

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

WRIT PETITION NO.548 OF 2020

Association of Apartment Owners of Banarasi
Heritage Condominium ... Petitioner
versus
Municipal Corporation of Greater Mumbai
and Ors. ... Respondents

**WITH
WRIT PETITION (L) NO.650 OF 2020**

Bairagra Builders Pvt. Ltd. And Anr. ... Petitioners
versus
Municipal Corporation of Greater Mumbai
and Ors. ... Respondents

Mr. Rohan Cama i/by Ms. Sapna Raichure, for Petitioner in WP 548 of 2020.
Dr. Birendra Saraf, Senior Advocate with Mr. Vikhil Dhoka, Mr. Siddharth Sharma,
for Petitioner in WPL 650 of 2020 and for Respondent Nos.5 to 7 in WP 548 of 2020.
Mr. Ashwin Sakolkar with Mrs. Rupali Adhate, for MCGM.

**CORAM: S.J. KATHAWALLA &
R.I.CHAGLA, JJ.**

DATE: 3rd MARCH, 2020

P.C.:

1. The above Writ Petition No.548 of 2020 is filed by the Association of Apartment Owners of Banarasi Heritage Condominium against the Corporation and the builder and occupants of Flat No.503 in the building known as Unique Tower, Opp. Mahesh Nagar, Behind Patel Petrol Pump, S.V.Road, Goregaon (W), Mumbai – 400 104. The main grievance of the members of the condominium is that the builders

have installed an internal staircase from their flat to the terrace on the 6th floor and the members of the condominium are not allowed access to the terrace. It is submitted that this will cause serious problems for the members of the condominium in case of fire or any such calamity, which the members of the condominium may face in future. The above Writ Petition is therefore, filed by the members of the condominium seeking directions against the Corporation to take action against the unauthorized obstruction created by Respondent Nos.5 to 7 and to ensure that access to the terrace is made available to the members of the condominium.

2. The Corporation has passed orders dated 27th January, 2020 and 30th January, 2020 and have called upon Respondent Nos.5 to 7 to remove the security cabin and obstruction to the terrace. The Respondent Nos.5 to 7 have impugned the said orders/notices in the second Writ Petition bearing (L) No.650 of 2020.

3. The learned Senior Advocate appearing for the Petitioner Bairagra builders in WPL 650 of 2020 submitted that the dispute qua terrace is a long standing dispute between the condominium and Bairagra builders. Infact, the condominium has filed a suit in this Court against Bairagra builders being Suit No.188 of 2015, wherein, till date no ad-interim reliefs have been granted in favour of the condominium. It is also submitted on behalf of Bairagra builder that there is no door or access shown to the terrace from the lobby in the sanctioned plan.

4. Though the matter involves certain disputed facts, the learned Senior

Advocate for the Petitioner (Bairagra builders) in WPL 650 of 2020 states that in order not to give an opportunity to the members of the condominium to instill fear in the minds of the authorities that in the event of any mishap like fire etc., the building and its occupants are at grave risk, they are willing to fix a door, which will have access to the 6th floor terrace from the lobby. Though, they shall keep the said door locked and use the said terrace from their flat, they will handover a set of keys to the condominium, which the condominium may use only in case of a grave emergency/mishap like fire etc. The learned Senior Advocate further submitted that this concession should not be treated as an admission on the part of the Petitioner including that the condominium has any right to use the said terrace.

5. Since the suit is already filed qua the rights of the condominium with regard to the access to terrace, we pass the following order :

(i) The Petitioners in Writ Petition (L) No.650 of 2020 shall fix a door providing access to the 6th floor terrace from the lobby within four weeks from today.

(ii) Though the key to the door shall be retained by the Petitioners in Writ Petition (L) No.650 of 2020, a duplicate key shall be deposited with the Secretary/member of the condominium within four weeks from today, which key shall be used only in case of grave emergency like fire etc.

(iii) This order is passed without going into the merits of the case and will not be used by either party in any court of law to contend that either of them have

given up their contentions/claims with regard to the dispute pertaining to the access to terrace.

(iv) The proceedings already filed/or to be filed in future by the parties before any court shall be decided on its own merits without being influenced by this order.

(v) The Corporation may take action only after any orders/final orders are passed in any civil proceedings filed/to be filed, with regard to the entry to the terrace.

(vi) Mr. Pawan Bairagra undertakes to comply with the statements recorded by him in his letter dated 2nd March, 2020 addressed to the Assistant Municipal Commissioner, P/South, Malad Office, S.V.Road Junction, M.G.Road, Goregaon (W), Mumbai, within a period of three weeks from today. The undertaking is accepted.

(vii) Needless to add that if Mr. Pawan Bairagra complies with the undertakings recorded in his letter dated 2nd March, 2020, the Corporation after carrying out inspection, shall not pursue the criminal proceedings initiated against the developer.

(viii) The Writ Petitions are accordingly disposed of.

(R.I.CHAGLA,J.)

(S.J.KATHAWALLA,J.)