

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

12 WRIT PETITION NO.17 OF 2020

SUBHASHCHAND FULCHAND CHUDIWAL THROUGH SPL ATTORNEY
RAJESH SUBHASHCHAND CHUDIWAL
VERSUS
THE COMMISSIONER AURANGABAD MUNICIPAL CORPORATION
AURANGABAD

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18 WRIT PETITION NO.54 OF 2020

SUBHASHCHAND FULCHAND CHUDIWAL THROUGH SPL ATTORNEY
RAJESH SUBHASHCHAND CHUDIWAL
VERSUS
RAZIABEE SK. RASHID AND ANOTHER

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Advocate for Petitioners : Mr. Tandale Fulchad R.

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CORAM: ROHIT BABAN DEO, J.

Date: JANUARY 6th, 2020

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PER COURT :-

- 1 Heard.
- 2 A common question is involved in these petitions.
- 3 The petitioner has filed suits inter-alia seeking compensation from the Aurangabad Municipal Corporation and perpetual injunction. The genesis of the dispute is demolition of the shops, which according to the petitioner, were in his possession. The petitioner claims possessory rights through Shri Shitalkumar Sethi who according to the petitioner was a sub-lessee of the Corporation.
- 4 In the suits, the petitioner preferred an application,

seeking a direction to the Corporation to produce certain documents inter-alia a letter dated 10.1.1990 issued by the Corporation to Shitalkumar Sethi which according to the petitioner shows that Shitalkumar was a sub-lessee. The alternate prayer made in the said application was that the petitioner be permitted to adduce secondary evidence of the documents.

5 The Corporation filed an affidavit in reply, denying the possession and the existence of the documents. In view of the stand of the Corporation, the learned Trial Court rejected the application seeking direction to the Corporation to produce the documents. However, the learned Judge has not expressed any opinion on the alternative request of the petitioner to be permitted to adduce the secondary evidence of the documents, which according to the petitioner are in possession of the Corporation.

6 In view of the categorical assertion of the Corporation that the documents which were sought to be produced are not in its possession, to the extent the learned Trial Court rejected the application seeking production of documents, I do not see any reason to interfere in writ jurisdiction. However, the alternate prayer for permission to produce secondary evidence is not decided. In any event, the petitioner shall be entitled to renew

the prayer if he is in a position to demonstrate in the evidence which may be adduced that the foundational facts that would entitle the petitioner to adduce secondary evidence do exist. Needless to observe that if the petitioner succeeds in bringing on record such foundational facts, the renewed request for permission to adduce secondary evidence, if the petitioner chooses to make such request, shall be considered by the Trial Court on its own merits and uninfluenced by any observation made in the order impugned.

7 The petitions are disposed in the afore-stated terms.

(ROHIT BABAN DEO, J)

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