

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

WRIT PETITION NO. 105 OF 2017

Jogen Indravadan Parekh
and others

... Petitioners.

Versus

Mumbai Municipal Corporation of
Greater Mumbai and others

... Respondents.

....

Ms. Nilima V. Sanglikar for the Petitioner.

Dr. Abhinav Chandrachud a/w Ms. Leena Shah i/b. Furia Associates
for Respondent Nos. 6 to 9.

Ms. Pallavi Thakur for MCGM.

....

***CORAM : Smt.Vasanti A Naik &
Riyaz I. Chagla, JJ.***

DATE : 3rd October, 2017.

P.C.:

By this Writ Petition, the petitioner seeks a direction against the respondent Nos. 1 to 5 for taking immediate action against the respondent Nos. 6 to 9 for stopping the unauthorized construction in shop Nos.1, 2, 6, 6A, 6B and 7 at Dubash Building, Mumbai.

According to the petitioner, the respondent Nos.6 to 9 who are the landlords of Dubhash Building, have illegally carved out two doors of 4'x6' in the foundation load bearing wall in the passage on the rear side of shop Nos.1 and 2 under beam No.74 between the pillars. It is alleged that the main wall between shop Nos. 1 and 2 below the beam and pillars has been removed by the respondent

nos. 6 to 9. It is stated that the aforesaid construction and demolition has weakened the structure in which the petitioners are residing as tenants. Certain other irregularities in the construction undertaken by the respondent Nos. 6 to 9 are also alleged in the Writ Petition.

The respondent Nos. 6 to 9 have filed an affidavit-in-reply and have specifically denied the averments made in paragraph No. 4.6 of the Writ Petition, that pertains to the illegal construction carried out by the respondent Nos. 6 to 9.

In view of the aforesaid dispute between the petitioners on one hand and the respondent Nos. 6 to 9 on the other hand, by our order dated 31.07.2017, we had directed the Corporation to make a report and to inform this Court, whether illegal construction is made by the respondent Nos. 6 to 9 as alleged by the petitioner.

The Executive Engineer, 'D' Ward of Mumbai Municipal Corporation has tendered the inspection report along with his affidavit dated 29.08.2017. On a reading of the report, it appears that the Corporation has not apparently found any illegal construction as alleged in paragraph No. 4.6 of the Petition.

Since several disputed questions of facts arise in the Writ Petition, it would not be proper to decide the same, in exercise of the writ jurisdiction. We are inclined to dispose of the Writ Petition so that the petitioner would be free to avail the appropriate remedy.

Resultantly, the Writ Petition fails and is dismissed with no order as to costs. The points raised in the Writ Petition are kept open.

(Riyaz I. Chagla J.)

(Smt.Vasanti A Naik J.)