

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

WRIT PETITION NO. 2815 OF 2017

Broach Sadan Premises
Co.Op. Society Ltd.

.. Petitioners

v/s.

The Board of Trustees of the Port of
Bombay and Ors.

.. Respondents

Mr. Shashipal Shankar for the petitioners
Ms. Sneha B. Pandey I/b Motiwalla & Co. for the respondent no.1

**CORAM : A.S. OKA &
M.S. SANKLECHA, J.J.**

DATED : 9th APRIL, 2019

P.C.

1. We have taken up the petition on the footing that the amendment has been carried out in terms of the order passed today in Chamber Summons No.71 of 2019.

2. It is not in dispute that the petitioners are claiming through the lessee of the first respondent of the subject property. A suit for eviction was filed by the first respondent against the lessee on the ground of committing breach of the terms of conditions of the lease. On an application being made by the petitioners, the Small Causes Court directed impleadment of the present petitioners. On 20th December,

2010, the suit was decided. The Small Causes Court declined to pass a decree of eviction against the petitioner. An appeal was preferred by the first respondent before the Appellate Bench. The appeal was allowed by the judgment and order dated 15th July, 2017 and a decree for possession was passed. It appears that a writ petition was filed by the petitioners for challenging the decree for possession and the writ petition is pending in this Court.

3. The submission of the learned Counsel appearing for the petitioners is that on 13th August, 1991, the first respondent come out with the policy of regularizing the breaches of the terms and conditions of the lease. His submission is that the petitioners availed of the benefit of the said policy by making an application on 3rd September, 1997 and certain amounts were paid. The learned Counsel appearing for the petitioners submits that the outcome of the application for regularization has not been communicated to the petitioners in terms of the letter dated 18th May, 1998. He submits that considering the fact that the petitioners have paid requisite amounts, the first respondent may be directed to atleast communicate the outcome of the application for regularization made by the petitioners. He also invited our attention to the additional affidavit filed in terms of the last order of

this Court. He submitted that the affidavit discloses that certain statements were made inadvertently and there is no intention to suppress any fact.

4. We have carefully considered the submissions. The narration of the admitted facts mentioned above will show that according to the case of the petitioners, in the year 1997, it had applied for regularization of its possession and 13 years thereafter, a suit for eviction was filed by the first respondent. Though the suit was dismissed, the appellate Bench of the Court of Small Causes has passed a decree for eviction. The Writ Petition filed by the petitioners for challenging the decree is pending in this Court.

5. Now it is too late in the day to rely upon a proposal for regularization submitted in the year 1997 and seek a writ of mandamus for communicating the decision taken thereon. The Writ Jurisdiction under Article 226 of the Constitution of India is always discretionary. Considering the aforesaid facts, there is no reason to interfere in writ jurisdiction. The Writ Petition is accordingly rejected.

(M.S. SANKLECHA, J.)

(A. S. OKA, J.)