

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

WRIT PETITION NO.1850 OF 2017

1. Ittehaad Co-operative Housing
Society Limited (Proposed) having
its address at Room No.5, First
Floor, Mominpura, B.I.T. Chawl
No.1, M.S. Ansari Marg,
Mominpura, Mumbai-400 011.
2. Ansari Jalal Ahmed Rashid Ahmed
3. Ansari Obaid Ahmed Masood Javed
4. Ansari Abuzar Sultan

Promoters of Ittehaad Co-operative
Housing Society Limited (Proposed),
All Adults, of Mumbai, Indian
Inhabitants, having their address at
Mominpura, B.I.T. Chawl No.1 and 2,
M.S. Ansari Marg, Mominpura,
Mumbai-400 011.

.... Petitioners

- Versus -

1. The Municipal Corporation of
Greater Mumbai, a Corporation
established under the provisions of
Mumbai Municipal Corporation Act,
1888 having its office at Opposite
C.S.T. Station, Mahanagar Palika
Marg, Fort, Mumbai-400 001.
2. The Assistant Municipal Commissioner
'E' Ward, Brihanmumbai Mahanagar

Palika, Sheikh Hafizuddin Marg,
Byculla, Mumbai-400 008.

3. The Ward Officer, E-Ward,
Brihanmumbai Mahanagar
Palika, Sheikh Hafizuddin Marg,
Byculla, Mumbai-400 008.

.... Respondents

Mr. Sharad B. Wakchoure for the Petitioners.
Mr. S.J. Bhamblani with Ms Rupali Adhate for the
Respondents.

CORAM: S.C. DHARMADHIKARI &
G.S. PATEL, JJ.

DATE : JULY 09, 2019

ORAL JUDGMENT (Per Shri S.C. DHARMADHIKARI, J.):

1. Rule. Respondents waive service. By consent, Rule made returnable forthwith and petition taken up for hearing and final disposal.

2. By this petition under Article 226 of the Constitution of India, the petitioners are apprehending that without following the mandate and procedure prescribed in law, the Municipal Corporation of Greater Mumbai will forcibly evict each of them from the structures or premises occupied by them.

3. Mr. Wakchoure appearing for the petitioners hands over to us a copy of the public notice displayed at site. It says that Mominpura B.I.T Chawl Nos.1 and 2, M.S. Ansari Marg, Byculla (W), Mumbai is the building concerned. This building belongs to the Municipal Corporation, but is occupied by municipal tenants. There are some commercial activities carried on at the ground floor. After the buildings were inspected, the Municipal Corporation felt they are unsafe for human habitation any longer. Notices were issued to caution the occupants that the structures may collapse at any time. The occupants were called upon to vacate the tenements in their possession immediately. The notice dated 23rd November, 2016 says that if they do not respond to this notice within seven days, they will be removed, but there are alternate arrangements made for their residence.

4. The argument of Mr. Wakchoure is that by such a document and styled as a notice simpliciter, the petitioners' right to occupy the premises cannot be put an end to. This is no way of dispossessing them. Reliance is placed by Mr. Wakchoure on

certain provisions of the Mumbai Municipal Corporation Act, 1888. He would submit that there is an entire Chapter which is inserted in this law to deal with premises belonging to the Municipal Corporation. Chapter V-A is titled as “Power to Evict Persons From Corporation Premises”. The term “corporation premises” is defined in section 105A(b) to mean any premises belonging to, or vesting in, or hired on lease by the Corporation. The term “unauthorised occupation” is also defined. Mr. Wakchoure would submit that this power to evict persons from the Municipal Corporation’s premises is based on a satisfaction to be reached by the Commissioner and that is with regard to the unauthorised occupation of any Corporation premises or that any Municipal Corporation premises in the occupation of any person are required by the Municipal Corporation in the public interest or that there is a contravention of the terms express or implied under which the occupant is authorised to occupy such premises. These rights have first to be put an end to after a satisfaction is reached as contemplated in law. Only thereafter the eviction follows and

that too after an order to that effect is made, and which is appealable.

5. Apart therefrom, if under the general law, the Municipal Corporation desires to evict the petitioners, then notices have to be given to that effect, or, in any event, suits or other legal proceedings have to be instituted. Absent that, the petitioners cannot be dispossessed.

6. The learned counsel appearing for the Municipal Corporation would urge that it is for the safety and for protection of the life of the petitioners that such notices have been issued. These are old chawls constructed decades back and the petitioners are making it impossible for the Municipal Corporation to carry out any redevelopment. Unless they co-operate and vacate, all this is impossible.

7. After hearing both sides, we find that the argument of Mr. Wakchoure has no answer from the Municipal Corporation. It has done nothing, but only issued some notices to which we have made reference in the foregoing paragraphs.

