

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

WRIT PETITION NO.3637 OF 2018

Kenil Worth R.K.Premises Co-Op. Soc.Ltd. .. Petitioner

Vs

Bruhanmumbai Municipal Corporation
and Ors. .. Respondents

Mr.Ramprakash R. Pandey for the
Petitioner.

Ms.Sheetal Metakari for the Respondents.

CORAM :- S. C. DHARMADHIKARI &
B.P.COLABAWALLA, JJ.

DATE :- MARCH 20, 2019

P.C. :-

1. Having heard the petitioner's advocate and finding that dispute involved is essentially on facts, we cannot entertain the writ petition.

2. In reply to notice dated 12th March, 2018 of the Municipal Corporation, copy of which is at page 22 of the paper-book and the response of the petitioner to same, it is apparent that the petitioner is claiming that it has not carried out the construction activities, but somebody else and who have never been permitted to enter the Mall and carry out any lawful activity, are responsible for these illegal unauthorised constructions.

3. The response of the petitioner has gone as far as stating that there are illegal stall holders and street vendors, who have encroached upon the roads and surrounding premises by putting their stalls and that is how the unauthorised structures and work has been carried out.

4. The notice is issued to the petitioner. The petitioner claims that the unauthorised occupants in the Mall premises, which belongs to the petitioner, are responsible for carrying out this and other illegal activities. The petitioner has not authorised any of them to perform these acts or indulge in the same.

5. If this is the position and there is a factual dispute, then, we do not see how the petitioner is prevented from instituting appropriate proceedings against the Municipal Corporation seeking to restrain that Corporation from entering the Mall premises and in the garb of taking action against the alleged unauthorised construction, obstructing the petitioner in carrying out its lawful activities or preventing its members from carrying on business. Similarly, the petitioner, in the instant proceedings, claim a direction to the Municipal Corporation directing it to carry out its statutory duties by identifying the persons, who are responsible for the illegal and unauthorised acts and proceed against them in accordance with law. The petitioner can also

proceed against the persons named by it in para 3 of its letter dated 20th March, 2018, copy of which is at page 23 of the paper-book. The writ petition is not a remedy of the petitioner. It is dismissed.

(B.P.COLABAWALLA, J.)

(S.C.DHARMADHIKARI, J.)