

Jsn

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

WRIT PETITION NO. 2720 OF 2016

Saptrishi Residents Co-operative Housing ... Petitioners
Federation Ltd & Anr.

Versus

State of Maharashtra & Ors. ... Respondents

WITH

WRIT PETITION NO. 2786 OF 2016

Chandru Khemlani ... Petitioner

Versus

Municipal Corporation of Greater Mumbai & ... Respondents
Ors.

Mr. Pradeep Havnur, with Ms. Radhika Samant, for the Petitioner
in WP No. 2786 of 2016.

Mr. Rajiv Narula, I./b Jhangiani Narula & Associates for the
Petitioner in WP No. 2720 of 2016.

Mr. Tushar A. Goradia, with Ms. Swapna Rupawate, for
Respondent No.4 in WP No. 2786 of 2016.

Mr. A.Y. Sakhare, Senior Advocate, with Ms. Pallavi Thakar, & Ms.
Shital Mane & Ms. S.M. Modak for MMC in both matters.

Mr. Deepak Chitnis Chiplunkar i/b M/s Deepak Chitnis Chiplunkar
& Co. for Respondent No.5 in WP No. 2720 of 2016.

Mr. Amit Shastri, AGP for Respondent No.7 State in WP No. 2786
of 2016.

Mr. Rajiv Mane, AGP for Respondent No.1, State in WP No. 2720
of 2016.

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

DATED: 6TH MARCH 2018.

PC:-

1. Heard learned counsel appearing of the parties. Perused
the earlier order dated 23rd January 2018. Both the Petitions

concern the same property which is described in paragraph 2 of Writ Petition No. 2786 of 2016. It is not in dispute that on 17th January 1962, the Mumbai Municipal Corporation created a lease in respect of the subject property. The lessee under the said lease was the company Pure Drinks Pvt. Ltd. The first prayer in Writ Petition No. 2786 of 2016 is for issuing the Writ of Mandamus enjoining the said Mumbai Municipal Corporation to terminate the lease and transfer the lease to six societies of the flat purchasers occupying the subject property. There is no dispute that the six societies are Esha Ekta Apartment CHS Ltd., B.Y. Apartments CHS Ltd., Shubh Apartments CHS Ltd., Mid Town Apartments CHS Ltd., Orchid CHS Ltd. and Patel Apartments CHS Ltd. The second prayer is for setting aside the order dated 14th July 2016 passed by the Deputy Municipal Commissioner (Improvement). The said order was passed by which show cause notice dated 16th August 2010 was disposed of. Prayer (c) and (d) in the said Petition are prayers for seeking consequential reliefs. The other prayers are for interim reliefs.

2. As far as Writ Petition No. 2786 of 2016 is concerned, it concerns the entire area subject matter of lease admeasuring 17907.60 Sq.mtrs, which is described in paragraph 2 of Writ Petition No. 2786 of 2016. As far as Writ Petition No. 2720 of

2016 is concerned, it relates to an area admeasuring 13049.45 sq. mtrs out of the larger property which is subject matter of lease. In Writ Petition No. 2720 of 2016, firstly there is a challenge to the same order dated 14th July 2016 passed by the Deputy Municipal Corporation. Secondly, there is a challenge to the consequential communication dated 11th August 2016. We must note here that the challenge to the order dated 14th July 2016 is limited to three aspects which are mentioned in prayer (A) of the Petition. Prayer (C) concerns the same order dated 14th July 2016. It seeks Writ of Mandamus in relation to the certain parts of order dated 14th July 2016. By way of amendment, there is a challenge to the constitution validity of provisions of the Maharashtra Act No. 20 of 2012 as well as to resolutions of the improvement Committee and General Body of the Corporation levying premium on transfer of lease. Earlier order dated 23rd January 2018 incorporates the operative part of the impugned order dated 14th July 2016.

