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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION ST NO. 273 OF 2019**

Jagdish C Mistry ...Petitioner
Versus
Municipal Corporation of Greater Bombay & Ors ...Respondents

Mr Nilesh Khandray, i/b GM Joshi, for the Petitioner.
Ms Vandana Mahadik, for the Respondent-MCGM.

**CORAM: S. C. DHARMADHIKARI &
G.S. PATEL, JJ**
DATED: 16th August 2019

PC:-

1. The petitioner in this connected petition says that the notice in question is issued to a building known as Valentino building.
2. It is stated that the petitioner before this Court is a tenant of a unit situated at Valentino building, ground floor, Vakola Village Lane, Opposite, St Charles's School, Santacruz (East) Mumbai 400 055. It is only a ground floor RCC structure admeasuring about 250 sq ft. It has a loft, wash basin, urinal and 24 hours water supply from the Valentino building overhead tank water connection. It is stated that the 3rd respondent is the widow of the erstwhile landlord, Mr Ivan Lobo. It is stated that the 4th Respondent is the new landlord. Adjoining this unit at a distance of 6 to 8 feet is the ground plus

three floor storey building known as Valentino. The Municipal Corporation has proceeded against this building but the petitioner apprehends that the independent structure allegedly belonging to the Lobo family and rented out to him would be brought down or demolished in pursuance of this notice issued to Valentino building.

3. After a perusal of this writ petition and all annexures thereto, so also the municipal files, we are of the firm view that the writ petition involves a seriously disputed question of fact. The petitioner may claim that this is an independent unit but the Municipal Corporation says it is in the same compound as Valentino building. It says that the Valentino building is highly unsafe and dangerous. It is in a ruinous condition and likely to fall.

4. The challenge to the notice issued to Valentino building has been withdrawn today before us.

5. As far as the petitioner in this petition is concerned, if he or she is desirous of protecting the structure from demolition, then, the petitioner must approach the competent Civil Court and satisfy it by leading evidence that this construction exists at site much prior to what is claimed to be the Valentino building; and, further, that it is independent and has nothing to do with the Valentino building. He must also prove that in the garb of notice being issued to Valentino building, he is threatened with demolition of the structure of which he is a tenant and that this action is not in accordance with law, and wholly ultra vires to the statute in question. It is only on establishing of these facts can the petitioner successfully

demonstrate that the attempt is illegal and the demolition cannot take place.

6. We do not think that in writ jurisdiction the serious dispute between the parties on facts can be resolved. The writ petition is dismissed with liberty to the petitioner to approach the competent Civil Court.

(S. C. DHARMADHIKARI, J)

(G. S. PATEL, J)