

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.10219 OF 2019

Mr. Shahid Rasool Nandolia		
And Another	...	Petitioners
Versus		
Ms. Neelkamal Exhibitors Pvt. Ltd.	...	Respondents

ALONG WITH
WRIT PETITION (ST.) NO.25937 OF 2019

Haji Haroon Kassam		
And Others	...	Petitioners
Versus		
Ms. Neelkamal Exhibitors Pvt. Ltd.	...	Respondents

Mr. Ram Apte, Senior Advocate a/w Mr. Deepak Y. Chitnis,
Ms. Sonali S. Dalvi i/b Deepak Chitnis-Chiparikar & Co. for the
Petitioners.

Mr. Gul K. Achhra for the Respondents.

CORAM : S.C. GUPTE, J.

DATE : 20 SEPTEMBER 2019

(Oral Judgement)

. These two writ petitions challenge the original order passed by the Court of Small Causes at Mumbai on an interim application and the appellate order passed by the Appellate Bench of that court confirming that order.

2 We are concerned in the present writ petitions with premises used as a canteen for what was known as ‘Ganga-Jamuna’ theaters at Tardeo in Mumbai. The complex had twin theaters and canteens on the ground and two upper floors to cater to the patrons. By a tenancy agreement dated 4 January 1972, the canteen premises were let out by the owners of the property to one Ismail Haji Gulam Rasool (since deceased). The Petitioners herein, who are original plaintiffs before the Court of Small Causes, are legal heirs of Ismail Haji Gulam Rasool. In 2006, the theaters came to be closed. It is, however, the Petitioners’ case that the ground floor continued to be occupied by them as a godown and catering unit. The present declaratory suit, filed in the year 2007, seeks a declaration of their tenancy in respect of the canteen premises on each of the three floors. In that suit, an interim notice was taken out by the Petitioners, being Exhibit ‘7’. After an ad-interim injunction was ordered by the trial court to protect the existence as well as occupation of the suit premises by the Petitioners and this order was sustained by the Appellate Court, by the impugned order of the trial court, the interim notice was dismissed. That order was carried by the Petitioners in an appeal before the Appellate Bench. The Appellate Bench dismissed the appeal. That is how the Petitioners are aggrieved and have approached this court.

3 It is pertinent to note, at the very outset, an important intervening circumstance. Municipal Corporation of Greater Mumbai (MCGM), which is a planing authority having jurisdiction over the suit

premises, has categorized the entire building housing the twin theaters of Ganga-Jamuna as a dangerous structure designated under C-1 category. By a notice, issued by MCGM under Section 354 of Mumbai Municipal Corporation Act, 1888 (“MMC Act”), the corporation has required the Respondents/Landlords to demolish the entire structure. It is particularly in the light of this intervening circumstance that the courts below have refused to grant any interim relief to the Petitioners.

4 The courts below have observed that in every case, where a party approaches a court for protective interim reliefs, the court has to consider *prima facie* merits of the case for protection together with the questions of balance of convenience and irreparable injury. Considering the fact that demolition has been ordered under a local planning law (i.e. under Section 354 of MMC Act) and also considering the fact that the Petitioners’ alleged rights as tenants are protected in any case, the court was of the view that the Petitioners and the Petitioners did not deserve any interim protection by the court.

5 The subject matter of the Petitioners’ interim notice is protection of their tenancy rights. If the building is demolished in pursuance of a notice issued by the corporation under Section 354 of MMC Act, the rights claimed by the Petitioners in their suit are not anyway jeopardized. Both under the directions of this court in the case of **MCGM Vs. Government of Maharashtra & Others** for structures of C-1

category, which are to be demolished in pursuance of a notice by the planning authority, and under the guidelines framed by MCGM in pursuance of those directions, tenants of private buildings are adequately protected when the buildings are to be demolished in pursuance of requisitions made under Section 354 of MMC Act. The corporation has been enjoined to include a condition in every sanction for redevelopment in such a case that no commencement certificate for such redevelopment shall be issued unless an agreement providing for permanent alternative accommodation in the newly constructed building has been made or settlement in that behalf has been arrived at between the concerned tenant/s and the landlord. This condition adequately protects the interests of the Petitioners. Besides, the Respondents themselves are offering to allot such accommodation to the Petitioners, subject to the result of their suit.

6 In the premises, there is no infirmity in the impugned orders of the two courts below. The writ petitions are, accordingly, dismissed. It is clarified that demolition of the building including the suit premises does not in any way prejudice the Petitioners' rights in their suit. In the event of demolition of the building, the Respondents/landlords shall ensure that before commencing any work at site, a suitable alternative accommodation agreement is executed between the parties or settlement in writing in that behalf is duly arrived at between the parties. It is needless to clarify that any such agreement or settlement shall be subject to the final outcome of the Petitioners' suit. The Petitioners are granted three months' time to

vacate the suit premises. The demolition of the building can take place only thereafter.

(S.C. GUPTE, J.)