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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION  
WRIT PETITION NO.6592 OF 2013**

Shri Mewalal Hiralal Shah

... Petitioner

Versus

1. Kalyan – Dombivali Municipal Corporation,
  2. The Ward Officer, 'F' Ward,
  3. The Deputy Executive Engineer (Demolition),
  4. The Senior Inspector, Ramnagar Police Station,  
Dombivali, Dist. Thane.
  5. Shri Jayanti Keshavji Sapra,
  6. Shri Mahendra Keshavji Sapra,
  7. Shri Narendra alias Naresh Nagraji Sapra,
  8. Shri Ashok Natwarlal Sapra,
  9. Shri Jayesh Natwarlalji Sapra,
  10. Shri Prakash Suresh Sapra,
  11. M/s. Prashant Builders,
  12. M/s. R.M. Builders,
  13. The State of Maharashtra
- ... Respondents

Shri. Madhav J. Jamdar, for the Petitioner.

Mr. A.S. Rao, for the Respondent No.1.

Mrs. M.P. Thakur, AGP, for Respondent Nos.4 and 13.

Mr. Sanjay A. Ghaisas, for Respondent Nos.5 and 7 to 10.

Mr. Mahesh Chandanshiv i/by Mr. Kishor H. Hase, for Respondent No.12.

**CORAM : A.S. OKA & C.V. BHADANG, JJ.**

**JUDGMENT RESERVED ON : 6<sup>th</sup> MAY, 2015**

**JUDGMENT PRONOUNCED ON : 29<sup>th</sup> JULY, 2015**

**JUDGMENT (PER A.S. OKA, J.):**

(Signed Judgment pronounced by A.S. Oka, J. as per clause (i) of Rule 1 of Chapter XI of the Bombay High Court Appellate Side Rules, 1960 as C.V. Bhadang, J. is sitting at Panaji)

. The case of the Petitioner is that he was in occupation and possession of Shop No.4 in Keshavji Valjji Sapra Chawl near Thakurli Railway Station, Dombivali, Taluka Kalyan, District – Thane. The Petitioner was running a flour mill in the Shop No.4 (“the said shop”) till 28<sup>th</sup> August, 2012. It is his case that his father late Hiralal Pandohi Shah was the tenant of the said shop. The Petitioner has stated that the Respondent Nos.5 to 10 are the owners of the property on which the said shop was situated. It is alleged that the Respondent No.11 - firm has agreed to purchase the said property on which the said shop was situated from the Respondent Nos.5 to 10. It is further alleged that Respondent No.12 is the developer of the said property.

2. The Petitioner is relying upon various documents to show that his father late Hiralal Pandohi Shah was the tenant in respect of the said shop and was running a flour mill in the said shop. He has relied

upon the rent receipts of the year 1970 and 1987. The Petitioner is relying upon the licence granted to his father by the erstwhile Dombivali Municipal Council which was renewed from time to time by its successor Kalyan – Dombivali Municipal Corporation which is the Respondent No.1 in this Petition. The Petitioner is also relying upon the licence granted in the name of Thakurli Flour Mill under the Bombay Shops and Establishment Act, 1948 apart from the electricity bills. The Petitioner's father died on 15<sup>th</sup> August, 2004. It is claimed that thereafter the Petitioner was carrying on business in the said shop. The area of the said shop was 350 square feet and was having dimensions as pleaded in Clause (d) of paragraph 3 of the Petition. The Petitioner is relying upon the photographs of the said shop and the flour mill therein.

3. It is stated in the Petition that adjacent to the said shop, a RCC structure consisting of ground + 4 floors was being erected. It is stated that only RCC framework of ground + 4 floors was ready. It is stated that the construction was carried out by the Respondent No.12. A notice of demolition was served by the Respondent No.1–Corporation in respect of the said RCC framework/structure. The Respondent No.12 filed a Civil Suit in the Civil Court at Kalyan for challenging the action of the first Respondent of issuing a notice. The Civil Suit was dismissed

by the learned II Joint Civil Judge, Junior Division at Kalyan by the judgment dated 30<sup>th</sup> July, 2012 by holding that the Respondent No.12 has failed to prove that the construction carried out was lawful. It is stated that on 28<sup>th</sup> August, 2012, demolition of the said RCC structure was commenced by the Respondent No.1 which was completed on 30<sup>th</sup> August, 2012. According to the case of the Petitioner, debris generated by the demolition work fell down on the said shop. As a result, considerable damage was caused to the said shop which led to its collapse. Therefore, by a letter dated 30<sup>th</sup> August, 2012, the Petitioner complained to the Commissioner of the Respondent No.1 and stated that if the demolition squad had taken necessary care, the said shop could have been saved. The Petitioner called upon the Commissioner to grant permission to reconstruct the said shop and to compensate him. The Petitioner is relying upon the photographs of the said shop which show that the same was substantially demolished due to the fall of debris. NC complaint was registered with Ramnagar Police Station on the very day against the demolition squad of the Respondent No.1 – Corporation.

