

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

**WRIT PETITION (L) NO.4162 OF 2018
WITH
NOTICE OF MOTION NO. 210 OF 2019**

Rukhsana Yusuf Harianawala
and anr.

... Petitioners/applicants

V/s.

Maharashtra Housing and Area

Development Authority and ors. ... Respondents

Mr.Altaf Khan i/by Mr.Nitesh Acharya for the Petitioners.
Mr.P.G.Lad with Ms.Sayli Apte for Respondent Nos. 1,2 and
38.

Dr.V.V.Tulzapurkar, Senior Advocate with Mr.Denzil, Mr.
Shlok Bolar, Ms.Nanki Grewal and Mr.P.Saraf i/by M/s
Wadia Ghandy & Co. for Respondent Nos. 3 to 7.

Mr.Pravin Samdani, Senior Advocate with Mr.Chinaj
Kamdar, Mr.Denzil, Mr.Shlok Bolar, Ms.Nanki Grewal and
P.Saraf i/by M/s Wadia Ghandy & Co. for Respondent
Nos.8 to 12.

Ms.S.Srikrishna with Mr.Denzil, Mr.Shlok Bolar, Ms.Nanki
Grewal and P.Saraf i/by M/s Wadia Ghandy & Co. for
Respondent Nos.13 to 17.

Ms.Shreya Parikh i/by Mr.Vishal S.Shriyan for Respondent
Nos. 23,28, 32, 34, 35 and 37.

**CORAM : AKIL KURESHI AND
S.J.KATHAWALLA, JJ.
DATE : JUNE 12, 2019.**

P.C.:-

1. Petitioners have challenged an order dated 4th
December, 2018 passed by the Deputy Chief Engineer
Zone-I, Mumbai Building Repair and Reconstruction

Board. Initially, by such order subject to certain conditions the authority granted permission to demolish a building called "Vapra chawl" situated in Bhendi Bazar, Mumbai. According to the petitioners, this building was not in such a dilapidated condition as requiring demolition. From the record however it appears that the adjacent two buildings namely Furniturewala building and Khatija building which share a common wall with Vapra chawl are under orders of demolition. One of the grounds raised by the respondents to oppose the petitioners' prayer is that it is not possible to pull down the said buildings without causing extensive damage to the present structure of Vapra chawl. They also contend that in any case Vapra chawl building also needs to be demolished.

2. This petition was taken up during vacation by Division Bench for interim relief. The Bench passed an order on 16th May, 2019. Relevant portion of which reads as under:-

"5. In view of the aforesaid situation wherein the interim order passed by this Court overarches the subject structure i.e. 'Vapra

Chawl Building' and allegedly prevents even the demolition of the adjoining buildings and there is an imminent risk of loss of life and property, in the event the buildings collapse, we were anxious to find out a workable solution to the situation. When the matter was listed on 13th May, 2019, we had put the Counsel for the Petitioners on notice that to take care of the apprehension of the MHADA and SBUT, we may need to clarify the extent of risk which the Petitioners carry on account of the restraint order. The matter was, thus, posted on 15th May, 2019 to facilitate the learned Counsel for the Petitioners, to take instructions and make submissions. On 15th May, 2019, the learned Counsel for the Petitioners, after arguing for sometime, submitted that the Petitioners would file an undertaking spelling out the risk which the Petitioners would undertake in the event of loss of life, limb and property due to the restraint order. Thus, the matter came to be posted today.

6. Today, the learned Counsel for the Petitioners has tendered an Affidavit. Though a submission is made there into the effect that if any damage is caused to 'Vapra Chawl Building' while demolishing the adjoining buildings i.e. 'Furniturewala Building' and 'Khatija Building', the Petitioners shall not hold SBUT contractor or MHADA responsible for the said damages, yet, the said undertaking is qualified by a number of caveats and conditions. We find it difficult to pass an order on the basis of such conditional and qualified Affidavitcumundertaking.

7. We are, however, of the considered view that the Petitioners ought to be held accountable for the loss of life, limb or property as is already indicated by use of term, "at the risk and cost of the petitioners", in the interim

order, in the event any mishap occurs. We are, thus, inclined to further clarify the extent of risk and liability of the Petitioners. Therefore, for the time being, while continuing the interim relief granted by the Order dated 19th December, 2018, we make it absolutely clear that in the event of any untoward incident, with respect to the said three buildings, i.e. 'Furniturewala Building', 'Khatija Building' and 'Vapra Chawl Building', resulting in loss of human life or limb or property, the Petitioners shall be held responsible not only for civil liability but also for criminal liability, and nobody else will be held responsible for the same.

8. We further make it clear that, till the next date of hearing, Maharashtra Housing and Area Development Authority (MHADA) and Saifee Burhani Upliftment Trust (SBUT) shall not undertake demolition of the other two buildings namely 'Furniturewala Building' and 'Khatija Building'.

3. Learned counsel for the petitioners stated that the petitioners are now not averse to all floors of Vapra chawl excluding the ground floor being pulled down. He submitted that even if complete demolition of the adjacent two buildings is carried out, the ground floor of Vapra Chawl can still stand alone.

4. It is an admitted position that Vapra Chawl is

presently vacant and there are no occupants in the said building. At present, we are not entering into the controversy whether even the ground floor of the Vapra Chawl being too dilapidated, needs to be pull down and whether after demolition of other two adjacent buildings and demolition of remaining floors of Vapra Chawl, the ground floor can still remain intact and strong enough to reoccupy with or without repairs. In view of the statement of the counsel for the petitioners, it is not necessary to continue the interim injunction granted by this Court in the said order dated 16th May, 2019. This would however, be subject to restricting the respondents from demolishing the ground floor of Vapra chawl building. This would however be on an undertaking by the petitioners that till full demolition of the upper floors of the Vapra Chawl and of the two adjacent buildings is carried out, neither the petitioners nor any of their relatives or agents would enter, leave alone, occupy the ground floor of the building.

5. In view of the above discussion, interim injunction

granted by the order dated 16th May, 2019 as well as the earlier injunction dated 19th December, 2018 is vacated. The respective respondents/authorities would be at liberty to carry out demotion work of all floors of Vapra chawl building except the ground floor and the two adjacent buildings to the extent permissible as per orders of demolition passed by the competent authority. It is further provided that even after such demolition is completed, no one shall enter or occupy or re-occupy any portion of the ground floor of Vapra Chawl even if it survives the demolition of the rest of the structures, without the leave of the Court.

6. In view of these directions, the onus and the liability imposed by this Court in the said order dated 16th May, 2019 on the petitioners would no longer apply.

6. Notice of motion No.210 of 2019 is disposed of without entering into allegations made in the application.

(S.J.KATHAWALLA, J.)

(AKIL KURESHI, J.)

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