

IN THE HIGH COURT OF JUDICATURE AT BOMBAY***ORDINARY ORIGINAL CIVIL JURISDICTION*****WRIT PETITION (L) NO. 1756 OF 2019****Asha Keru Chougule & Anr.****..... Petitioners****VERSUS****The Municipal Corporation of
Greater Mumbai****..... Respondent**

Mr.Atul Damle, Senior Advocate, a/w. Ms.Aparna Muralidharan
Kalathil for the Petitioners.

Mr.Milind More, Senior Panel Counsel of MCGM, a/w. Mrs.Sheeta
Metakari, Mr.Ravi Shirsekar for the Respondent.

CORAM : R.D. DHANUKA, J.**DATE : 17th JUNE, 2019****P.C.**

By this petition filed under Article 226 of the Constitution of India, the petitioners have impugned the order dated 15th June, 2018 passed by the Enquiry Officer and order dated 4th May, 2019 passed by the Principal Judge of the City Civil Court under section 105B of the Mumbai Municipal Corporation Act, 1888.

2. The predecessor of the petitioners was a tenant of the respondent. The open land in question was given for maintenance of the playground on payment of monthly rent. The said plot was required for public purpose i.e. for construction of toilet for public. The tenancy of the predecessor of the petitioners was terminated. The said order of termination of tenancy has not been set aside by any of the

competent authority till date.

3. An enquiry under section 105B was initiated against the petitioners. The enquiry officer after giving an opportunity to the petitioners of being heard and leading evidence, passed a detailed order and rendered various findings of fact that the land in question was required for the public purpose. The tenancy in favour of the predecessor of the petitioners was terminated. The said order passed by the enquiry officer was impugned by the petitioners before the learned Principal Judge, City Civil Court, Bombay. By a detailed order and judgment passed by the learned Principal Judge on 4th May, 2019, Misc.Application No. 184 of 2018 filed by the petitioners came to be dismissed.

4. Mr.Damle, learned senior counsel submits that the petitioners have constructed a chawl on the land in question and have given such tenements to some of the occupants. The open plot was used by the tenants of the petitioners. Learned senior counsel does not dispute that the determination by the tenancy by the Municipal Corporation against the predecessor of the title has not been set aside till date. He also does not dispute that the Corporation required the premises for constructing the public toilets.

5. Both the authorities have considered this aspect in great detail by giving sufficient opportunity to the petitioners and have rendered various findings of facts including that the premises is required by the Corporation for constructing the public toilets. Though this court

repeatedly enquired with the learned senior counsel as to how the interest of the petitioners would be affected if the petitioners were asked to vacate since the predecessor in title of the petitioners was given the premises only for the purpose of maintenance of the playground, learned counsel could not satisfy this court on this issue.

6. The findings of fact rendered by the learned enquiry officer which is confirmed by the Principal Judge, being not perverse, cannot be interfered with by this court under Article 226 of the Constitution of India. Petition is devoid of merits and is accordingly dismissed. No order as to costs.

7. *Ad-interim* relief passed by this court stands vacated.

8. Since the land in question is proposed to be used for the public purpose, i.e. the public toilets, I am not inclined to continue the *ad-interim* protection granted by this court. Application for continuation of the *ad-interim* relief is accordingly rejected.

9. The parties to act on the authenticated copy of this order.

[R.D.DHANUKA, J.]