

Shephali

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 8867 OF 2019**

Narendra Hassanand Jethwani ...Petitioner

Versus

The State of Maharashtra through Dy Collector
(Encroachment & Removal) Mumbai & Ors ...Respondents

**WITH
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION (L) NO. 2374 OF 2019**

Sunil Naraindas Mulchandani ...Petitioner

Versus

The State of Maharashtra & Ors ...Respondents

**WITH
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION (L) NO. 2377 OF 2019**

Vallabh Damodhar Jhaveri ...Petitioner

Versus

The State of Maharashtra through its Deputy
Collector & Ors ...Respondents

**WITH
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION (L) NO. 2382 OF 2019**

Shivkumar Dilomal Madhyan ...Petitioner

Versus

The State of Maharashtra & Ors

...Respondents

WITH

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION (L) NO. 2383 OF 2019

Mohandas Parmanand Sadra

...Petitioner

Versus

The State of Maharashtra & Ors

...Respondents

Dr Uday P Warunjikar, *with Ms Ms Heena Rathor, ib Kulkarni & Associates, for the Petitioner in all Petitions.*

Mr VM Mali, AGP, *for Respondent No. 1-State in ASWP/8867/19.*

Mr J Reis, Special Counsel, *with Mr Vinod Mahadik, for MCGM.*

Mr J Reis, Special Counsel, *with Ms Rupali Adhate, for MCGM.*

Mrs Jyoti Chavan, AGP, *for the Respondent-State in all Petitions except ASWP/8867/19.*

Mr Avinash Kambri, *Sub-Engineer Maintenance, M/Ward, present.*

**CORAM: S. C. Dharmadhikari &
G. S. Patel, JJ.**

DATED: 29th August 2019

PC:-

1. These Petitions were mentioned in the morning session with a request to take them urgently post recess simply because, according to Mr Warunjikar, learned Advocate appearing for the Petitioners, the Municipal Corporation is likely to demolish the structures of the Petitioners to implement a road widening scheme or project.

2. *Prima facie*, we do not find from the annexures of the Writ Petition that the Petitioners have come before the regular line of public street was prescribed. *Prima facie*, entry and in the structure as well as the existence of the structure is post the prescription in terms of Section 297 of the Mumbai Municipal Corporation Act 1888.

3. The law is therefore clear that if the road is earlier and the shop is later, the shop must go and not the road. Realizing this position, Mr Warunjikar says that the Petitioners are not seeking any ad-interim or interim relief.

4. With the consent of the Petitioners, we have taken up the Petitions for consideration.

5. All that the Petitioners' request is that an Appeal to determine their eligibility for permanent alternate accommodation under a rehabilitation scheme devised by the Municipal Corporation/State Government is pending.

6. The request is that this Appeal may be disposed of as expeditiously as possible and depending upon the outcome of the same the Petitioners be included in the rehabilitation scheme for benefits on par with similarly situate structures/shops.

7. We have no hesitation in accepting this request but we clarify that accepting the request to expedite the proceedings does not mean that this Court ruled upon the eligibility of the Petitioners for

any package of rehabilitation or for grant of permanent alternate accommodation to carry on their commercial activities. It is entirely for the Municipal Corporation and the other authorities to determine and decide the issue of the eligibility of the Petitioners. This Court has neither mandated that the scheme of rehabilitation being devised or if already devised should be implemented in such a manner so as to include all the shops including that of the Petitioners.

8. The Writ Petitions are, therefore, disposed of with a direction that the Appellate Authority shall decide the Appeal as expeditiously as possible and in any event within a period of six weeks from the date of communication of this order.

9. Once the writ petitions are disposed of with these directions, there is no question of the Petitioners holding up the public project of road widening. All the more when Mr Reis assures the Court that all the shops (28 in number) which are affecting the road line would be removed or demolished.

(S. C. Dharmadhikari, J)

(G. S. Patel, J)