4. On 3<sup>rd</sup> September, 2012 on the 'Lokshahi Din', the Petitioner complained to the Commissioner of the Respondent No.1 about the damage caused to his shop. The Commissioner directed that concerned

department shall take immediate action on the grievance and shall give a reply to the Petitioner accordingly.

5. On 20<sup>th</sup> September, 2012, the Petitioner through his Advocate issued legal notice to the Respondent No.1 and its Commissioner by pointing out that the said Respondent has committed breach of the provisions of Section 248 of the Maharashtra Municipal Corporations Act, 1949 (for short “the Municipal Corporations Act”).

6. On 2<sup>nd</sup> November, 2012, the Ward Officer of the concerned Ward of the Respondent No.1 addressed a letter to the Petitioner contending that while carrying out demolition, necessary care was taken to ensure that no damage is caused to the other structures. However, the Petitioner was called upon to produce necessary documents in respect of the said shop. The Petitioner by letter dated 8<sup>th</sup> November, 2012 pointed out to the Ward Officer that necessary documents have been submitted. On an application being made under the Right to Information Act, 2005 by the Petitioner, a Compact Disk containing video film taken during the demolition of the building in question was supplied to the Petitioner.

7. The Petitioner has assessed the damage caused to the said shop at Rs.4,02,800/- as per the quotation submitted by M/s. Khairnar Enterprises. According to the Petitioner, the Electric Motor and Flour Mill was destroyed which was worth Rs.54,000/-. The Petitioner quantified loss of business of Rs.20,000/- per month from the date of the demolition of the said shop.

8. The Petitioner further alleged that FIR was registered at Ram Nagar Police Station on 16<sup>th</sup> October, 2012 at the instance of the Petitioner. It is alleged that at the place where the said shop was situated, the Respondent Nos.5 to 12 have made an illegal construction. The Petitioner alleged that the Respondent Nos.4, 6 and 7 have stolen the Flour Mill Machinery, Electric Motor and Table Fan and other goods totally worth Rs.54,000/- which belonged to the Petitioner. The Petitioner is relying upon the correspondence made by him. The contention of the Petitioner is that the work of demolition was carried out without taking proper precaution as required by Section 248 of the Municipal Corporations Act. His allegation is that the officials of the Respondent No.1 – Corporation acted hand-in-glove with Respondent Nos.5 to 12. The contention is that the illegal structure was erected by Respondent Nos.5 to 12 at the place where the said shop was situated.

9. The prayer made in this Petition is for issuing a writ of mandamus directing the Respondent No.1 to demolish the said structure erected at the place where the said shop was situated and for directing Respondent No.1 to restore status-quo *ante* by reconstructing the said shop and by installing the machinery therein. The Petitioner prayed for compensation at the rate of Rs.20,000/- pm with effect from 20<sup>th</sup> August, 2012 till flour mill in newly constructed shop starts functioning. Necessary directions are sought against Ram Nagar Police Station to take steps on the basis of the FIR.

10. There is a reply filed by Shri Vinayak Ramprasad Pande on behalf of the Respondent Nos.1 to 3. The allegation of the Petitioner that damage was caused to the said shop while carrying out demolition of the adjoining building has been denied. He is relying upon video film of the work of demolition.

11. A reply is filed by the Respondent No.10 for himself and on behalf of Respondent Nos.5, 8 and 9. In the said reply, it is contended that though the Petitioner's father was a monthly tenant, he abandoned the flour mill. It is contended that a temporary shed has been constructed at the site where the said shop was situated which has been let out to one Shri Anil Jagganath Chaudhari under the agreement of

tenancy dated 4<sup>th</sup> April, 2013. A copy of the said agreement and a photograph of the newly erected structure subject matter of the said Agreement is also annexed to the affidavit.

