part Occupancy Certificate is apparently issued upon a completion certificate submitted by 3rd Respondent's architect and, as we have found out, on very little else. The reason for this will become evident shortly. The Part Occupancy Certificate then says that 'all temporary provisions in regard to building services are to be maintained till full Occupancy Certificate'. From this, we are supposed to understand that the builder must make arrangements for even essential services such as water supply. The officer from the building proposal department says that he has inspected the premises and satisfied himself before the Part Occupancy Certificate was issued. We have every reason to doubt the correctness of this instruction conveyed through Mr Patil.

9. The reason is as follows. On 18th June 2022, the MCGM issued what is called a P form to the 3rd Respondent. It asked for several water charges including an amount of Rs. 23,11,121/- for extra charges for construction and Rs. 16,41,694/- for extra sewerage charges. The total amount with other charges Rs. 41,78,266/-. The 3rd Respondent has paid no part of this so far. We are told that the P form has a one year validity. So far there is no response at all to the MCGM from the 3rd Respondent. We are asked to believe that this is perfectly all right — even if it means that the occupants must go a year without a connected municipal drinking water supply.

10. Now the MCGM has what is called a trenching policy where it disallows the digging of any roads during the monsoon period after 30th April of each year. This is reasonable. But it also can come as no surprise to anyone, any more than the annual monsoon is a surprise.

11. Before us, the 3rd Respondent tries to make capital of this trenching policy and says that he cannot provide a drinking water connection, because, to do that, the MCGM would have to dig up some portion of the intervening road and the builder would have to do some RCC work, which needs dry weather.

12. We find this absolutely astonishing. On the one hand this developer claims to be an accomplished and renowned builder and at the same time is unaware — and expects us to believe that he is unaware — that arrangements would have had to be made for laying an underground water connection to connect to the municipal mains for drinking water supply. He expects us to believe that it is acceptable that residents should manage without a proper water supply and must wait until the MCGM finishes work across the road. The builder knew the location of the site, the alignment of the road and where the municipal main ran. None of this was a surprise either. We do not know why arrangements have not been made in all this time to have a connection to the Municipal main in readiness. All that needed to be done was to apply in good time to have the line to the site readied, leaving only the final connection to be made.

13. In the meantime, those who have taken up occupation are supposed to be beholden to the 3rd Respondent for receiving tanker water supply, always a doubtful proposition since tanker water supply, unless it is of the highest quality, can be extremely unhealthy, and grateful for these handouts of 20 litre Bisleri bottles.

14. This is no way to run the public administration of civic affairs. We have no choice but to take notice of these matters and issue appropriate directions. The BMC will bear in mind that we will now do this in every single matter until the MCGM evolves a policy that is designed to protect the interests of the residents and not to merely subserve the profit motives of builders.

15. What has impelled this petition is that the 3rd Respondent is trying to get the Petitioner to take up his allotted flat C-501 on the pretext that 'it is ready', and to force the Petitioner to give up his temporary transit accommodation.

16. Chapter X of The Mumbai Municipal Corporation Act 1888 deals with water supply. Leaving aside the definitions, the provisions regarding providing water supply in Sections 270A to 279 are important. Some of these are immediately relevant. Sections 270A, 271 and 272 read thus:

270A. Premises not to be occupied without Commissioner's certificate in respect of adequate water supply

No person shall occupy or permit to be occupied, or use or permit to be used, any premises or part thereof constructed or reconstructed after the date of the

coming into force of the Bombay Municipal Corporation (Amendment) Act. 1953, until he has obtained a certificate from the Commissioner to the effect that there is provided within or within a reasonable distance of the premises, a supply of pure water to the persons intending to occupy or use such premises or, where the premises are situated within any portion of Brihan Mumbai in which a public notice has been given by the Commissioner under section 141, until he has obtained a certificate from the Commissioner to the effect that a supply of pure water has been provided for the premises from a municipal water work.

271. Application for private water supply from whom to be received

(1) Supply pipes for conveying to any premises a private supply of water from a municipal water work shall not be connected with such water work except on the written application or with the written assent of the owner of the premises, of the person primarily liable for the payment of property-taxes on the said premises;

Provided that, in respect of any premises, where the owner or person primarily liable for the payment of property-taxes fails or refuses or make such application or to give his assent within a reasonable period, the supply pipes for conveying to such premises such water-supply may be connected with such water work on the written application of the occupier or such premises made to the Commissioner, after holding necessary inquiry and payment of the cost of connecting the supply pipes and subject to such other conditions (including those for payment of water taxes and water charges) as the Commissioner may deem fit to impose.

