

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

WRIT PETITION (L) NO.107 OF 2020

Dr. Shailesh V. Mehta and Anr. ... Petitioners
versus
The Municipal Corporation of Greater
Mumbai and Ors. ... Respondents

Mr. Amogh Singh with Mr. D.P.Singh, for Petitioners.
Mr. Rajesh Patil with Mrs. Rupali Adhate, Mrs. Yamuna Parekh, for MCGM.
Mr. Jignesh Shah i/by Mr. Dinesh Rane, for Respondent No.5.
Mr. Sukanta Karmakar, AGP, for Respondent No.6.
Mr. Anil Anap, Asstt Engineer, B&F, H/East Ward, MCGM, present.

**CORAM: S.J. KATHAWALLA &
B.P.COLABAWALLA, JJ.**

DATE: 23rd JANUARY, 2020

P.C.:

1. The above Writ Petition is filed by the Petitioners interalia seeking directions against Respondent Nos.1 to 4 i.e. the Municipal Corporation of Greater Mumbai and its officers, to remeasure the premises of the Petitioners and issue a fresh area certificate and to further set aside the impugned communication dated 11th November, 2019 of Respondent Nos.1 to 4 in respect of the shop premises of Petitioner No.1 and residential premises of Petitioner No.2. In view of the aforesaid reliefs sought, this Court by its order dated 20th January, 2020 passed the following order :

"1. The learned Advocate appearing for the Municipal Corporation

states that the Municipal Corporation will carry out the measurements of the area of the Shop No.5 and Room No.2 'Lata Kunj Building' situated at 62B, Kalina Kurla Road, Santacruz (E), Mumbai 400 029 which were occupied by Dr. Shailesh V. Mehta, Dentist and Ms. Merry Thomas, by 21st January, 2020 and submit a report to this Court on 22nd January, 2020. Respondent No.5/landlord shall ensure that the officers of the Municipal Corporation Greater Mumbai are given access to the said two premises i.e. Shop No.5 and Room No.2 between 11.00 a.m. to 12.00 noon on 21st January, 2020. Stand over to 22nd January, 2020."

2. Pursuant thereto, the Corporation has submitted its report dated 21st January, 2020 interalia stating as follows :

"Accordingly, measurement have taken and are tabulated as below against the measurement as mentioned in the area certificate issued earlier :

<i>Premises Name</i>	<i>Name of Tenant/Occupier</i>	<i>Areas as per Assessment Records (sqm)</i>	<i>Area as per measurement taken on 21.01.2020 (sqm)</i>
<i>Shop No.5</i>	<i>Dr. S.V.Mehta</i>	<i>9.3</i>	<i>8.8 x 3.32 = 29.22</i>
<i>Room No.2</i>	<i>Mrs. Mary Thomas</i>	<i>3.14</i>	<i>4.8 x 3.7 = 17.76</i>

3. However, today the owner of the premises has sought to intervene in the matter. He has informed the Court that it is Shop No.4 which was in possession of Dr. S.V.Mehta and not Shop No.5. The shop numbers were changed in view of the renumbering of the shops after amalgamation of Shop Nos.1 and 2. However, the

learned Advocate for the owner states that the Corporation has measured the shop which is in possession of Dr. S.V.Mehta. He also states that in the sanctioned plan, the area of the premises is shown as 220 sq.ft. and not 3.14 sqm., as is now reported. He has also pointed out that Dr. Mehta has already filed L.C. Suit No.394 of 2018 before the City Civil Court at Dindoshi against the Corporation impugning the notice of demolition issued under Section 351 of the Mumbai Municipal Corporation Act, 1888.

4. As far as the premises under the occupation of Mrs. Mary Thomas is concerned, the learned Advocate for the owner states that he has already issued a letter dated 5th September, 2019 confirming that she is in occupation of an area admeasuring 229.75 sq.ft carpet area. In view thereof, there is no dispute qua the area in occupation of Petitioner No.2 and /or her heirs.

5. As far as the premises in occupation of Dr. Mehta is concerned, since disputed questions of facts are involved, we are not inclined to pass any further orders. However, the parties may move the Civil Court seeking appropriate reliefs.

6. The Writ Petition is accordingly disposed of.

(B.P.COLABAWALLA, J.)

(S.J.KATHAWALLA, J.)