

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

WRIT PETITION (L) NO. 2434 OF 2016

Mohd. Nadeem Shakil Bhujwala

And 10 Ors

...Petitioners

Versus

The Municipal Corporation For Greater

Mumbai And 3 Ors

...Respondents

Mr. Subhash Jha i/b Mr. Akhilesh Singh for the Petitioners.

Mr. A. Y. Sakhare, Senior Advocate with Mrs. K. H. Mastakar for
MCGM / Respondent No. 1 to 3.

Coram : RANJIT MORE &
Smt. ANUJA PRABHUDESSAI, JJ.

Date : **September 8, 2016.**

P. C. :

1. Heard learned Counsel appearing for the Petitioners and
the learned Senior Counsel appearing for MCGM.

2. By this petition, the Petitioners seek declaration that
action of Respondent Nos.2 to 4 in evicting the Petitioners from their
premises without giving notice is illegal, malafide, arbitrary, high handed
and bad in law. The Petitioners have sought a direction to the
Respondents to maintain status quo ante by restoring the premises of
the Petitioners. A direction is also sought that no further coercive action
be taken in respect of the said premises. The Petitioners have further
sought a direction to initiate enquiry against Respondent Nos. 2 to 4
and direct them to pay damages to the Petitioner for their eviction and
illegal demolition of the premises in their possession.

3. The Petitioners claim tenancy in a building erected on a plot bearing No. 11, Keshavji Naik Road, Mumbai 400009. In support of their contention, the Petitioners rely upon rent receipts and ration cards, photocopies of which are annexed to the petition. Mr. Jha, learned Counsel appearing for the Petitioners submitted that the Petitioners are bonafide tenants and the Respondents arbitrarily evicted them and demolished the building standing on the said plot without following the due process of law.

4. Mr. Sakhare, the learned Senior Counsel appearing for the MCGM submitted that original structure on the said plot consisting of ground plus two floors, was in dilapidated condition; it collapsed at its own prior to 2010. The owner of the said building thereafter without obtaining any approval from the MCGM, commenced erection of a building on the said plot. Therefore, notices under section 354 of the MMC Act were given on 16th September 2015 and 28th October 2015. Notice was also given under sections 52 and 43 of MRTP Act, being notice dated 9th October 2015. The matter did not end there. An FIR came to be registered against the owner on 29th January 2016. The aforesaid notices were issued to the owner as well as to the occupiers of the said construction. Thereafter said construction was demolished.

Some of the occupants / tenants / owner challenged the said notices by filing suit in the City Civil Court, Bombay. In the said suit, initially ad-interim relief was granted, however, it was not continued by the City Civil Court. The said tenants/ occupiers/ owner then approached this Court by filing an Appeal from Order. However, they could not succeed. Mr. Sakhare submitted that the Corporation demolished the illegal structure thrice and despite this owner / tenants/ occupants continued the construction activity and completed the structure of ground plus 11 floors. The Corporation thereafter started demolition of this building on 8th August 2016 and three floors have already been demolished and all internal walls and slabs of the entire building have been removed.

5. The Petitioners on the basis of the rent receipt claim that they are in possession of the respective premises since October 2015, i.e., since after the issuance of the notice under section 354 of the MMC Act. The owner and earlier tenants made several efforts to protect the illegal structure, but could not succeed.

6. We find that receipts annexed to the petition are for the period January 2016 onwards and the ration-cards on which the Petitioners rely upon are issued in the month of July 2016, i.e., after the issuance of notice under section 354 of the MMC Act. The record

discloses that in earlier round litigation, the owner and some of the tenants made several attempts to protect the structure by filing various proceedings in the Courts, however those efforts were rendered futile by the MCGM by pointing out the real fact situation of the case to the Court.

7. We find that the Petitioners have approached this Court by suppressing earlier proceedings taken out in the City Civil Court and the orders passed therein. In the light of these facts and circumstances, we are of the considered opinion that this is another attempt by the owner / landlord to protect the illegal structure. We are also satisfied that the Petitioners have not come to the Court with clean hands. This is nothing but the abuse of the process of law. In these circumstances, we dismiss the writ petition with exemplary costs which are quantified at Rs.10,000/- payable by each of the Petitioners. The Petitioners shall deposit the said costs in this Court within eight weeks from today. If the cost is not deposited within the stipulated period, the same shall be recovered from the Petitioners as arrears of land revenue.

[SMT. ANUJA PRABHUDESSAI, J.]

[RANJIT MORE, J.]