These notices have been pasted on the premises. The notices are not traceable either to Chapter V-A or to such other legal provisions enabling the Municipal Corporation to obtain possession of the premises from the occupants. If the municipal tenants and occupants desire to repair the premises or to redevelop the property and they have submitted a scheme, as stated by Mr. Wakchoure, then the least that is expected from a public body is that pending consideration of such a scheme, the municipal authorities should not precipitate the matter. If there is an imminent danger and the premises are likely to collapse, then, the petitioners can be convinced to shift to alternate premises in their interest and keeping their rights intact. They could also be persuaded to vacate the premises by either accepting the scheme of redevelopment proposed by them or to extend to them the benefit of other redevelopment schemes. We do not expect a high-handed action and continued threat of eviction. The Municipal Corporation knows that it has to act reasonably and in a *bona fide* manner to subserve public interest. To our mind, therefore, the notices simpliciter cannot be the

foundation to forcibly evict the petitioners. The Municipal Corporation will have to take recourse to law and to which we have made a detailed reference in the foregoing paragraphs.

8. In the light of the aforesaid discussion, the writ petition succeeds. The notices issued to the petitioners are quashed and set aside. Rule is made absolute in these terms. The Municipal Corporation, however, is free to take recourse to such legal provisions and powers as are conferred in it by law. It can evict the petitioners from the premises by taking recourse to law and not otherwise.

9. Before parting, a useful reference can be made to the judgment of the Hon'ble Supreme Court in the case of *State of Uttar Pradesh vs. Maharaja Dharmander Prasad Singh*.¹ The Hon'ble Supreme Court summarised the settled legal principle thus:

“14. On a consideration of the matter, we think, in the facts and circumstances of this case, the High Court should have abstained from the examination of the legality or correctness of the purported

¹ **AIR 1989 SC 997**

cancellation of the lease which involved resolution of disputes on questions of fact as well. In *Express News Papers v. Union of India*, [1985] Supp. 3 SCR 382 Venkataramiah, J. in a somewhat analogous situation observed:

“The rest of the questions relate truly to the civil rights of the parties flowing from the lease deed. Those questions cannot be effectively disposed of in this petition under Article 32 of the Constitution. The questions arising out of the lease, such as, whether there has been breach of the covenants under the lease, whether the lease can be forfeited, whether relief against forfeiture can be granted etc. are foreign to the scope of Article 32 of the Constitution. They cannot be decided just on affidavits. These are matters which should be tried in a regular civil proceeding. One should remember that the property belongs to the Union of India and the rights in it cannot be bartered away in accordance with the sweet will of an Officer or a Minister or a Lt. Governor but they should be dealt with in accordance with law. At the same time a person who has acquired rights in such property cannot also be deprived of them except

in accordance with law. The stakes in this case are very high for both the parties and neither of them can take law into his own hands.”

Accordingly, we hold that the question whether the purported forfeiture and cancellation of the lease were valid or not should not have been allowed to be agitated in proceedings under Article 226.

15. Sri Sorabjee submitted that great hardship and injustice would be occasioned to the respondents if the State Government, on the self-assumed and self-assessed validity of its own action of cancellation of the lease, attempts at and succeeds in, a resumption of possession extra-judicially by physical force. Sri Sorabjee referred to the notice dated 19.11.1985 in which the Government, according to Sri Sorabjee, had left no-one in doubt as to its intentions of resorting to an extra-judicial resumption of possession. Sri Sorabjee referred to paras 3.10 and 4 of the order dated 19.11.1985.

A lessor, with the best of title, has no right to resume possession extra-judicially by use of force, from a lessee, even after the expiry or earlier termination of the lease by forfeiture or otherwise. The use of the expression 're-entry' in the lease-deed

does not authorise extrajudicial methods to resume possession. Under law, the possession of a lessee, even after the expiry or its earlier termination is juridical possession and forcible dispossession is prohibited; a lessee cannot be dispossessed otherwise than in due course of law. In the present case, the fact that the lessor is the State does not place it in any higher or better position. On the contrary, it is under an additional inhibition stemming from the requirement that all actions of Government and Governmental authorities should have a 'legal pedigree'. In *Bishandas v. State of Punjab*, [1962] 2 SCR 69 this Court said:

“We must, therefore, repel the argument based on the contention that the petitioners were trespassers and could be removed by an executive order. The argument is not only specious but highly dangerous by reason of its implications and impact on law and order.”

"Before we part with this case, we feel it our duty to say that the executive action taken in this case by the State and its officers is destructive of the basic principle of the rule of law.”

Therefore, there is no question in the present case of the Government thinking of appropriating to itself an extra-judicial right of re-entry. Possession can be resumed by Government only in a manner known to or recognised by law. It cannot resume possession otherwise than in accordance with law. Government is, accordingly, prohibited from taking possession otherwise than in due course of law.”

(G.S. PATEL, J.)

(S.C. DHARMADHIKARI, J.)