

Sharayu Khot.

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

WRIT PETITION NO. 914 OF 2018

Chatarlal Bhavarlal Jain

...Petitioner

Versus

Mumbai Municipal Corporation & Ors.

...Respondents

Mr. Ajit S. Karwande, for the Petitioner.

Mrs. Geeta Joglekar, for the Respondent No. 1-BMC.

Mr. Javeed Hussein, a/w Mr. Mubashir Hussein, Mr. Munibah Iram, Ms. Saba Shaikh, Ms. Reshma Khatri, Mr. Firdous Khan, i/by Hussein & Company, for the Respondent No. 3.

**CORAM : ABHAY S. OKA AND
RIYAZ I. CHAGLA, JJ.**

DATE : 2 April 2018

ORDER :

1. Heard the learned Counsel appearing for the

Petitioner. The Petitioner claims to be the tenant of Shop No. C more particularly, described in paragraph 1 of the Petition. According to the case of the Petitioner, the 3rd Respondent in this Petition under Article 226 of Constitution of India is the owner/developer of the property on which the said shop is situated.

2. The main contention raised in this Petition is that the 3rd Respondent has committed the breach of the terms and conditions of the IOD issued by the 1st Respondent-Municipal Corporation. Our attention was invited to the clause 21 of the IOD which provides that the work as per approved plan should not be taken up by the 3rd Respondent unless the Executive Engineer is satisfied that the 3rd Respondent has entered into written agreements with the existing tenants for grant of the alternate accommodation in the proposed structure. He invited our attention to the letter addressed by the architect appointed by the 3rd Respondent to the Municipal Officers as well as the letter dated 23 December 2011 addressed by the Advocate of

3rd Respondent to the Municipal Officers in which the status of the Petitioner as a tenant has been accepted. He invited our attention to the deposition of the witnesses examined by the Petitioner in a declaratory suit filed by him in the Court of Small Causes which is still pending. In particular, he invited our attention to the deposition of Shri. Nasir Ahmed Khan, Sub-Engineer of the Municipal Corporation. He submitted that while dealing with the 1st Respondent-Municipal Corporation, the 3rd Respondent's Architect and Advocate have accepted the Petitioner as a tenant, but in the suit filed by the Petitioner in the Court of Small Causes, a contrary stand has been taken. He, would therefore, submit that the construction could not have proceeded with by the 3rd Respondent without entering into an agreement with the Petitioner.

3. We have given careful consideration to the submissions. We have perused a copy of the Plaint in R.A.D. Suit No. 878 of 2011 filed by the Petitioner against the Respondents. The substantive prayer in the suit is for a declaration that the

Petitioner is the tenant of the shop premises described in paragraph 1 of the Petition. There are consequential reliefs claimed in the suit. A copy of the Written Statement filed by the 3rd Respondent is also annexed.

4. It appears that the Petitioner applied for interim relief by filing an Application before the Court of Small Causes in pending suit. The prayer in the said Application was for restraining the 3rd Respondent from creating third party rights in respect of the suit premises and for temporary mandatory injunction directing the 3rd Respondent to provide transit accommodation to the Petitioner till the date of handing over the new premises or in the alternative, to pay an amount of Rs. 15,000/- towards transit accommodation. The said Application was partly allowed by the order dated 27 July 2012 passed by the learned Judge of the Court of Small Causes. The prayer for mandatory injunction was rejected. But the 3rd Respondent was restrained from creating the third party interest in respect of the suit premises.

5. It is not in dispute that the suit for declaration filed by the Petitioner is still pending in the Court of Small Causes.

6. Thus, the status of the Petitioner as a tenant is yet to be established before the competent Court. The statements made in the communication addressed by the Advocate for the 3rd Respondent and architect representing the 3rd Respondent will at the highest be admissions which will have to be considered by the Court of Small Causes while deciding the suit.

7. As of today, it is not possible to entertain this Petition which proceeds on the assumption that the Petitioner is a tenant in respect of shop C described in paragraph 1 of the Petition.

8. Therefore, at this stage, no interference is called for at the instance of the Petitioner in writ jurisdiction.

9. Though we are not interfering in this Writ Petition, we make it clear that if any breach of the terms and conditions

in the development permission/IOD granted to the 3rd Respondent has been committed by the 3rd Respondent, the Municipal Corporation is bound to take appropriate action in accordance with law.

10. Subject to what is observed above, we decline to entertain the Petition.

11. We however, make it clear that all the contentions of the parties in pending suit are expressly kept open.

[RIYAZ I. CHAGLA J.]

[ABHAY S. OKA, J.]