12. At one stage, this Court directed the Petitioner and the Respondents to explore the possibility of amicable settlement. However, settlement could not be arrived at. The learned counsel appearing for the Respondent Nos.1 to 3 has placed on record a compact disk containing video film of the work of demolition. We have seen the said video film.

13. The learned counsel appearing for the Petitioner submitted that from the affidavit of the Respondent No.10, it becomes an admitted position that the Petitioner's father was the tenant in respect of the said shop. He pointed out that there is nothing on record to show that the Petitioner's father had surrendered the said shop to the Respondent Nos.5 to 10. He pointed out that admittedly the Respondent Nos.5 to 10 have erected a structure on the site where the said shop was situated and the same has been done without obtaining permission of the Municipal Corporation. He pointed out that the video film of the demolition shows that after the work of demolition of RCC framework consisting of ground + 4 floors was carried out, the debris fell on the said shop as a result of which the said shop came down. He relied upon

the provisions of Section 248 of the Municipal Corporations Act and urged that the said shop collapsed as a result of the failure of the municipal authorities to take necessary precautions. The learned counsel appearing for the Respondent Nos.1 to 3 urged that while carrying out the work of demolition of the adjoining building, no damage has been caused to the said shop. He urged that the remedy of the Petitioner was against his landlords. The learned counsel appearing for the Respondent Nos.5 and 8 to 10 urged that the Petitioner's father had abandoned his right, title and interest in respect of the said shop. He pointed out that the said shop is no longer in existence and in the structure erected at the site of the said shop, a third party has been inducted. The learned counsel appearing for the Petitioner submitted that by passing an order of demolition of the structure erected by the Respondent Nos.5 to 10, a direction be issued to the first Respondent to re-erect the said shop and to pay compensation as prayed.

14. We have given careful consideration to the submissions. At the outset, we must note that neither the Respondent Nos.1 to 3 nor the Respondent Nos.5 and 8 to 10 as well as Respondent No.12 have disputed the existence of the said shop. In the affidavit of the Respondent No.10, he has accepted that the Petitioner's father was the tenant in respect of the said shop. The contention of the Respondent No.10 is that the Petitioner's father abandoned the tenancy during his

lifetime. No document is placed on record to show the abandonment. It is not the case of the said Respondent that the Petitioner's father handed over the possession of the said shop to the landlords. It is not the case made out in the affidavit of Respondent No.10 that the said shop was demolished by the Petitioner himself. It is not the case that he himself or other co-owners had demolished the said shop.

15. In paragraph No.4 of the affidavit, Respondent No.10 has stated thus :-

“4. I say and submits that one Mr. Hiralal P. Shah was original monthly tenant, who has during his lifetime abandoned the said floor mill to the landlords. I say and states that it is revealed to the respondent that said Hiralal P. Shah has expired somewhere in year 2004 and the petitioner has not made any claim of tenancy in respect of said floor mill by way of succession or otherwise, and claim of petitioner regarding tenancy is denied and disputed by these respondents.”

16. Earlier, in paragraph 3, he has stated thus :-

“3. I say and submits that respondents are landlords and owners of the suit site on which there is construction of temporary shed which have been let out by the respondents to one Mr. Anil Jagganath Chaudhari vide document dated 4/4/2013, a copy of which is annexed hereto and marked as Annexure '1'.”

17. Thus, it is not the case of the Respondent No.10 that possession of the said shop was handed over to any of the Respondents either by the Petitioner's father or by the Petitioner. On the contrary, Respondent No.10 admitted that the Petitioner's father was a tenant.

Under the provisions of the Maharashtra Rent Control Act, 1999 the tenancy rights are inheritable. The Respondent No.10 has not stated that before constructing the shed at the place of the said shop, the development permission from the said Municipal Corporation was obtained.

18. The Petitioner is relying upon the licence granted to run the flour mill which was renewed up to the year 2012-13, a copy of which is annexed as Exhibit-B. The Petitioner has relied upon the licence under the Shops and Establishment Act, 1948 which shows that on 11<sup>th</sup> November, 2011, the Shop Inspector of the said Corporation renewed the same up to the year 2013-14. Even electricity bill of 9<sup>th</sup> August, 2012 is relied upon. Copies of the said documents have been annexed to the Petition. In the reply filed by the Respondent No.10, the said documents have not been disputed. It is not the case made out that the said documents do not relate to the said shop. Even in the reply filed by Shri Vinayak R. Pande, the Ward Officer of the Municipal Corporation, the said documents have not been denied. On the contrary, specific stand taken in paragraph 2 reads thus :-