Commissioner may in certain cases require owners to obtain private water supply

(2) But it shall appear to the Commissioner that any premises situated within any portion of Brihan Mumbai in which a public notice has been given by the Commissioner under clause (b) of section 141, are without a supply of pure water, adequate to the requirements of the persons usually occupying or employed upon the said premises, the Commissioner shall, by written notice, require the owner of the said premises or the person primarily liable for the payment of property taxes thereon, to obtain a supply adequate as aforesaid from a municipal water work and to provide supply and distributing pipes, cisterns and fittings and do all such works as may in the opinion of the Commissioner be necessary for that purpose.

272. Making and renewing connection with municipal water works

(1) No connection with any municipal water work shall be made or renewed—

(a) except by a municipal officer or servant empowered in that behalf by the Commissioner; and

(b) until the certificate specified in sub-section (4) has been given.

(2) In every case where a new connection with a municipal water work is made or an existing connection requires renewal, all necessary communication pipes and fittings thereon, shall be supplied by the Commissioner, and the work of laying and applying such communication-pipes and fittings shall be executed by municipal agency under the Commissioner's order; and the cost of all such materials and work shall be charged to the-municipal fund.

(3) Every such communication-pipe and fittings thereon shall vest in the Corporation and be maintained at the charge of the municipal fund as a municipal water work.

(4) All supply and distributing pipes and cisterns and

fittings not being the property of the Corporation shall be laid and applied under the supervision and to the satisfaction of a Municipal Officer appointed by the Commissioner in that behalf, who shall give and sign a certificate, free of charge, when such supply and distributing pipes, cisterns and all necessary fittings have been laid, applied and executed in a satisfactory manner and when proper and sufficient arrangements have been made for draining off waste water.

(5) Where any supply or distributing pipe, cistern or such fitting is laid, applied, added to or altered, or any connection is made in contravention of this section the Commissioner may, with the previous approval of the Standing Committee remove such supply or distributing pipe, cistern, fitting or connection, or additions or alterations thereto, and make good such pipe, cistern, fitting or connection ; and the owner and occupier of the premises in which or for supply to which such supply or distributing pipe, cistern or fitting has been laid, applied, added to or altered or such connection has been made, shall be jointly and severally liable to pay the expenses incurred by the Commissioner in so doing.

(Emphasis added)

17. These provisions must be read with Section 353A regarding certificates. This section reads as follows:

353A. Completion certificates: permission to occupy or use

(1) Every person who employs a licensed surveyor or person approved by the Commissioner to erect a building or execute any such work as is described in section 342, shall, within one month after the completion of the erection of such building or the

execution of such work, deliver or send or cause to be delivered or sent to the Commissioner at his office, notice in writing of such completion, accompanied by a certificate in the form of Schedule T signed by the person employed under section 344A, who is hereby required immediately upon completion of the work and upon demand by the person employing him to sign and give such certificate to such person, and shall give to the Commissioner all necessary facilities for the inspection of such building or of such work;

Provided that—

(a) such inspection shall be commenced within seven days from the date of receipt of the notice of completion, and

(b) the Commissioner may, within seven days from the date of commencement of such inspection, by written intimation addressed to the person from whom the notice of completion was received, and delivered at his address as stated in such notice, or, in the absence of such address, affixed to a conspicuous part of the building to which such notice relates—

(i) give permission for the occupation of such building or for the use of the building or part thereof affected by such work, or

(ii) refuse such permission in case such building has been erected or such work executed so as to contravene any provision of this Act or of the bye-laws.

(1A) Notwithstanding anything contained in sub-section (1), a co-operative housing society or a federation of co-operative housing societies registered under the Maharashtra Co-operative Societies Act, 1960 or any

condominium or a company incorporated under the Companies Act, 1956 with limited liability or an association of persons any ad hoc body formed by the occupants of the building constructed before the 25th March, 1991 and occupied without obtaining the permission to occupy the building from the Commissioner under section 353A, shall employ a licensed surveyor or person approved by the Commissioner to erect a building or to execute any such work as is described in section 342, who shall after inspecting the said premises deliver or send or cause to be delivered or send to the Commissioner at his office, notice in writing of such completion accompanied by certificate in Form “T”. The certificate given by the licensed surveyor or person approved by the Commissioner to erect a building or execute any such work as is described in section 342, under this sub-section shall, for all purposes, be deemed to be the certificate given under sub-section (1).

