

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

WRIT PETITION NO. 577 OF 2017

Mohamed Sharif Abdul Qayum Qureshi Petitioner

Vs.

The Municipal Commissioner, Respondents
Municipal Corporation of Greater
Bombay and another

Mr. Kunal Bhanage advocate for the petitioner

Mr. T. J. Pandian for the respondent no. 3.

Mr. G. S. Godbole a/w Ms. Pallavi Thakar for MCGM-respondent nos. 1 & 2.

**CORAM : SMT. VASANTI A. NAIK,
RIYAZ I. CHAGLA, JJ.**

DATE : DECEMBER 5, 2017.

P.C.

By this writ petition, the petitioner challenges the notice of the Corporation dated 09/12/2016, directing the petitioner to vacate the structure or else the Corporation would demolish the same.

It is stated on behalf of the petitioner that though the structure in which the petitioner is conducting the business at the Byculla Railway Station was allotted to the petitioner by the respondent-Corporation, by the impugned notice, the structure was sought to be vacated and demolished for the construction of a new railway over bridge at Byculla Railway Station. It is stated that the railway bridge is constructed and the same is used by the commuters at Byculla Railway Station but still the Corporation authorities are

insisting that the petitioner should vacate the structure and hand over the site to the Corporation as the structure would cause obstruction and hindrance in the use and the maintenance of the railway bridge.

It is stated on behalf of the Corporation that the old railway over bridge was extremely narrow and hence, the same was sought to be constructed at the expenses of the Corporation by the railways. It is submitted that the petitioner is not the tenant of the structure or the site on which the same is constructed and the father of the petitioner namely Abdul Qayam was allotted the said site by the Corporation on rent. It is stated that after 1994, the petitioner has not paid rent to the respondent-Corporation. It is submitted that since the structure of the petitioner at the Byculla Railway Station is causing obstruction, the same is liable to be removed.

The learned counsel for the Railways has referred to the affidavit-in-reply filed on behalf of the Central Railways. It is stated that the structure of the petitioner is touching the railway over bridge which is under construction. It is stated that a minimum distance of 3 feet is required to be maintained between the bridge and any structure but there is no gap between the bridge and the stall of the petitioner. It is stated that the structure of the petitioner is obstructing and causing hindrance in the completion of the construction work. It is stated that it would be difficult for the railways to maintain the bridge periodically, if the structure of the petitioner is permitted to be retained at the concerned site. It is stated that the rear side wall of the structure of the petitioner falls on the land belonging to the railways and due to the obstruction, the land is not maintained in a good condition. A photograph is annexed to the affidavit-in-reply of the railways to substantiate the submission about the location of the shop and the railway over bridge.

In the circumstances of the case, the petitioner cannot effectively challenge the impugned notice by which the petitioner is directed to vacate the structure so that the same could be demolished. Due to the heavy traffic of commuters at Byculla Railway Station, it was necessary to construct the railway over bridge. It is not in dispute that the railway over bridge is sought to be constructed and/or is constructed by the railways and the stall of the petitioner abuts the railway over bridge. We find from the photograph annexed to the affidavit-in-reply on behalf of the railways that there is no gap or distance between the stall of the petitioner and the railway over bridge. There is much force in the submission made on behalf of the railways that it would be difficult to maintain the railway over bridge periodically, if the stall of the petitioner is retained at the site. The safety of the commuters is of utmost importance and in public interest, it would be necessary for the petitioner to shift the stall to an alternate site.

Though we are not inclined to interfere with the impugned notice and quash and set aside the same, in the circumstances of the case, it would be necessary to direct the Corporation to provide an alternate site to the petitioner for conducting his business as admittedly as per the reply of the Corporation, the site where the stall exists was allotted to the father of the petitioner for carrying on his business and apparently, the petitioner's father was carrying on the business on the said stall for more than 60 years. Though it is the case of the Corporation that the petitioner has illegally and unauthorisedly constructed the first floor, since the said fact is seriously disputed by the petitioner and it is the case of the petitioner that the entire construction-structure was in existence before the cut off date and is tolerated structure, the Corporation cannot be heard to say that the petitioner would not be entitled to the allotment of an

alternate site specially when the site was admittedly allotted to the father of the petitioner.

Hence, for the reasons aforesaid, the writ petition is partly allowed. The Corporation is directed to allot an alternate site to the petitioner for carrying on his business, as far as possible, within the vicinity of the area where the stall is located if a site is available in the said area, within 6 weeks and the petitioner is directed to vacate the existing structure immediately on the allotment of the alternate structure. Order accordingly. No costs.

[RIYAZ I. CHAGLA J.]

[SMT. VASANTI A. NAIK, J.]