

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

WRIT PETITION NO.494 OF 2014

Fulchand Nate Gupta & Ors.

... Petitioners

Vs.

Municipal Corporation of Greater Mumbai & Ors. ... Respondents

Mr.D.H. Mehta i/b D.M. Legal & Associates for the Petitioners

Mr.A.Y. Sakhare, Sr. Advocate a/w Ms.Shobha Ajitkumar for Respondents

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

DATE: 6th JANUARY, 2015

P.C.:

By this petition, the petitioners seek a declaration that they were and are entitled to vertical construction on the property of the petitioners under the Kurar Pattern and / or under the bottleneck policy and withholding of the benefits to the petitioners by the respondents to the aforesaid effect is unlawful, improper and unjustified.

According to the petitioners, in pursuance of a notice issued by the Corporation on 29.2.2008, the respondent-Corporation demolished a part of the structure on the property in question for improvement and widening of the road. In view of the said demolition, it is the case of the petitioners that the petitioners were entitled to make vertical construction on the plot

in question under the Kurar pattern. It is stated that despite the assurances by the officers of the Corporation of permitting the petitioners to make the vertical construction, the respondent-corporation is not permitting the petitioners to make the same.

Mr.Sakhare, the learned Senior Counsel for the Respondents, states on the basis of the affidavit in reply filed on behalf of the Corporation that the respondent-corporation has never demolished any structure of the petitioners in furtherance of the notice dated 29.2.2008 and it would therefore not be permissible for the petitioners to make the vertical construction as per the Kurar pattern.

On hearing the learned Counsel for the parties and on a perusal of the petition and the affidavit in reply filed on behalf of the respondent-Corporation, it appears that there is a serious dispute in regard to the fact of demolition of the part of the premises of the petitioners. The petitioners have asserted that a part of the premises have been demolished for the purpose of road widening, whereas the Corporation has specifically denied that a part of the premises of the petitioners have been demolished in pursuance of the notice dated 29.2.2008. It would not be possible for this Court to decide the disputed questions of facts involved in this writ petition and it would be for the parties to file proceedings before the appropriate

forum as the said issue could be decided only after permitting the parties to tender evidence, both oral and documentary. Since it would not be proper for this Court to consider the issues of facts involved in this case in exercise of writ jurisdiction, the Writ Petition is liable to be dismissed.

The Writ Petition is dismissed as such, with no order as to costs.

The points raised in the petition are, however, kept open.

(C.V. BHADANG, J.)

(VASANTI A. NAIK, J.)