



Ashwini

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION (L) NO. 31084 Of 2023

Mustansir Barma ...Petitioner
Versus
 Executive Engineer A ward & Ors ...Respondents

Mr Vishal Kanade, with Rutuparn Deo, i/b Aditya Lele, for the
Petitioner.

Mr SA Bhalwal, i/b Vyas & Bhalwal, for Respondent No. 2.

Mr Mayur Khandeparkar, with Chaitanya Nikte, Esha Malik,
 Hitanshu Jain & Vikramjeet Garewal, for Respondent No. 4.

Mr Kunal Waghmare, for the Respondent-MCGM.

**CORAM G.S. Patel &
 Kamal Khata, JJ.**

DATED: 6th December 2023

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1. Heard. We are not satisfied that there are sufficient reasons to intervene at the instance of the sole Petitioner who claims to have some sort of right to the building owned by the 3rd Respondent society. Why the society did not file the Petition or join as Petitioner is unexplained. Even more odd is the fact that the 4th Respondent is not an outsider. It is the owner of premises on the ground floor and is a member of the society. If the dispute pertains to the property of the society and if the dispute is between member and member or

between the society and a member pertaining to the assets of the society, then there is surely an equally efficacious alternate remedy. There is no reason why this has not been availed.

2. The only grievance in the Petition is that according to the Petitioner, the 4th Respondent has allegedly done unauthorised and illegal work in its ground floor premises. Specifically, we are told that a mezzanine has been removed and the level of the ground floor premises has been lowered to below the plinth level. We are also told that in the course of some of these works, the structural stability of the entire building has been adversely affected. Therefore, the demand is that the Municipal Corporation of Greater Mumbai (“MCGM”) should be directed by this Court to issue a stop work notice and to carry out a survey.

3. We do not think that our writ jurisdiction is meant to be used like this in what is clearly an internal dispute. Mr Khandeparkar for the 4th Respondent states that there is no logical reason why the 4th Respondent, the owner of premises on the ground floor, would damage the premises let alone the structure. What is proposed by the 4th Respondent is a commercial establishment to open shortly, is designed as a high-end coffee shop and eatery. The building is in a lane just behind the Taj Mahal Hotel in Colaba on Merewether Road.

4. There are some photographs annexed to the compilation tendered by the 4th Respondent just as rival photographs are annexed to the Petition.

5. More importantly, the compilation shows that the 4th Respondent has a Deed of Assignment which goes back to 2003. There is an NOC from the MCGM of 31st March 2023 to carry out tenatable repairs. Then there are other licences and a fire safety compliance certificate of 26th June 2020.

6. If this is therefore a question of whether or not the Petitioner has exceeded the permissions granted, then that is surely a factual dispute into which this Court will not enter. Page 12 of the compilation has a fire safety compliance certificate. It is of 26th June 2020. We are asked to believe that this fire safety compliance certificate is bogus, must be ignored, or it is obtained on some incorrect representation.

7. Whether or not the Petitioners have seen this document is immaterial. The 4th Respondent is not bound to show all its documents to even the 3rd Respondent society let alone the individual Petitioner. A Petitioner who comes to Court with a case like this must frame his or her Petition within the limits of what is permissible in our writ jurisdiction. We certainly cannot permit our writ jurisdiction to be weaponized in a private dispute by delving into disputed questions of fact.

8. The counter-complaint by the 4th Respondent is that certain hefties have been strategically positioned to obstruct the 4th Respondent's access to its own premises inter alia for installing a compressor for the air conditioning even though it is known that the 4th Respondent's scheduled opening is tomorrow, 7th December

2023. Small wonder then that despite notices and permissions going back several months, repeated applications citing urgency are made only now.

9. The 3rd Respondent, though it does not care to file its own Petition, draws our attention to a communication at page 129 of 4th July 2023 which mentions a structural audit report of the building and saying that it was categorised in the C2-B category. This notice says that all repair works for the building should be done in consultation with an empanelled structural consultant and engineer. Now the attempt is to confuse structural repairs to the building with the permission that the 4th Respondent obtained for repairs and renovations of the interior of the 4th Respondent's premises. We do not think that it is open to this society to dictate what permissions the MCGM should or should not grant. The MCGM itself has found no cause to move against the 4th Respondent.

10. If the dispute from this individual Petitioner (who repeatedly asserts that he has been conferred a Padma Shri, as if this is of the slightest consequence to his status as a litigant like any other before us) is that the works are not tenantable repairs, then he should have the courage and take the trouble to file a suit, pay court fees and step into the witness box. Simply put, we are not prepared to accept his word for it (and most certainly not merely because he has a Padma Shri).

11. Notably, Exhibit "C" to the Petition is a collection of photographs and ones similar to these were shown to us earlier as if

to suggest that these works are shocking and show structural distress. As everybody who has lived in premises that are under repair knows, every kind of renovation looks like devastation initially. But more importantly the Petition does not tell us who took these photographs, on what date and why these are now being shown as part of Exhibit “C” of the current state of work, especially if it is argued that these are part of a structural audit report because one structural report is not of 2023 but is of December 2022, well prior in point of time. A second audit report is of 14th August 2023. What is shown to us at Exhibit “L” is in regard to structural deterioration of the entire building but does not specifically address the specifics of the work being done by the 4th Respondent other than saying surprisingly that the consultant did *not* have the access to the 4th Respondent’s premises but without such access somehow came to the conclusion that there was indiscriminate demolition and ad hoc alterations and a lowering of the plinth. There is, therefore, rank speculation — and this is supposed to suffice in a Writ Petition.

12. Finally, it is now argued that the 4th Respondent’s permission was for 45 days and that time expired several months ago. Clearly, this is grasping at straws. Equally clearly, if one allegation does not find favour, another distant one is made. First, it is said that the works are unauthorised. Then, when permissions are shown, it is said that the works are damaging the entire building. When the sheer lack of logic is pointed out, and it is seen that this allegation is the merest speculation, it is argued that whatever permissions there may have been, these have expired — as if everybody always completes renovations on schedule — without the slightest attempt made to show that the works are beyond the permissions granted.

13. Finally, it was repeatedly argued that the structure is 100 years old. This argument is solemnly advanced in a building that is 150 years old.

14. On this presentation of the age of the building (and the Petitioner's Padma Shri), the matter was repeatedly mentioned, ultimately taking an unconscionable amount of judicial time and with no explanation at all for the evident delay if there was indeed urgency. This leads to the inevitable conclusion that the Petition is not bona fide but an attempt — and a poorly disguised one at that — to agitate some private disputes.

15. The less said of this Petition the better. It is rejected.

16. Neither the Petitioner nor the 3rd Respondent society is permitted in any shape, fashion or form to obstruct access by the 4th Respondent, its customers, clients, staff or workmen to the 4th Respondent's premises.

(Kamal Khata, J)

(G. S. Patel, J)