

*Sequeira*

*IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE SIDE JURISDICTION*

***WRIT PETITION NO. 7440 OF 2016***

Smt.Pistaben Sukhadraj Jain .. Petitioner  
Vs  
Shri Pralhad Babulal Thakur & ors. .. Respondents

***Along with***

***WRIT PETITION NO. 7442 OF 2016***

Shri Dagarchand Tarachand Jain .. Petitioner  
Vs  
Shri Pralhad Babulal Thakur & ors. .. Respondents

Mr.A.V.Anturkar – senior counsel i/b Mr.P.B.Bhargude, for the  
Petitioner.

Mr.R.D.Suryawanshi, for Respondents Nos.1 & 2.

***CORAM : N.M.Jamdar, J.  
Tuesday, 18 October 2016.***

***P.C. :***

The matter has been argued from time to time and it was also adjourned for the learned counsel for Respondents to take instructions as regards safeguarding the rights of the Petitioner in respect of their suit claim during the proceedings in the suit. Thereafter the petitions are taken up today for consideration.

2. The Petitioners have challenged the orders passed by the learned District Judge, Thane dated 20 April 2016 and learned Civil Judge, Junior Division Thane dated 20 January 2016 rejecting the applications filed by Petitioners for interim injunction. By way of an interim relief, the Petitioners are seeking that the parties should maintain status-quo during the disposal of the suit. The learned Civil Judge rejected the application for grant of status-quo holding that the Respondents have secured the necessary permission and they are carrying out the construction. Appeal was filed in the District Court by the Petitioner. The learned District Judge held that the suit property is demolished and there is a permission in favour of Respondents for redevelopment and the Petitioner has a right to challenge the grant of permission for redevelopment before appropriate authority and at this stage of the suit an order of status-quo cannot be granted.

3. The situation as on today is that the suit property is demolished and the Respondents are proceeding to construct on the suit property. The apprehension of the Petitioner is that if third party rights are created and property is disposed of then the claim made by the Petitioner in the suit for possession of premises on the basis of tenancy claim will be frustrated. The claim of the Petitioners is that they were erstwhile tenants and they are entitled two shops on the ground floor in the reconstructed premises each shop admeasuring totalling around 500 and 250 sq.ft. approximately.

4. As on today the question as regarding tenancy of the Petitioner is yet to be adjudicated. Plans have been sanctioned and it is as per the plans that Respondents will have to proceed for construction. Even if assuming the Petitioners claim is accepted in the suit, the Petitioners will be entitled to shops on the ground floor. Initially Respondents had given an undertaking that Shop Nos.2 and 3 on the ground will be kept aside and no third party rights will be created. It is the contention of the learned counsel for Petitioners that the area of these shops is not commensurate with the claim of Petitioners and in fact, it is less than half of the claim of Petitioners. Thereafter it was put to the learned counsel for Respondents whether he would keep aside the area on the ground floor. The learned counsel for Respondents, on instructions, had submitted that as far as shop no.1 / premises is subject matter, it is kept by Respondents for their own use and there is no question of creating any third party rights in respect of the same. Today, in addition, the learned counsel for Respondents on instructions makes a statement that even shop no.4 / premises will not be encumbered upon till the disposal of the suit. That is the entire ground floor will not be encumbered, as per statement of the learned counsel for Respondents. Thus the learned counsel for the Respondent submitted that no third party rights will be created in respect of the entire ground floor. This statement made by the learned counsel for Respondent Nos.1 and 2 is fair and adequately protects the rights and contentions of the Petitioner by way of an

interim arrangement. The learned senior counsel for the Petitioner has also accepted this position.

5. In these circumstances by way of consensus, accepting the statements made by the learned counsel for Respondent Nos.1 and 2 on instructions of Respondent Nos.1 and 2 both who are stated to be present in the Court, both the Writ petitions are disposed of as no further orders are required. The statements are made with reference to the map annexed at Exhibit 'O' to Writ Petition No.7440 of 2016. All contentions of the parties are kept open and the observations made in this order are in context of an interim arrangement during the pendency of the suit. It is open to the parties to make a request to the learned Civil Judge, Thane for expeditious disposal of the suit, considering the factual situation.

*(N.M.Jamdar, J.)*