3. Today, the learned Senior Counsel appearing for the Mumbai Municipal Corporation has tendered across the bar an order dated 17th February 2018 passed by the Municipal Commissioner of the Mumbai Municipal Corporation, a copy of which is taken on record and marked Exhibit "O-1" for identification. By the said order, the Municipal Commissioner has

withdrawn the order dated 14th July 2016 and has directed the Additional Municipal Commissioner (City) to hear the matter afresh and to pass a speaking order limited to the show cause notice dated 16th August 2010. The Municipal Commissioner, for reasons recorded in order, observed that the order dated 14th July 2016 does not stand the test of the judicial correctness.

4. In view of the withdrawal of the said order dated 14th July 2016, Writ Petition No. 2786 of 2016 does not survive.

5. As far as Writ Petition No. 2720 of 2016 is concerned, prayers (A), (B) and (C) will not survive. As the order dated 14th July 2016 has been withdrawn, as of today, the question of first Petitioner in the said Petition paying premium on transfer of lease will not arise. It will all depend upon the final order which may be passed by the Additional Municipal Corporation (City) on the show cause notice dated 16th August 2010. Therefore, as of today, amended prayer clauses B(i), B(ii) and B(iii) have become academic. If an occasion arises in future, the Petitioners can urge the said prayers by filing appropriate proceedings in accordance with law.

6. The learned counsel appearing for the Petitioners in Writ Petition No. 2720 of 2016 invited our attention to the order dated

23rd January 2018 passed by this Court. He submitted that the order proceeds on the footing that a federation of the six cooperative societies has not been formed. He submits that the first Petitioner in the Writ Petition No. 2720 of 2016 is the said federation.

7. The observations made in the said order of this Court are in the context of the order dated 14th July 2016 in as much as the Deputy Municipal Commissioner has proceeded on the footing that the six societies have not formed a federal society and in fact under the said order, he issued a direction directing six societies to form a single federation. As the said order of the Deputy Municipal Commissioner is withdrawn, it is not necessary for us to go into question whether the first Petitioner in Writ Petition No. 2720 of 2016 is the same federation which was contemplated by the Deputy Municipal Commissioner.

8. Accordingly we pass the following order:-

(a) Subject to what is observed above, both the Petitions do not survive as a consequence of withdrawal of order dated 14th July 2016 passed by the Deputy Municipal Corporation (Improvement);

(b) We direct the Additional Municipal Corporation (City) to

hear the first Petitioner in Writ Petition No. 2720 of 2016. The Petitioner in Writ Petition No. 2786 of 2016, the six societies mentioned in paragraph No.2 above (Esha Ekta Apartment CHS Ltd., B.Y. Apartments CHS Ltd., Shubh Apartments CHS Ltd., Mid Town Apartments CHS Ltd., Orchid CHS Ltd. and Patel Apartments CHS Ltd.) shall be heard by the Additional Municipal Commissioner. The impugned order of Deputy Commissioner (Improvement) indicates that he had heard Mr. B.K. Gupta. However, we have told across the bar that B.K. Gupta is no more. The Additional Municipal Commissioner (City) will peruse the record. If he finds that said B.K. Gupta was present at any time during the course of hearing before the Deputy Municipal Commissioner (Improvements), the Additional Municipal Commissioner (City) will have to issue notice to the legal representative of the said B.K. Gupta;

(c) The parties to the Petition which are required to be heard, shall appear before the Additional Municipal Commissioner (City) on 19th April 2018 at 11.00 a.m. for fixing the schedule of hearing. The Additional Municipal Commissioner to issue notices to those parties who do not remain present on 19th April 2018;

(d) The Additional Municipal Commissioner (City) shall pass appropriate order in accordance in law as expeditiously as

possible and preferably within a period of four months from 19th April 2018;

(e) All contentions on merits are kept open;

(f) We may also note here that the observations made by this Court in the order dated 23rd January 2018 were tentative and *prima facie* observations and therefore, the Additional Municipal Commissioner will hear the matter without being influenced by the said observations;

(g) Needless to add that, those who are aggrieved by the order which may be passed by the Additional Municipal Commissioner can always challenge the same in accordance with law.

(RIYAZ I. CHAGLA J.)

(A.S. OKA, J)