

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO.1569 OF 1996

1. Kusum w/o Mithailal Teli
Aged: 61, Occ: Household
2. Gulabchand s/o Mithailal Teli
Aged: 38, Occ: Vegetable Vendor
3. Shivnana s/o Mithailal Teli
Aged: 32, Occ: Vegetable Vendor
4. Munna s/o Mithailal Teli
Aged: 30, Occ: Vegetable Vendor
5. Smt. Sunita Omprakash Gupta
Aged: 27, Occ: Household
6. Smt. Hiramani Dharamdev Gupta
Aged: 25, Occ: Household

Nos.1, 2, 4, 5, 6 through their
Constituted Attorney No.3, residing at
Room No.2, Shanti Bhuvan, R.R.
Thakur Marg, Jogeshwari (E),
Mumbai – 400 060.
Being the legal representatives of the
deceased Original Petitioner.

.... Petitioners

- Versus -

1. Municipal Corporation of Gr.
Mumbai, Mahapalika Marg,
Mumbai.

2. V.N. Jadhav

3. A.K. Bermare

4. A.M. Desai

2 to 4 officers of Mun. Corpn, of Gr.
Bombay, K-Ward East, Below Fly
Over Bridge, Andheri (East),
Mumbai.

.... Respondents

WITH
CHAMBER SUMMONS NO.82 OF 2019
IN
WRIT PETITION NO.1569 OF 1996

Shivanand S/o Mithailal Teli & Others

.... Applicants

In the matter between

Late Kusum w/o Mithailal Teli & Others

.... Petitioners

Vs.

Municipal Corporation of Gr. Mumbai
& Others

.... Respondents

Mr. S.P. Kanuga with Mr. Hitesh Vyas for the
Petitioners in the WP and the Applicants in CHSW.

Ms Vandana Mahadik for the Respondent-MCGM.

**CORAM: S.C. DHARMADHIKARI &
M.S. KARNIK, JJ.**

DATE : MAY 03, 2019

ORAL JUDGMENT (Per Shri S.C. DHARMADHIKARI, J.):

1. This writ petition is filed in this Court for the following two reliefs:-

“(a) That this Hon'ble Court be pleased to issue writ of mandamus or other appropriate writ, order or direction directing the respondents to forthwith restore the shed situate at R.R. Thakur Marg, Opp. Maharaj Bhuvan, Jogeshwari (East), Mumbai-66 and return the material illegally seized by the respondents.

“(b) That this Hon'ble Court be pleased to pass such appropriate order or direction directing the respondents to pay compensation to the petitioner at Rs.10,000/- for illegally demolishing the structure.”

2. The petition being filed way back in 1996, at the time of its admission, this Court was pleased to make the following order:-

“Rule, returnable on Saturday 17/8/96.

File pertaining to demolition of Petitioner shed produced by Learned Counsel for B.M.C. is taken on record. Prothonotary and Senior Master is directed to

keep the file in sealed cover.”

Thereafter upon a Notice of Motion for interim reliefs being moved, on hearing parties, the following order was passed:-

*“Heard Advocates.
N/M made absolute in terms of prayer (a)”*

Thus, the demolished structure was allowed to be reconstructed and it continues to exist at site.

3. Mr. Kanuga, appearing on behalf of the petitioners, would submit that, by passage of time and by virtue of this order the petition gets worked out.

4. The original petitioner had been carrying on business from a structure admeasuring 25 ft. x 27 ft., having tarpaulin sheet and C.I. sheet roof at the address mentioned in the cause title of this petition.

5. The original petitioner has expired and the petition is pursued by his heir and legal representatives.

6. It is stated that for their livelihood, these petitioners

are carrying on small business of selling vegetables and they have not contravened the law nor they have done anything to the structure which would enable this Court to conclude that undue benefit of the interim order has been derived or that the said order is misused in some other manner.

7. On the earlier two occasions, the respondent/MCGM sought time to ascertain whether the position remains the same from 1996 till date.

8. It is stated that the structure is situate on private premises. There is an adjoining footpath on one side and a road on the other side. The Municipal Engineer has visited the site and has found that the structure is covered by tarpaulin sheets. It is propped by wooden poles.

9. The portion of the structure affecting the movement of the public has already been removed. Now, the remaining structure and covered as above is at site.

10. There is no complaint from the Municipal

Corporation of this structure having been extended or that this structure is affecting the traffic on the abutting road.

11. In the above circumstances, this writ petition need not be kept pending. It is disposed of in terms of this order without examining any larger issues and by clarifying that in the event the Municipal Corporation desires to proceed against this structure, in future, it shall do so strictly in accordance with law.

12. Rule is made absolute accordingly with no order as to costs.

13. A copy of the site inspection report dated 2-5-2019 is taken on record and marked "X" for identification.

14. In view of disposal of the writ petition, the Chamber Summons does not survive and it accordingly stands disposed of.

(M.S. KARNIK, J.)

(S.C. DHARMADHIKARI, J.)