

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 4227 OF 2018

M/s. Shubham Enterprises

...Petitioner

Versus

Babu Bhiku Matal & Ors.

...Respondents

Rohan Sawant i/b Yogesh Adhia, Advocate for the
petitioner.

Nilesh Soni I/b Bhati Associates - Advocate for the
respondent.

CORAM : DAMA SESHADRI NAIDU, J.

DATE : 17th JUNE 2019.

P.C. :

The petitioner-landlord initially filed a suit for eviction before the Small Cause Court, Bandra, Mumbai. In that suit, the respondents-tenants filed an application for injunction. They contended that the landlord was trying to demolish a toilet (euphemistically called WC, that is, a Water Closet) attached to the leased building. On merits, the Trial Court granted an injunction,

restraining the landlord from demolishing any portion of the leased property, including the WC.

2. Aggrieved, the landlord filed an appeal, but the Appellate Bench of the Small Cause Court confirmed the injunction. Further aggrieved, the landlord filed this writ petition.

3. By the time, the landlord filed this writ petition, the pleadings were complete before the Trial Court. And from those pleadings, rival contentions have emerged. The landlord, in fact, disputed the very location of the WC and who constructed it. Besides that, there arose another question: has the WC been commonly used by all other people in the tenanted complex or exclusively by those tenants?. As a result, this Court appointed an Advocate Commissioner, who visited the leased premises and filed his report, along with a few photographs.

4. In the context of the rival pleadings and also the report filed by the Advocate Commissioner, both the learned counsel on either side have advanced their

arguments.

5. The landlord's counsel stated that even going by the Advocate Commissioner's report, the alleged WC is in a dilapidated condition and totally unusable. At any rate, he has contended that what remains now is perhaps the relic of a structure, almost unidentifiable as a WC. Then, drawing my attention to Exhibit-I photograph and also the Advocate Commissioner's report, he has submitted that, pending the suit, the landlord reconstructed the building—excluding the suit schedule property, though. In that process, the landlord has already constructed a common WC which can be use by all the tenants, including the respondent-tenants.

6. If the respondents-tenants use the newly constructed area, the landlord will, the counsel submits, remove the dilapidated structure in the common area. According to him, the tenants call only this dilapidated structure in the common area a WC in their exclusive use.

7. The learned counsel stresses that this arrangement of the tenants' using the new WC, first, benefits the tenants themselves; second, it does not prejudice their case before the Trial Court; and, third, it improves sanitation and hygiene in the building. The learned counsel has also pointed out that if the landlord has not removed the dilapidated structure in the common area, the landlord's reconstruction violates the building permission he secured from the civic authorities.

8. The tenants' counsel on the other hand submitted that structure has been existing for many years—that is, from the days beyond 1960. According to him, it has been used by all the tenants, including the respondents-tenants. If the landlord demolishes that structure, it will cause enormous prejudice to the tenants.

9. Then, I have queried about what prejudice would be caused to the tenants if they use the alternative WC shown by the landlord and allow him to

go ahead with the construction or reconstruction, encompassing the common area—without affecting the tenant's interest. The tenants' counsel has fairly submitted that of the three tenants, one is disinclined to accept this proposal.

10. In reply, the landlord's counsel informs the Court that in the premises there are 12 tenants. Of those 12, already 11 have surrendered the property to be reconstructed, save these three respondents, who represent only one tenancy, though.

11. Heard the learned counsel on either side and perused the record.

12. I reckon it is much ado about nothing. First, the respondents do admit that they used or have been using the WC commonly along with other tenants in the complex. So I gather it is a common WC. To throw more light on the controversy, I may refer to the Advocate Commissioner's report.

13. In his report, the Advocate Commissioner has observed that there is no WC attached to the suit

schedule property. According to him, “one kitchen is found . . . constructed”. And there is a “drainage pipe in the constructed kitchen”. On enquiry, he has found that the kitchen is not used presently. One of the respondents reported to the Commissioner that though the WC is in a shambles, it is still used by them.

14. Indeed, the tenants in their rejoinder have admitted that they have constructed the WC in the common area, but that was constructed before 1960. True, even by the Advocate Commissioner’s report, it is in the common area and not attached to the suit schedule property. That said, I may also note wherever it is situated, a WC is an indispensable amenity. By that reckoning, the respondents should not be deprived of its use.

15. In all fairness, the landlord has come forward to provide them an alternative, as it provided to the other tenants, who have agreed and let the landlord proceed with the construction.

16. So, pending the suit, what this Court must

ensure is that no interim arrangement should prejudice the cause of either party to the litigation. Here, it is a question of using a common amenity: a toilet or WC. The Commissioner has found that no WC was found attached to the leased property, but one does exist in the common area. Indeed, even Exhibit- I photograph shows that the structure shown as WC is unusable. It is not only a question of right but also that of sanitation that the tenants must be using a safe WC; their insistence on a decrepit, possibly infected structure spells danger to all the inmates and, at the same time, serves no purpose even for the respondents. The rival pleadings, the Commissioner's report, and the photograph, even on a prima facie consideration, compel me to conclude that the respondents suffer no prejudice if they use a safer, newer WC offered by the landlord.

17. Under these circumstances, I partially modify the Trial Court order of injunction, as confirmed by the Appellate Court. As a result, the landlord is free to

demolish the structure shown in the Exhibit-I photograph, situated in the common area. But it must allow the respondents to use the common WC shown in the photograph annexed to Exhibit-N.

As a matter of abundant caution, I observe that this arrangement should not prejudice the cause of either party to the litigation. And this Court's observations, now made, affect neither party before the Trial Court. In other words, the observations are incidental and collateral, made for the disposal of this Writ Petition.

[DAMA SESHADRI NAIDU, J.]