

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO.1909 OF 2015

Amba Magan Moleshwari & Others Petitioners

Vs.

Director General, Railway Protection
Force, Ministry of Railways, Mumbai
& Others

.... Respondents

Mr. Amrut Joshi with Mr. Rushabh Sheth and Ms Pooja
Bhatia i/by M/s. M.S. Bodhanwalla & Co. for the
Petitioners.

Mr. Chetan C. Agrawal for Respondent Nos.1 and 2.

Mr. M.A. Sayed, AGP, for Respondent Nos.4 and 5.

CORAM: S.C. DHARMADHIKARI &
DR. SHALINI PHANSALKAR JOSHI, JJ.

DATE : APRIL 18, 2016

P.C:

1. By this petition under Article 226 of the Constitution of India, the petitioners are seeking a writ, order or direction directing the respondent No.1 to repair, reconstruct, build and do all such things and take all steps, including all permissions and approvals as are necessary to reconstruct and restore a patra chawl, meaning thereby a tin chawl, as it stood prior to its demolition on 20-10-2014 and illegally.

2. Though the writ petition is containing such a prayer, during the course of the arguments, the petitioners' counsel would submit that the land bearing CTS Nos.1/322, 323, 324 and 1/326 located at Tardeo, Mumbai on which the subject chawl is standing, belongs to private parties. It is not owned by Indian Railways or by Central or Western Railways.

3. It is in these circumstances that it is contended that the demolition is illegal and in any event, the Railway Protection Force could not have been utilised to carry out the demolition.

4. On such pleadings and the prayer, the writ jurisdiction is invoked and naturally we enquired from the petitioners' counsel as to how an issue of right, title and interest in an immoveable property and which is highly disputed can be settled or resolved in writ jurisdiction. The counsel could only rely upon a Judgment of the Hon'ble Supreme Court in the case of **Whirlpool Corporation Vs. Registrar of Trade Marks, Mumbai and others**, reported in AIR 1999 SC 22.

5. Upon hearing the counsel at some length, we are unable to agree with him that a writ petition is the only remedy to resolve the above factual dispute. Time and again it has been clarified by the Hon'ble Supreme Court of India that when the issue involved is that of right, title and interest in an

immoveable property or land, the Court has to determine as to in whom the title vests, then, writ jurisdiction is not the appropriate remedy. In writ jurisdiction, such disputed questions of fact cannot be decided and adjudicated. The Court would be required to record evidence. Once the issue arises because the railways proceed on the footing that it is their property and the petitioners do not admit this position, then they must approach a competent Civil Court. That remedy is complete. A suit on title is not barred straightaway, as is contended, merely because it is to be laid against a Government. In the circumstances, we do not think that the Judgment in **Whirlpool Corporation** (supra) will be of any assistance. Whirlpool Corporation involved a challenge to a show cause notice and the argument was, that there is an alternative statutory remedy. In the face of such remedy and which is efficacious and complete, the writ jurisdiction cannot be invoked. The Hon'ble Supreme Court set out the exceptions to this principle and since Whirlpool's case fell within that exception, the Hon'ble Supreme Court directed that it should be entertained. This principle has no application to the facts of the present case. In the circumstances, the writ petition is dismissed.

(DR. SHALINI PHANSALKAR JOSHI, J.)

(S.C. DHARMADHIKARI, J.)