

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

WRIT PETITION NO.650 OF 2016

Jyotindra Poonamchand Shah

...Petitioner

Versus

The Principle Housing Secretary, State of
Maharashtra, Mantralaya & Ors.

...Respondents

Mr. V.M. Vaghela for the Petitioner.

Mr. U.S. Upadhyay, AGP for the Respondent No.1.

Mr. J.G. Reddy for the Respondent No.2.

Ms. Pallavi Thakar for the Respondent No.3.

Mr. R.S. Apte, Senior Advocate with Mr. H.K. Shenoy for the
Respondent No.4.

**CORAM : A.S. OKA &
SMT. VIBHA KANKANWADI, JJ.**

DATE : 16th JUNE, 2017

ORAL ORDER

1. Heard learned Counsel appearing for the petitioner.
2. The only substantive prayer made in this Petition under Article 226 of the Constitution of India is prayer clause (b) which reads thus :-

“(b) That -this Honourable Court be pleased to issue necessary writ of order upon the Respondent No.1, 2 and No.3 above named, ordering to initiate the legal action under section 53(1), 53(6)(b) and other relevant provisions of the Maharashtra Regional Town Planning Act 1966 along with action under section

353A (2) of the Mumbai Municipal Corporation Act and other relevant provisions of the Mumbai Municipal Corporation Act as amended up to date against the occupants of the Building No.4 “Midas”, situated at Bhau Daji Road, Sion, Mumbai 400022 and be ordered to Demolish the Building “Midas” under Supervision and monitor of this Honourable Court, after perusing, inspecting and examining the papers of the said file – from the Respondent No.2 above named.”

3. There is a reply filed by Mr. S.A. Bhendawadekar, Assistant Engineer of Slum Rehabilitation Authority (S.R.A.). S.R.A. is the Planning Authority. The petitioner's father was appointed as a developer to develop a Rehabilitation Scheme under Regulation 33(10) of the Development Control Regulations of 1991. The petitioner was admittedly issued a Letter of Intent.

4. Affidavit filed on behalf of SRA discloses that a notice was issued under Sub-Section (1) of Section 53 of the Maharashtra Regional and Town Planning Act, 1966. Thereafter, a Co-operative Society submitted a proposal in respect of building no.4, which is the subject-matter of this petition, for the work upto 14 floors. By an order dated 9th September 2009, the construction has been regularized by the Chief Executive Officer of S.R.A. Therefore, prayer clause (a) cannot be considered on merits.

5. Learned Counsel for the petitioner submits that building no.4 has been illegally occupied by the flat purchasers. He states that there is no Occupation Certificate granted in respect of the said building. On a query being made by the Court, he states that the

petitioner has appointed a sub-developer who has allowed the persons to occupy the flats.

6. Firstly, prayer clause (b) is worked out as the entire building has been regularized. Secondly, the petitioner himself is claiming to be the developer of the Redevelopment Scheme. If the sub-developer or the agent appointed by the petitioner has acted illegally, the petitioner has a remedy to take action in accordance with law.

7. This petition under Article 226 of the Constitution of India cannot be entertained. The petition is rejected. We clarify that this Court has not regularized or tolerated the action of the alleged flat purchasers of occupying the flats in the building for which no Occupation Certificate is granted. This order will not prevent the concerned authority from taking an action in accordance with law in that behalf.

(SMT. VIBHA KANKANWADI, J.)

(A.S. OKA, J.)