

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
COMPANY PETITION NO. 642 OF 2016**

Sanjay Ramchandra Gujar

..Petitioner

V/s

Vighnaharta Builders and Projects Pvt. Ltd.

...Respondent

Mr. Ramachandra Apte, Senior Advocate i/b. Deepali Deherkar for petitioner.

Mr. Ravi Gadagkar i/b Usha Gadagkar for respondent.

Mr. Aditya Pimple, Advocate for official liquidator.

CORAM : K.R. SHRIRAM, J.

DATED : 11th JUNE 2021

P.C. :

1 Petition was originally filed by Byramjee Jeejeebhoy Pvt Ltd. (BJPL). BJPL and respondent settled the matter at which time, notice was issued for permitting the withdrawal of the petition, since the petition had already been admitted. At that stage, the present petitioner Sanjay Gujar appeared in the court and sought leave to be added as petitioner in place of BJPL. Leave was granted by an order dated 16th January 2020 and petitioner was permitted to pursue this company petition. Leave to amend was granted and petitioner was directed to file the affidavit indicating his claim against respondent. Amendment has been carried out, an affidavit dated 30th January 2020 has been filed by petitioner – Sanjay Gujar and the same has been served on respondent company. Reply has also been filed by respondent company.

2 The claim of petitioner is that his uncle Late Kashinath Savalaram

Gujar was the holder of vacant land tenancy of commercial premises admeasuring 450 sq.ft. at Ganesh Nagar, Lalbaug (the said premises). Petitioner, his father Late Ramchandra Gujar and his uncle Kashinath Gujar were jointly conducting business of tobacco godown in the said premises. Petitioner's uncle Kashinath Gujar expired on 8th February 1987 and after the demise of his uncle he was in exclusive use, occupation and possession of the said premises and had been conducting the tobacco business from the said premises. The occupants of the commercial premises proposed to form a housing society and go for redevelopment. The housing society was formed and respondent was appointed to develop the said property. According to petitioner, since he was in exclusive use, occupation and possession of the said premises, he was entitled to get permanent alternate accommodation having equivalent area of 450 sq.ft. in the new building to be developed. By a letter dated 12th May 2002, society requested petitioner to vacate the old premises for redevelopment purpose and shift to a transit camp. Admittedly, notice from the society was addressed in the name of uncle of petitioner Late Kashinath Gujar. Upon completion of redevelopment, respondent company addressed a letter dated 26th January 2008 allotting Gala No.6 in A wing to Late Kashinath Gujar. According to petitioner, he being the legal heir of Late Kashinath Gujar and since he was in exclusive use, occupation and possession of the old premises when the property went for redevelopment and it was, he who handed over the possession of the premises to the society to be handed over to respondent

developer for redevelopment, he is entitled to Gala No.6, A-Wing of the newly constructed building known as Vijaya Residency. According to petitioner, since respondent failed to hand over possession of the said Gala No.6 to petitioner, respondent company is indebted in the sum exceeding Rs.1 lakh and, therefore, should be wound up. According to petitioner, he had even issued a notice as required under Section 434 of the Companies Act, claiming Rs.1,20,46, 368/- as on 7th April 2019, to which, there has not even been a reply. Therefore, respondent company should be ordered to be wound up.

3 To a question posed by the court as to whether petitioner received any rent or compensation for the temporary alternate accommodation during the period of redevelopment from respondent company, Mr. Apte replied in the negative. Mr. Apte relies only on Exhibit D, which is a notice dated 18th September 2009 addressed to respondent's erst while advocates and another letter dated 20th January 2010 addressed to respondent company. Mr. Apte also relied upon Exhibit C letter addressed to the Director of Respondent for surrender of transit camp room nos.12 and 13. There is no document annexed surrendering original premises to the company.

4 I have to note, having considered Exhibits D and E, petitioner has not given the mandatory notice as required under Section 434(1)(a) of the Companies Act 1956. Moreover, petitioner has also filed a suit admittedly before the Bombay City Civil Court at Bombay, being L.C. Suit No.2743 of 2013 praying for possession of suit premises, for injunction and from

creating any third party rights in the suit premises and for rent of Rs.45,000/- in order to secure temporary alternate accommodation, which suit is still pending. Therefore, admittedly there are also disputed questions of fact involved. In the circumstances, petition is not maintainable and hereby stands dismissed.

5 Petitioner to give donation of Rs.5,000/- to the Chief Minister Relief Fund within two weeks from today and copy of proof of payment shall be provided to respondent's advocates within two weeks of making payment. If the amount is not so paid, and proof of payment is also not filed in the Bombay City Civil Court at Bombay, Bombay City Civil Court shall dismiss the suit filed by petitioner.

6 Provisional Liquidator, who was also earlier appointed, stands discharged. Company shall pay a sum of Rs.50,000/- to the Official Liquidator and upon making that payment the Official Liquidator, who is appointed as Provisional Liquidator, shall stand discharged. Upon Provisional Liquidator being so discharged, symbolic possession taken shall stand vacated.

(K.R. SHRIRAM, J.)