

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

WRIT PETITION NO.574 OF 2020

Mahesh K. Poddar & Ors.

.. Petitioners

v/s.

The Municipal Corporation of
Greater Mumbai & Ors.

.. Respondents

**WITH
INTERIM APPLICATION (L) NO.13180 OF 2021
WITH
INTERIM APPLICATION NO.2108 OF 2021
WITH
INTERIM APPLICATION NO.2107 OF 2021
WITH
INTERIM APPLICATION NO.2109 OF 2021**

Mr. Vishwajeet Kapse for the petitioner/applicant.

Ms. P.H. Kantharia a/w Ms. Oorja Dhond & Ms. Sheetal Metakari i/b.
S.K. Sonawane for respondent nos.1, 3 & 4.

Mr. Shyamrao Gore, AGP-State for respondent nos.12.

Mr. Sameer Bhalekar for the applicant in IA/13180/2021.

Mr. Durgaprasad Rao, for respondent no.8 Constituted Attorney of
respondent nos.5 to 7 -present.

Mr. Deepak Rathod- respondent no.11-present.

**CORAM : R.D. DHANUKA &
KAMAL KHATA, JJ.
DATED : 1ST AUGUST, 2022.**

P.C. :

1. By this petition filed by the petitioner under Article 226 of the Constitution of India, the petitioner seeks an order and direction against respondent nos.1 to 4 to initiate the immediate steps as contemplated under Section 354 of the Municipal Corporation Act for demolishing the dilapidated and dangerous structure known as ‘Champa Niwas’ described in prayer clause (a) of the petition and to shift the occupants thereof to temporary alternate accommodation.
2. Since the said structure which was occupied by the petitioners was declared under C-I category, this court by an interim order directed the Corporation to demolish the impugned structure. The impugned structure is already demolished during the pendency of this petition by order dated 8th January, 2021.
3. This matter has been adjourned from time to time. In pursuance of the order dated 5th July, 2022 passed by this Court in this Writ Petition along with pending Interim Applications, the Court

directed respondent nos.5 to 8 and respondent no.11 to file affidavit in reply placing on record their respective terms for reconstruction of the building, if they so agree. Respondent no.11 has already filed an affidavit-in-reply and is present in Court. Respondent nos.5 to 8 have not filed any reply. Respondent no.8 who appears in person for himself and on behalf of respondent nos.5 to 7 states that respondent nos.5 to 8 are disputing the claim of respondent no.11's 87.5% in the suit plot and the offending structure. According to respondent nos.5 to 8, respondent no.11 is not entitled to any share in the said property. Neither respondent nos.5 to 8 nor respondent no.11 are ready and willing to carry out the redevelopment of the plot on which the structure is occupied by the tenants that has been already demolished at this stage.

4. Learned counsel for the petitioners, on instructions, states that since respondent nos.5 to 8 or 11 are not ready and willing to carry out redevelopment, petitioners are ready and willing to carry out redevelopment under the applicable policy and the relevant provisions of law. Respondent nos.5 to 8 and respondent no.11 at this stage states that they are also willing to carry out the redevelopment. However, the entitlement of respondent nos.5 to

8 and respondent no.11 is disputed inter se. In these circumstances, we cannot direct either respondent nos.5 to 8 or respondent no.11 to carry out any redevelopment of the plot. At the same time, we are unable to pass any order in favour of the petitioner granting permission to carry out the redevelopment since the petitioners claim to be only the tenants and not the owners of the said plot.

5. The only solution we find at this stage is to permit the petitioner, respondent nos.5 to 8 and 11 to apply for permission to carry out redevelopment with the Municipal Corporation according to the provisions applicable in law. If any such application is made by the petitioners or the respondent nos.5 to 8 or 11 or all of them jointly or severally, the Municipal Corporation to consider such application for redevelopment according to the existing policy applicable in the facts and circumstances of this case under the Municipal Corporation Act or the existing circulars/guidelines issued by the Municipal Corporation. If any such application is made, the same shall be decided on its own merits.

6. Writ Petition is disposed off in the aforesaid terms.

7. No orders as to costs.

8. In view disposal off the Writ Petition, Interim Applications shall also stand disposed of.

(KAMAL KHATA, J.)

(R.D.DHANUKA, J.)