

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

WRIT PETITION NO.2244 OF 2014

Premnath Govindram Dange

... Petitioner

Vs.

The State of Maharashtra & Ors.

... Respondents

Mr.Rajesh Bindra for the Petitioner

Mr.Amit Shastri, Assistant Government Pleader, for Respondent No.1-State

Ms.Vandana Mahadik for Resp. Nos.2 to 6

**CORAM: SMT. VASANTI A. NAIK &
SHRI C.V. BHADANG, JJ.**

DATE: 27th JANUARY, 2015

P.C.:

By this petition, the petitioner challenges the order of the respondent No.3 dated 16.5.2014 permitting the petitioner to stop using the loft area beyond the permissible limit and hand over the same to the market department of the Municipal Corporation of Greater Mumbai.

The petitioner claims to be the lessee of the Corporation Shop No.159. Behind the shop of the petitioner, is shop No.151 and the same is licensed to the respondent No.7 by the Municipal Corporation. According to the petitioner, the petitioner was permitted to use the shop and the loft above the same and the petitioner was paying the rent for the shop and the

loft. It is stated that there is a common loft above the shop Nos.159 and 151 and since there was no access to the lessee of shop No.151 to the loft above the said shop, the petitioner was paying the rent for the entire loft that was above shop Nos.159 and 151. According to the petitioner, by the impugned order, the Commissioner has wrongfully asked the petitioner to hand over the loft beyond the licensed area to the market department of the Municipal Corporation of Greater Mumbai.

It is submitted on behalf of the Corporation that the petitioner was licensed a shop area of 24.75 sq.ft and a loft area of 25.15 sq.ft. It is stated that the petitioner is using the loft area which is in excess of 25.15 sq.ft. It is stated that the Municipal Corporation considered the complaint filed by the petitioner before the Respondent No.3 and then decided the matter. It is stated that the original document pertaining to the licence also clearly shows that the petitioner was granted the loft area of 1.40 X 1.67 metres. It is stated that the petitioner cannot be permitted to use the loft area which is over and above the area of 1.40 x 1.67 metres.

On hearing the learned Counsel for the parties, we find that there is no scope for interference with the order of the Respondent No.3 in exercise of the writ jurisdiction. The documents pertaining to the licence clearly show that the petitioner was permitted to use the shop area of 24.75 sq.ft.

and the loft area of 25.15 sq.ft i.e., 1.40 x 1.67 metres. By stating that the licensee of shop No.151 could not have been permitted to use the loft above his shop, the petitioner cannot be permitted to use the loft area which is in excess of 25.15 sq.ft. The Corporation has ample powers to secure the area of the loft, i.e., beyond the licence area of the loft. The Corporation has, therefore, rightly permitted the petitioner to use the licensed loft area and directed the petitioner to hand over the remaining area to the Corporation. The Corporation is free to secure the area of the loft which is over and above the area of 25.15 sq.ft. While measuring the said area, the loft area starting from above the shop licensed to the petitioner i.e., the shop No.159 should be considered.

Since we do not find any illegality in the order of the respondent No.3, the petition is liable to be dismissed. Hence, the petition is dismissed as such with no order as to costs.

(C.V. BHADANG, J.)

(VASANTI A. NAIK, J.)