“2. At the outset I say that in the present petition filed by the Petitioner above named, the only contention of the Petitioner is that while carrying out the demolition of the adjacent building of G+4, the flour mill of the Petitioner has been damaged and the said damage was due to the demolition of the unauthorized construction carried out by the Municipal Corporation. I say that the said

contention and allegation of the Petitioner against the answering Respondents is totally incorrect. I say that there was no damage of any nature caused to the flour mill of the Petitioner while carrying out the demolition of the adjacent unauthorized building structure. I say that the Municipal Corporation has taken due care and caution to ensure that no damage is caused to any other structure including that of the Petitioner.”

(Underlines added)

19. Thus, the case made out in the said affidavit filed on behalf of the Municipal Corporation is that the said shop in which flour mill of the Petitioner was situated was very much in existence when the work of demolition was carried out by the Municipal Corporation on 28<sup>th</sup> and 29<sup>th</sup> August, 2012. Therefore, by taking the statements made in the affidavits of the contesting Respondents as correct, it can be safely held that till 28<sup>th</sup> August, 2012, when the Municipal Corporation started demolition of the adjacent building having RCC framework of ground + 4 floors, the said shop was very much in existence in which the Petitioner was running a flour mill. It is also an admitted position that the said shop collapsed thereafter and the Respondent Nos. 5 to 10 have carried out a construction of a shed/ premises at the site of the said shop on which a restaurant is being run by a tenant inducted by the Respondent No.10 under the agreement dated 4<sup>th</sup> April, 2013. It is not the case of any Respondents that the said structure was erected after obtaining any permission from the Municipal Corporation. We must also note that from the copy of the agreement annexed to the affidavit of

Respondent No.10, it is apparent that the same has not been registered. The Maharashtra Rent Control Act, 1999 is applicable to the area in question and under Section 50 thereof the said document is a compulsory registrable document.

20. Therefore, the only question which remains for consideration is who is instrumental in demolition/ collapse of the said shop premises. It is not the case made out by the Ward Officer in his affidavit that the Petitioner himself brought the said shop down. That is also not the case made out by the Respondent No.10 in his affidavit.

21. We have watched the video film of the demolition work which is available on a Compact Disk filed on behalf of the Respondent – Municipal Corporation. It is not in dispute that the RCC building on ground + 4, which was demolished by the Municipal Corporation was adjacent to the said shop. That is very apparent even from the video film as well as the photograph on page 64 as well as photograph on page 93. From the video film as well as photographs, it appears that the Municipal Corporation did not erect any barricades or did not take any steps to prevent the debris of the building from falling on the said shop. The photographs as well as the video film show that the said shop came down as a result of RCC debris of the demolished RCC structure falling on it.

22. Section 248 of the Maharashtra Municipal Corporations Act, 1949 reads thus :

**“248.Protective measures during demolition work.-** (1) No person who proposes to take down a building or a part thereof shall commence doing so without providing, in addition to such hoard or fence which he may be required to provide under section 246, screens extending to the full height of such building on all sides thereof so as to prevent pollution of the surrounding air with dust or injury or damage caused by the falling of any debris, bricks, wood and other material.

(2) If any such work is commenced in contravention of sub-section (1), the Commissioner may cause it to be stopped forthwith and any person carrying it out to be removed from the premises by a Police Officer.”

23. It is not even the case made out in the affidavit of the Ward Officer that any specific precautions were taken by the municipal officers to protect any damage to the said shop. On the basis of FIR registered at the instance of the Petitioner, a panchanama was recorded by the Police on 17<sup>th</sup> October, 2012. The panchanama records presence of uprooted flour mill and a stone used in flour mill at the site. It also records presence of old electric motor which was lying near foundation. Even electric meter was found at the site.

