

Sharayu Khot - Nitin

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

WRIT PETITION (L) NO. 334 OF 2020

Mr. Vasant Kheraj Chheda & Ors.

...Petitioners

Versus

**Municipal Corporation of Gr. Bombay &
Anr.**

...Respondents

Mrs. Priti Sejal Shah, for the Petitioners.

Mr. Dhruti Kapadia, a/w Ms. Vandana Mahadik and Ms. Sheetal Metkari, for the Respondent No. 1-MCGM.

Mr. B.S. Kulkarni, Asst. Eng. (B & F).

Mr. Abhijeet B. Desai, i/by Prashant Kulkarni, for the Respondent No.2.

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

DATE : 24 February 2020

P.C. :

1. The Petitioners who are tenants of Sona Villa Building have filed the above Writ Petition seeking the following reliefs:-

- “a. *that this Honorable Court be pleased to issue writ of mandamus or any other writ, order or direction in the nature of writ of mandamus directing Respondent No. 1 to take appropriate and immediate action against Respondent No. 2 for carrying out the activities amounting to change of user at the flat No. 1 & 2 on the ground floor of ‘Sona Villa Building’ situated at 113, S.V. Road, Khar-(W), Mumbai-400 052 under the provisions of MMC Act, 1888 and MRTTP Act in pursuance to and in compliance with Judgement dated 2nd March 2009 passed by Executive Engineer, (Building & Proposal), Western Suburbs, H-Ward of Respondent No. 1 at Exhibit - ‘E’ hereto.*
- b. *that the Honourable Court be pleased to issue writ of mandamus or any other writ, order or direction in the nature of writ of mandamus directing Respondent No. 1 to take action against Respondent No. 2 for illegally breaking open the compound wall of Sona Villa Building and removing of main entrance gate thereof for parking nearly 30 to 35 cars on an average per day for doing commercial activities under the provisions of MRTTP Act or MMC Act, 1888.*
- c. *that this Honorable Court be pleased to restrain the Respondent No. 2 his agent, servant or any person*

claiming through or under him from using the common open compound in 'Sona Villa' building at 113, S.V. Road, Khar-(W), Mumbai - 400 052 for any other purpose other than that for parking of the vehicles of the residents/tenants and also restrain them from using flat No. 1 & 2 of the said building for the commercial purpose/activities.

d. that pending the hearing and final disposal of present Writ Petition the Petitioners be permitted to park their vehicles in the common open compound and the garages at 'Sona Villa', 113, S.V. Road, Khar-(W), Mumbai - 400 052."

2. It is pointed out that the earlier landlord had in the year 2008 started similar unauthorised activities because of which Writ Petition No. 1213 of 2003 was filed by the tenants seeking necessary directions against the Corporation. In the said Writ Petition, an order dated 16th December 2008 was passed directing the Executive Engineer, Building Proposal, Western Suburbs to give a hearing to the Petitioners as well as to the Respondent No. 2 landlord and thereafter pass appropriate orders in accordance with law, within a period of

three months from the date of the said order.

3. Thereafter, the parties were heard and the Executive Engineer, (Building Proposal), Western Suburbs (H Ward) passed an order dated 2nd March 2009 directing the Assistant Engineer (Building & Factory) H/West Ward to take appropriate action, which order is reproduced herein below :

“The Petitioners have complained about the unauthorised change of user in respect of Flat No. 1, 2 & 7 and garages in the building known as Sonavilla Building, 113, S.V. Road, C.T.S. No. E/640 of village Bandra, Khar (W) to the Assistant Engineer (Building & Factory) H/West Ward. Shri Murlidhar Tilwani, Respondent No. 2 has failed to produce any authentic documents showing that the said change of user in respect of Flat No. 1, 2 & 7 and garages area approved by the Competent Authority and the proposal submitted by M/s. Iqbal Nitain & Associates on behalf of Respondent No. 2 Shri Murlidhar Tilwani is rejected by Assistant Engineer (Building Proposal) H Ward. I, therefore, direct Assistant Engineer (Building & Factory) H/West Ward to take

appropriate action against the said unauthorised change of user for Flat No. 1, 2 & 7 and garages situated in the building known as Sonavilla by following due process of law and submit the report to Law Officer to appraise the Hon'ble Court in the matter.”

4. Pursuant to the above order, the unauthorised change of user in respect of Flat Nos. 1, 2 and 7 and garages in the building - Sona Villa was discontinued. The building was thereafter sold by the then landlord to the present Respondent No. 2. According to the Petitioner, the Respondent No. 2 has again started unauthorised change of user in respect of Flat Nos. 1 and 2, compelling the Petitioners to file the present Writ Petition seeking the reliefs set out hereinabove. Mr. Desai, the learned Advocate for the Respondent No.2 states that the Flats are not used for commercial purposes.

5. It is submitted that the new landlord has also applied to the Corporation seeking demolition of the building on the ground that the same is in dilapidated condition and the same is categorised by his Structural Engineers under C-1 category, which submission is refuted

by the tenants who have produced a report of their Structural Engineer stating that the building can be repaired and need not demolished. In any event, at this moment, we are not issuing any directions with regard to the same, since no reliefs with regard to this issue / dispute is sought in the present Petition.

6. The learned Advocate appearing for the Corporation states that the Corporation has already received the complaint from the tenants dated 9th January 2020 about the unauthorised change of user of Flat Nos. 1 and 2 by the present landlord and that the Corporation is proceeding to take action as per law. The statement is accepted. The Corporation shall take action after considering the complaint on merits within a period of eight weeks from today. The Petition is disposed of.

[R.I. CHAGLA J.]

[S.J. KATHAWALLA, J.]