

Atul

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 1669 OF 1996**

Meshog Sohraab Irani	...Petitioner
<i>Versus</i>	
D Aspi Framroze Golwalla & Ors	...Respondents

Mr VY Sanglikar, *with H Diamondwala, i/b Diamondwala & Co., for
Petitioners Nos. 1A to 1D.*

Mr Jehaan Irani, *grandson is present.*

Mr Ranjit Thorat, Senior Advocate, *with Samsher Garud &
Radhika Nair, i/b Jayakar & Partners, for Respondents Nos. 1, 2
& 4 to 6.*

**CORAM: G.S. PATEL, J
DATED: 30th November 2017**

PC:-

1. The dispute is in relation to a residential Flat No. 8, third floor, Plot No. 6, Khareghat Colony, Hughes Road, Mumbai 400 007. The Respondents are the Trustees of Parsi Punchayet Funds and & Properties (“**Parsi Punchayet**”). This is a charitable trust that owns several housing colonies throughout Mumbai. It allots these premises periodically to the members of Parsi Zoroastrian community who are in need of accommodation.

2. The litigation has an extremely long history. In this court, it has been pending for over 20 years since 1996 when Rule was first

issued. At present, the flat in question is occupied by a 82-year-old widow, Homai Irani. She has three children: one son and two daughters. Her son lives abroad in Australia. One of the daughters, Farzana. is married outside the community and apparently that has some implications for the Trust. That is not the subject matter of this dispute. The second daughter Pervin stays elsewhere with her husband in premises also allotted by the Trustees of the Parsi Punchayet. Her son, Jehaan, presently unmarried, stays in the suit flat with his grandmother, Homai. I am only noting this background and not entering into a discussion of any controversial facts since I believe it is now possible to put an end to this entire dispute, and indeed to all pending disputes in the manner noted below.

3. The case of the Petitioners is that the premises in question are governed by the Bombay Rent Act 1947 and the Petitioners are, or must be deemed to be, statutory or protected tenants of the Respondent-Trust. I am not deciding that question today since Mr Thorat for the Respondent-Trustees has instructions to say that during Homai's lifetime her occupation of this flat will not be disturbed, and that she will be allowed to continue as recognized licensee of the Respondent-Trust.

4. Apart from anything else, I believe the first objective is to ensure that Homai does not have hanging over her head the proverbial Damoclean sword of a pending litigation in relation to the home in which she lives out the rest of her days. I believe Mr Thorat's statement on instructions adequately serves that purpose.

5. There remains the question of Jehaan, currently staying with his grandmother Homai in the flat. Of course, the attempt by the Petitioners is to say that after Homai, Jehaan will acquire some rights in the flat. Again, this is best resolved by making an order that Jehaan, and, should he be married and have a family, then his family too may stay with Homai in that flat in her lifetime. As an exceptional concession, Jehaan and his family may continue in that flat for an additional period after Homai's passing. He will then have to make arrangements for alternative accommodation. He will be entitled to apply in his own right to the Parsi Punchayet for allotment of suitable accommodation. That application is to be processed by the Parsi Punchayet on merits in accordance with its then prevalent policies and norms but without regard to the past history of this litigation.

6. There is a reason why Jehaan is unable to stay with his mother, and why, should he get married shortly, moving into Parvin's accommodation will prove to be difficult. I have been given the reason, but I do not think that it is appropriate to state it in this order. It must suffice to say that I believe the reason is intensely private, and, in my view, sufficient to warrant this order.

7. Jehaan will of course need to give a properly affirmed undertaking to be filed in this Court within two weeks from today in which he must undertake to deliver vacant possession of himself and, if that situation arises, all his family members within six months of Homai's passing. That undertaking will be accepted as an undertaking to the Court.

8. The petition stands finally disposed of in these terms. The Petitioners do not press the petition in view of the foregoing order.

9. Resultantly, the suit filed by the Respondents will also be withdrawn. The Respondents undertake to withdraw that suit within two weeks from today by making an appropriate application to the Court where it is pending.

10. As regards any application that will be made by Jehaan to the Respondents for allotment of premises in his own name, it is only necessary to clarify that the fact that this order has been passed and that he has been given an additional time of six months to vacate will not create any rights or equities in his favour in the making of that application.

11. This thus brings to an end all pending disputes and litigations between the parties.

(G. S. PATEL, J)