

Amarnath Suryabali Pandey	...	Petitioner
versus		
Assistant Commissioner, Brihan Mumbai Municipal Corporation & Ors.	...	Respondents

**CORAM: S.J. KATHAWALLA &
B.P.COLABAWALLA, JJ.**

DATE: 21st NOVEMBER, 2019

1. The above Writ Petition is filed by the Petitioner against the Corporation seeking the following reliefs :

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- (b) This Hon'ble Court be pleased to direct the Sr. Inspector of Police, Malwani Police Station, Mumbai, to register the written report of the petitioner dated 04-10-2014 i.e. Exh. F to this Petition, as F.I.R. and investigate in accordance to the provisions of law;
- (c) This Hon'ble Court be pleased to direct the respondent Nos.4 and 5 to reconstruct the structure of said Ganesh Flour Mill, of its' original size i.e. 15 ft. x 8 ft. and to install the flour mill in full working condition, as before demolition of the same;
- (d) This Hon'ble Court be pleased to direct necessary legal action against the Respondent Nos.1 to 3 for not carrying out demolition of the unauthorized work for such long period of one year after refusal of any protection order by the court of law;"

2. It is the case of the Petitioner that the shop premises described in prayer clause (a) of the Petition was given by the Corporation on tenancy basis to late Suryabali Sukhnandan Pandey and late Ramlakhan Sitaram Pandey. Both the original tenants have passed away. The Petitioner claims to be the legal heir of Suryabali Sukhnandan Pandey and the Respondent No.4 is admittedly the legal heir of Ramlakhan Sitaram Pandey. The Petitioner admits that he is not in possession of the said shop and the same is in possession of Respondent No.4. He states that he has filed a declaratory suit before the City Civil Court in the year 2012 against Respondent No.4 inter alia seeking a declaration that he has 50% tenancy rights in the suit shop. The Petitioner has admittedly not obtained any ad-interim relief in his favour in the last seven years. Certain notices have been issued by the Corporation to the

Respondent No.4 for unauthorized extension of the said shop. Certain orders are also passed and the Corporation has taken certain steps/action in the matter. Respondent No.4 has filed his Written Statement in the Suit filed by the Petitioner, wherein he has denied and disputed the claim/s of the Petitioner.

3. In the circumstances, today the City Civil Court is seized of the matter and the issue as to whether the Petitioner has any right in the suit shop will have to be determined in the said Suit. In the absence of the said issue being decided, the Petitioner will have no locus to seek the above reliefs against the Corporation by way of the above Writ Petition. The learned Advocate for the Petitioner submits that if the Respondent No.4 is allowed to keep on changing the dimensions of the said shop, he will have to suffer the consequences if the final order passed in the Suit by the City Civil Court, is in his favour. This apprehension of the Petitioner can be taken care of by him by seeking appropriate ad-interim / interim reliefs in his Suit pending against Respondent No. 4 in the City Civil Court. The Writ Petition is therefore, dismissed.

(B.P.COLABAWALLA, J.)

(S.J.KATHAWALLA, J.)