

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 286 OF 2017

Jagpat Rajnath Prajapati	.. Petitioner
V/s	
State of Maharashtra & Ors.	.. Respondents

WITH
WRIT PETITION NO. 294 OF 2017

Mangesh Jaywant Chavan	.. Petitioner
V/s	
State of Maharashtra & Ors.	.. Respondents

WITH
WRIT PETITION NO. 703 OF 2017

Deepak Kumar Sinha	.. Petitioner
V/s	
State of Maharashtra & Ors.	.. Respondents

Mr. Sandeep Bane for the petitioners.
Mr. Sukanta Karmarkar, AGP for the State in WP No.294/2017.
Mr. Hemant Hariyan, AGP for State in WP No.286/2017.
Mr. Dushyant Kumar, AGP for State in WP No. 703/2017.
Mr. G.D. Utangale with Mr. Suyash Gadre i/b Utangale & Co. for respondent no.2.
Ms. Reena Salunkhe i/b Mr. Yadunath Choudhari for respondent no.3.
Mr. A.R. Shaikh for respondent no.6.
Mr. Rajiv Narula i/b Jhangiani Narula & Associates for respondent no.7.

**CORAM: DR. MANJULA CHELLUR, CJ. &
N.M. JAMDAR, J.**

DATE : 22nd JUNE 2017

P.C.:

Heard learned counsel for the petitioner.

We have gone through the contents of the writ petition.

The petitioner is before this Court seeking following reliefs:

- “a. Writ of Certiorari against Respondent No.1 to 5 that this Hon'ble Court may be pleased to direct to the Respondent No.7 to pay arrears of Transit Rent Rs.3,73,000/- for the period 30.04.2014 to 29.10.2015 along with 4 months Brokerage and further issue next 11 months transit rent for the period 30.10.2015 to 29.9.2016 and 30.9.2016 to 29.8.2017 @ Rs.23,650/- p.m. in addition 2 months brokerage for each tenure i.e. Total Transit Rent is Rs.6,14,900/- (Rupees Six Lakhs Fourteen Thousand nine hundred Only) i.e. Total Transit Rent is Rs.6,14,900/- (Rupees Six Lakhs Fourteen nine hundred Only) to petitioner. Thus direct Respondent No.1 to 5 to recover total transit rent of Rs.9,87,900/- (Rupees Nine Lakh Eighty Seven Thousands Nine Hundred Only) from Respondent No.7 and handover to petitioner.*
- b. That this Hon'ble Court may be please to direct Respondent No.1 to 5 to ensure and direct Respondent No.7 to provide*

Temporary Transit Rent regularly and in advance of 11 months.”

2. So far as prayer (a) is concerned, for different periods the petitioner has claimed transit rent at different rates and in all, according to him, total Rs.9,87,900/- has to be paid in terms of the Agreement entered into between the parties, i.e. Rs.23,650/- per month commencing from 2014 till 29/8/2017.

3. Apparently the petitioner is alleged to be one of the tenants of SRA Scheme which is under process. It is the case of the petitioner that he entered into an Agreement with the party respondent no.7 – Developer wherein there is an agreement between the parties regarding payment of rent. It is also his contention that he is not offered transit accommodation. However, according to the 7th respondent, by tomorrow morning they would indicate and show the transit accommodation and even otherwise they were always ready to accommodate the petitioner in transit accommodation, but for reasons best known to the petitioner, he wanted the rent to be paid.

4. In a scheme of this nature, if the Developer has agreed in general with all the unit holders of the scheme by one common agreement either to pay rent or to provide transit accommodation, we can conclude that there is uniformity in the matter. However, beyond the scope of the scheme, if there is a private contract

between the Developer and the single individual unit holder, who happens to be a tenant, that instead of transit accommodation, certain amount has to be paid as rent which could be enhanced from time to time, it is altogether a different situation. If it is not part of the general scheme and if it were to be a private arrangement between the parties, we are surprised how the petition could be maintained under Article 226 of the Constitution. Prayer (a) is nothing but recovery of money asking intervention of the Court to direct the party respondent to pay Rs.9,87,900/-. No doubt, if there is an admitted amount to be paid between the parties (if unconditionally admitted by the respondent if the respondent were to be a person who gets attracted to Article 12 of the Constitution), then even in writ jurisdiction such matters exceptionally could be entertained. Merely because of the status of the 7th respondent - a Developer under a SRA Scheme, the Developer cannot come under the purview of Article 12 of the Constitution. Therefore, it becomes a private contract between the parties. Even otherwise, the dispute is with regard to the factual situation including the quantum of rent to be paid and the quantum of arrears of rent.

5. In that view of the matter, this is not the forum where the petitioner could get his dispute adjudicated. It has to be before the proper Court. Accordingly all the petitions are disposed of.

(N.M. JAMDAR, J.)

CHIEF JUSTICE