24. Thus, the only inference which can be drawn is that due to failure on the part of the Municipal Corporation to take care which it was under an obligation to take in view of Section 248 of the said Act of 1949, the debris of RCC structure fell down on the said shop which led

to the collapse of the said shop. In our view, the Municipal Authorities ought to have fairly accepted its mistake and ensured that the Petitioner is compensated. As a result of the negligence on the part of the Municipal Officers, the Petitioner has suffered a loss. Moreover, the Respondent No.10 has taken undue advantage of the situation and has erected a shed at the site of the said shop. It is not his case that the shed was erected after obtaining a permission of the Municipal Corporation. The Municipal Corporation has not taken any action in respect of this illegality. Though, in the Petition there is a specific averment that the Respondent Nos.5 to 12 have illegally erected the structure at the site of the said shop, it will be interesting to note that Shri Vinayak Pande, Ward Officer who filed an affidavit on behalf of the Municipal Corporation has not even dealt with the said specific contention raised by the Petitioner in clause (j) of paragraph IV of the Petition. Thus, the Respondent No.1 – Corporation has violated the right of the Petitioner under Article 300-A of the Constitution of India by depriving the Petitioner of his shop without due process of law.

25. Thus, it follows that the Municipal Corporation will have to take action of demolition of the illegal structure erected by the Respondent No.10. Thereafter, the Municipal Corporation will have to re-erect the structure of the said shop and place the Petitioner in possession thereof. This will be without prejudice to the rights of the

landlords of filing appropriate proceedings against the Petitioner for eviction and for other reliefs. As far as the loss sustained by the Petitioner is concerned, apart from a bald averment that he has sustained loss of Rs.20,000/- per month and the cost of the said shop was Rs.4,02,800/-, there is no concrete material placed in support of the said contention. There is no material to support the contention that the machines and other material inside the said shop was worth Rs.54,000/-.

26. Further, the Municipal Corporation will have to pay compensation to the Petitioner on account of neglect on the part of its officers in performance of statutory duty under Section 248. The Petitioner has been deprived of his livelihood as a result of this neglect. The said compensation will have to be reasonably quantified in the sum of Rs.2 lakh. There is a material on record to show that the Petitioner was running a flour mill in the said shop. But, there is no evidence of the income earned by the Petitioner. Even taking into consideration the prevailing rates of minimum wages, the Municipal Corporation will have to pay a sum of Rs.5,000/- per month to the Petitioner till the said shop is reconstructed and the Petitioner is placed in possession. The Petitioner has taken recourse to the public law remedy. The Writ Court in exercise of powers under Article 226 of the Constitution of India is empowered to grant compensation. It will be open for the Petitioner to

file a Civil Suit for recovery of compensation over and above what is granted under this Judgment and Order. It is obvious that Civil Court will take into consideration the amounts ordered to be paid under this Judgment and Order.

27. Hence, we dispose of the Petition by passing the following order :-

### **ORDER**

- (i) We direct the first Respondent – Municipal Corporation to demolish the structure erected by the Respondent No.10 on the site of the said shop of the Petitioner as admittedly the said structure is illegal. Action of demolition shall be carried out within a period of one month from today;
- (ii) Within a period of two months from the date of demolition of the said structure, the first Respondent shall reconstruct the structure of the said shop of the Petitioner as per the dimensions set out in clause (d) of paragraph 3 of the Petition;
- (iii) We direct the first Respondent to pay compensation of Rs.2,00,000/- (Rupees Two Lacs) to the Petitioner within a period of one month from today. If the compensation is not paid within the stipulated period of

one month from today, the compensation amount shall carry interest at the rate of 9% per month from the date of filing of this Petition till the date of payment;

- (iv) We direct the first Respondent to pay to the Petitioner a sum of Rs.5,000/- per month from 29<sup>th</sup> August, 2012 till the date on which the Petitioner is put in possession of the reconstructed shop. The amount payable till the date of this judgment at the rate of Rs.5,000/- per month shall be paid to the Petitioner within a period of one month from today;
- (v) Thereafter, the first Respondent shall pay the said monthly compensation amount regularly and punctually on or before 10<sup>th</sup> day of every calendar month till the Petitioner is placed in possession of the reconstructed shop;
- (vi) We make it clear that action of reconstruction of the shop and action of placing the Petitioner in possession shall be without prejudice to the rights and contentions of the parties and it will be open for the landlords to initiate appropriate proceedings for eviction in accordance with law against the Petitioner;
- (vii) It will be open for the Municipal Corporation to hold an

enquiry and to recover the compensation amount payable in terms of the Judgment from the Officers who are found to be responsible for the default;

- (viii) It will be open for the Petitioner to file a Civil Suit to recover compensation over and above the amount granted under this Judgment and Order;
- (ix) Rule is made absolute on above terms;
- (x) We direct the first Respondent – Municipal Corporation to pay costs of this Petition quantified at Rs.50,000/- within a period of two months from today.

( C.V. BHADANG, J )

( A.S. OKA, J )