

psv

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
CONTEMPT PETITION NO.39 OF 2017
IN
SUIT NO.2438 OF 2012**

Parekh Lane Kamala Vihar Co-operative
Housing Society Limited

..Petitioner/
org.Plaintiff

Vs.

Jayant Narendra Mehta & Anr.

..Respondents

Ms.Panti Desai i/b. M.P. Vashi for Petitioner.
Mr.Deepan Dixit for Respondent No.1.
Mr.Sagar Patil with Mr.D.S. Shingade for MCGM.

**CORAM : G.S. KULKARNI, J.
DATE : 3rd MARCH, 2020**

PC.:

Heard learned Counsel for the petitioner and learned Counsel for the respondents.

2. Although this Court had passed an order dated 18 February 2020 issuing notice to the respondent to show cause as to why contempt proceedings ought not to be initiated against him for having intentionally breached the orders dated 29 August 2012 and 20 January 2015 passed by this Court, it now appears to be a clear position as also admitted by the learned Counsel for the petitioner that the parties have changed their position. This is as much as the members of the petitioner

were granted possession only for fitment purposes, however they have now entered the premises to reside and are in fact residing in the premises since January 2016. Even they have obtained the water connection and the premises are full-fledgedly now used by the members without an occupation certificate being granted by the Municipal Corporation. It is at this stage the present proceedings are being pursued and more particularly to seek a relief that respondent No.1 shall be forced to take appropriate steps and obtain an occupation certificate from the Municipal Corporation.

3. In fact, it is disturbing that the petitioner has not made any statement in the petition that the members of the petitioner after taking possession for fitment purposes have actually entered the premises and are residing in the said premises. Obviously therefore there is suppression and an attempt to mislead the Court in passing earlier orders.

4. In the above circumstances, it may not be possible to initiate any contempt action against the respondent. This significantly for the reason that having taken possession of the premises, it is not possible to ascertain in the contempt proceedings as to in what manner the members of the petitioners have dealt with the premises taking

possession and as to whether there are any alterations, additions, etc. contrary to the plans and as to who has undertaken such alterations, and if at all there are any, whether they can now be foisted upon respondent No.1 and compelled him to obtain occupation certificate. If the petitioner were not to change the position and if they were to wait in a situation they were left that the building is ready and only the occupation certificate is required to be obtained by respondent No.1, then the position would have been different to consider any breach of the undertaking, which was given in the consent terms by respondent No.1. In these circumstances, the consent terms would be required to be considered as an agreement between the parties and the parties would be free to adopt appropriate proceedings for compliance of any of the terms and conditions and/or obligations as imposed by the consent terms on the parties.

5. The contempt petition is accordingly without merit. The notice issued in the petition stands discharged. The contempt petition is however rejected with costs of Rs.25,000/- to be deposited by the petitioner to Maharashtra State Legal Services Authority. Costs be deposited within one week from today.

[G.S. KULKARNI, J.]