(2) No person shall occupy or permit to be occupied any such building, or use or permit to be used the building or part thereof affected by any such work, until

—

- (a) the permission referred to in proviso (b) to sub-section (1) has been received, or
- (b) the Commissioner has failed for twenty-one days after receipt of the notice of completion to intimate as aforesaid his refusal of the said permission.

(Emphasis added)

18. We fail to understand how an “occupancy” certificate can ever be issued to a structure that is totally unfit for human habitation. “Occupancy” posits habitability; and an essential requirement of any habitable premises is the provision of basic

amenities. Water and power are the most basic. It is indeed alarming that the MCGM seems to take it for granted that a building without a regular water supply can be considered habitable and eligible for an 'occupancy' certificate. We refuse to accept any such interpretation. To do so would be to deliver manifest injustice to residents across the city.

19. We intend to pass a direction in future that no Occupation Certificate is to be issued unless the developer can demonstrate that he has already made preparations by laying the appropriate pipelines for connecting to the municipal mains. In high rise buildings all lifts (not construction elevators or construction lifts) must be in full working order. It must not be forgotten that when we are talking about people moving in, this includes the old and the infirm and young children as well. Saying that a building is ready but providing a staircase without a guard or a handrail is to put at risk the lives of future residents of this building.

20. Therefore, until there is provision made by this builder for laying the pipelines in preparedness for a water connection, the so-called Part Occupancy Certificate stands suspended. None of the Part Occupancy Certificates issued to the builders for any of the buildings are to be acted upon for any purpose until connections to Municipal water mains are demonstrated to us to be ready. This restraint will operate only until the next date.

21. The 3rd Respondent must deposit with the MCGM the full amount demanded by the MCGM under the P-Form within two

weeks from today. For, without P-form compliance, no water supply connection can be obtained.

22. The Court Receiver, High Court Bombay is appointed Receiver and will take actual physical possession of flat C-501.

23. Mr Joshi for the 3rd Respondent insist that the flat is ready. Mr Saraogi for the Petitioner insists that it is not. The Receiver will visit the flat and will submit a report including as to whether or not wiring has been completed with the necessary switches and outlets and whether there is power supply. The Receiver should note whether there is basic finishing such as flooring, painting of walls, doors and windows etc. A set of photographs should also be provided. It is acceptable if those photographs are shown to us on a digital device rather than have them printed.

24. As to the water supply, since there is presently no possibility of linking to the municipal water mains at least for several weeks from now, the 3rd Respondent developer will ensure that there is a separate hygienically treated water tank for storage of drinking water and that it is filled with water provided by the MCGM in its own special drinking water supply tankers. If there is a shortfall or any inadequacy, the 3rd Respondent builder will at its cost obtain drinking quality water supply from any private water supplier and will not be entitled to recover these costs from any resident whatsoever. The provision of free 20 litre Bisleri bottles is to continue until further orders.

25. As to the MCGM, we will require an explanation on Affidavit as to how it issued this Part Occupancy Certificate. We specifically require an explanation from the gentleman instructing Mr Patil today as to whether he personally inspected the site, and, if so, whether he checked if the 3rd Respondent has made arrangements for connecting to the municipal drinking water mains or not. The MCGM affidavit is to be filed by 23rd August 2022.

26. The Petitioner will be entitled to continue in transit accommodation at the 3rd Respondent's cost until further orders of this Court. Mr Joshi agrees on instructions that this will be done. No services that have been made available to the Petitioner are to be discontinued.

27. We permit the 3rd Respondent and Mr Joshi to chalk out a viable action plan for resolving these issues. That proposal must have full particulars and details, including time-lines. We will consider the proposal on the next date. We make it clear that any proposal we accept will be treated as a solemn undertaking to the Court.

28. We are not going to dispose of this matter but will list it periodically for compliance.

29. List the matter on 24th August 2022.

(Gauri Godse, J)

(G. S. Patel, J)