

Shephali

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 210 OF 2017
WITH
CHAMBER SUMMONS NO. 228 OF 2019**

HNG Enterprises ...Petitioner
Versus
Municipal Corporation of Greater Mumbai & Ors ...Respondents

Mr Cherin Lapashiya, i/b Nirjanjan & Co, for the Petitioner.
Mr Akshay Shinde, for Respondent No. 9.
Mr Sameer Tendulkar, for Respondents Nos. 13 & 14.

**CORAM: G.S. Patel &
Madhav J. Jamdar, JJ.**
DATED: 15th November 2021

PC:-

1. Heard.

2. This Writ Petition under Article 226 of the Constitution of India raises very seriously disputed questions of fact relating to an immovable property (a garage or shop at Dadar) over which the Petitioner claims rights. The Petitioner claims to have been using this garage/shop for commercial purposes. The allegation is that the premises were demolished without notice to the Petitioner, prejudicing the Petitioner's rights in the property.

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3. The Affidavit in Reply of Respondent No. 13, Shaunak Dilip Kirkire (at page 202) asserts that the Petitioner delivered possession of the garage before 28th March 2011. The electricity meter was disconnected on 2nd December 2012. The garage was itself demolished on 1st February 2015. In the Affidavit in Rejoinder, these assertions are disputed and controverted by the Petitioner.

4. What is beyond doubt is that these are all said to be events of February 2015 or possibly several years earlier. The Writ Petition is filed only in 2017.

5. The Petitioner has in fact filed a substantive Suit No. 818 of 2016 (prior to the filing of this Writ Petition) in the Bombay City Civil Court.

6. In view of this, we see no reason to entertain the Writ Petition. It is well settled that disputed questions of fact cannot be examined in exercise of the extraordinary and discretionary writ jurisdiction of the High Court under Article 226 of the Constitution of India.

7. The Writ Petition is rejected. The Chamber Summons does not survive and is disposed of as infructuous.

8. This order has been passed without considering the merits of the rival submissions. All contentions are left open for the pending proceedings in the Bombay City Civil Court or for such other proceedings as the Petitioner may be advised to adopt.

9. All concerned will act on production of a digitally signed copy of this order.

(Madhav J. Jamdar, J)

(G. S. Patel, J)