

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 896 OF 2016

Kurla Industrial Estate Pvt.Ltd. ...Petitioner

Versus

The Municipal Corporation of Gr. Mumbai ...Respondent

Mr. Amol Tembe, for the Petitioner.

Ms. Yamuna Parekh, for the MCGM/Respondent no.1.

Mr. J. J. Thakkar, for Respondent nos.5 to 7.

**CORAM: S. J. KATHAWALLA &
N. J. JAMADAR, JJ**

DATED : 15th NOVEMBER, 2019

PC:-

1. The Petitioner is admittedly the sub-lessee of respondent nos.5 to 7, who are lessees of the property being Plot No.9, Shed No.4, L.B.S. Marg, behind Samrudh CNG Pump, Kurla (West), Mumbai - 400 070 ("subject property", for short). The present petition is filed by the Petitioner *inter alia* seeking (i) direction against Respondent Nos. 1 to 3 to act on notices dated 30th April, 2015, 13th May, 2015 and 25th May, 2015, issued by them to respondent nos.5 to 7 qua the water tanks installed by the Respondent Nos. 5 to 7 on the subject property and used by Respondent Nos. 5 to 7, (ii) direction against respondent nos.1 to 3 to take immediate action for recovery of deficient water charges for the period prior to 3rd March, 2015 from

Respondent No.6 in respect of water connection in the subject property ; (iii) direction against Respondent No. 4 to take action against Respondent nos.8 and 9 by stopping them from continuing their activities of cold-storage and preparation of eatables as mentioned in prayer Clause (c) and ; (iv) direction against Respondent Nos. 1 to 3 to perform their statutory obligation by disconnecting the water connection provided to the Respondent No. 6 in the structure occupied by them on the subject property.

2. The Petitioner has submitted that the above reliefs are sought by the Petitioner in the above Writ Petition since under the deed of sub-lease executed by and between the Petitioner and Respondent Nos. 5 to 7, the Petitioner is entitled to a right of way over a portion of the leasehold land along with Respondent's structure to access the sub-lease land from the LBS Marg. The Respondent Nos. 5 to 7 are obstructing the right of way of the Petitioner by carrying out illegal activities described in paragraph 31 of the Writ Petition.

3. Respondent Nos. 5 to 7 have denied and disputed that they are creating nuisance by carrying out illegal activities as alleged in paragraph 31 of the Writ Petition or otherwise.

4. Admittedly, the Petitioner has filed SC Suit No.2527 of

2015 before the City Civil Court at Bombay against respondent nos.5 to 9 seeking following reliefs:

(a) That the defendants, their agents, servants and any other person claiming through or under them be restrained by a order of permanent injunction of this Hon'ble court from in any manner disturbing / obstructing / interfering with the plaintiff's peaceful use of the Access Road i.e. the 5.9 meter wide strip of road admeasuring 296 square meters forming part of land bearing Plot No.9 and C.T.S. No.129 (Part) of village Kurla (Part-II) and which is described in the Schedule at Ex-E hereto and which is delineated in red coloured boundary on the plan annexed hereto at Ex-C.

(b) That the Defendants, their agents, servants and any other person claiming through or under them be restrained by a order of permanent injunction of this Hon'ble court from (i) parking any vehicles (whether light motor vehicles or heavy motor vehicles) on the Access Road, (ii) installing any machinery or equipment (including the generator) on the Access Road, (iii) depositing any debris on the Access Road and (iv) permitting auto-rickshaws, buses and other vehicles visiting the Defendant

Nos.1 to 3's CNG Pump from making a queue on the Access Road i.e. the 5.9 meter wide strip of road which is delineated in red coloured boundary on the plan annexed hereto at Ex.C."

No ad-interim relief is granted in favour of the Petitioner in that suit. Notice of Motion taken out therein is pending.

5. The learned Counsel appearing for Respondent Nos.2 to 5 and 7 states that filing of the said suit as well as the above Writ Petition by the Petitioner is nothing but a counter-blast to the notice issued by Respondent nos.5 to 7 calling upon the Petitioner to vacate the premises which is used by the Petitioner as the sub-lessee of Respondent Nos. 5 to 7. He has further submitted that in fact Respondent Nos.8 and 9 have vacated the premises and have removed the water tanks and the cooling tower. Three water tanks, which are used by Respondent Nos. 5 to 7 are installed pursuant to the permission obtained from the Corporation which permission is annexed at pages 162 and 163 of the reply filed to the Writ Petition. He submits that one of the sub lessee M/s. Drums Foods International Pvt. Ltd., who are not joined as party Respondent / Defendant to the Writ Petition or to the Suit have installed tanks after obtaining permission from the Corporation. In fact, the said tanks are inside the shed used by the said M/s. Drums Foods

International Pvt. Ltd.

6. In view of the above submissions made on behalf of Respondent Nos.5 to 7 more particularly the fact that the tanks are removed by Respondent Nos.8 and 9, the cooling tower is also removed by Respondent No.8, Respondent Nos. 5 to 7 and M/s. Drums Foods International Pvt. Ltd.have installed water tanks in their sheds after obtaining permission from the Corporation, and also since the Petitioner has filed a substantive Suit in the City Civil Court on the same cause of action, seeking restraint orders against the Respondents from creating the alleged nuisance, which allegations are denied and disputed by the Respondents, the question of granting any reliefs to the Petitioner by exercising powers under Article 226 of the Constitution of India, does not arise.

7. The Writ Petition is, therefore, dismissed.

[N. J. JAMADAR, J.]

[S. J. KATHAWALLA, J.]