

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

WRIT PETITION NO. 1331 OF 2016

Shailesh M. Palsuledesai and others. ... Petitioners.

V/s.

Municipal Corporation of Greater Mumbai
and others. ... Respondents.

WITH
CHAMBER SUMMONS NO. 173 OF 2018

Mr.Madhusudan Nair with Mr.Sharad Agre I/b. KPMC Legal
for the petitioners.

Mr.Shital Mane for the respondent- MMC.

Mr.D.S.Sakhalkar i/b. Mr.Swapnil A. Waradkar.

Mr.S.B.Gore, AGP for the respondent- State.

Mr.A.R.Mishra for the applicant in CHSW-173/2018.

CORAM : A.S.OKA AND RIYAZ I. CHAGLA, JJ.

DATE : 17th July 2018.

P.C.:

The learned counsel appearing for the petitioners states that now the petitioners have confined their prayers in the petition to prayer clause (aa) and interim relief is sought in support of the said prayer (aa). His submission is that neither the Municipal Corporation nor the fourth respondent is coming out with a true area of the premises in possession of the petitioners on the date of demolition of the building. He invited our attention to the assessment record, a copy of which is annexed at Exhibit-B-1. He also tendered across the bar a statement showing the difference in measurement of area which is taken on record and marked as "S-1" for

identification. The statement/chart shows that neither the Municipal Corporation nor the fourth respondent is accepting the case of the petitioners as regards the area in their respective possession on the date of demolition. There is a reply filed by the fourth respondent disputing the claim of the petitioners.

2. For deciding the issue as to what was the actual area of the premises in possession of the petitioners on the date of demolition of the building, it requires evidence to be recorded as it involves several disputed question of facts. Therefore, more appropriate remedy for the petitioners would be to file a civil suit. We are informed that the fourth respondent-developer is likely to start construction as the IOD has been issued to it. If the petitioners are right in their contention, appropriate provision will have to be made for allotment of premises of specific area in the sanctioned plan. Therefore, to enable the petitioners to file a civil suit and to apply for appropriate relief therein, we propose to direct that for a period of six weeks from today, the fourth respondent shall not start any development or construction on the site.

3. Accordingly, we pass the following order:

- (i) The writ petition is disposed of by granting liberty to the petitioners to file a civil suit for the reasons recorded above;
- (ii) To enable the petitioners to apply to the civil Court for grant of appropriate interim reliefs, we direct that the

fourth respondent shall not proceed with any construction/ development on the site for a period of six weeks from the date on which this order is uploaded;

- (iii) Civil suit proposed to be filed by the petitioners and an application for interim relief filed therein shall be disposed of by the concerned Court on its own merits;
- (iv) In view of disposal of writ petition, Chamber Summons No.173/2018 does not survive and stands disposed of accordingly.

(RIYAZ I. CHAGLA, J.)

(A.S.OKA, J.)