

Ashwini

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 9551 OF 2022

Kapleshwara Palace through Secretary & Anr ...Petitioners
Versus
 Ulhasnagar Municipal Corporation & Ors ...Respondents

Ms Minal Chandnani, i/b JS Chandnani Associates, for the
Petitioner.

Mr Vijay D Patil, for Respondents Nos. 1 to 3.

Ms Molina Thakur, AGP, for Respondent No. 4-State.

Mr Manish Dubey, i/b Suresh Malkani, for Respondent No. 9.

CORAM G.S. Patel &
Kamal Khata, JJ.

DATED: 25th August 2023

PC:-

1. *A building comes to court.* Astonishing though that is, it is what greets us at the start. The 1st Petitioner is a building. It wants an order that it should be demolished. There are several other Petitioners. But the 1st Petitioner is the building described as ‘Kalpeshwara Palace’. The first paragraph of the Petition says that the 1st Petitioner is “the building” that stands on the plot of land at Ulhasnagar. We do not see how a building is either a person or a citizen to invoke any rights under Part III of the Constitution of India.

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2. The 2nd Petitioner, one Mahesh Mirani, is a resident of the building. There is no society. Yet the 2nd Petitioner claims to be the 'secretary' of the building. Buildings do not have secretaries. Societies do. And no building can sue or be sued.

3. This becomes utterly bizarre when we see paragraph 6. Here, we are told that the building is dangerous. This means that the building-Petitioner is telling us that it is dangerous. And should be demolished.

4. There is obviously far too much enthusiasm in the joinder of the Petitioners. The 1st Petitioner is to be deleted. The Petition must be only in the name of the remaining Petitioners, all added by a later amendment. Amendment to be carried out immediately without reverification.

5. According to Mirani and the other Petitioners, the building is dilapidated.

6. But the Petitioners cannot establish any rights over the building or the land. There is no society. The Petitioners do not own all the premises in the building. They have some premises in the building, but not all.

7. The one thing that is not in doubt is that there are several shops at the ground floor level. The Petitioners agree that they have no right or title to the shop premises owned or occupied by

Respondents Nos. 3 to 8. These Respondents oppose demolition of their structures.

8. Ms Chandnani on behalf of Mirani argues that a shutter has been installed, and these shops on the ground floor ‘yet remain and are required to be demolished’. It is unclear how the Petitioners have a right to make any such demand.

9. The shopkeepers have filed an Affidavit in Reply through one Vinod Rameshlal Methwani, one of the Respondents. He has filed his Affidavit in Reply for himself and on behalf of Respondents Nos. 5 to 8. He says that the Petition is frivolous and is intended only to harass these shopkeepers. He questions Mirani’s locus (and rightly so). He says that shops 1, 2 and 3 belong to one Jaikumar Vijendra Sharma, Respondent No. 5, Shop 4 belongs to Methwani himself along with Respondent No. 7, and Shop 5 belongs to Respondent No. 8, Jashan Rajpal.

10. Methwani says that the Petition has been filed only to demolish the shops of these Respondents. He accuses the Petitioners of extortion and denies that they have any right or locus.

11. The Respondents’ shops, Methwani says, are in safe condition and do not require demolition. His affidavit asserts that the structural audit report filed by the Petitioners themselves shows that these shops premises are safe. He also points out that Mirani claims to be the owner of one shop. How he or any of the other

Petitioners have an interest in the entire building is unclear from the entire Petition.

12. Then comes paragraph 4 of the Affidavit in Reply in which Methwani says that Mahesh Mirani is notorious and habitually creates trouble and harasses people.

13. When originally filed, the Petition had only the building and Mirani as Petitioners. None of the shop owners were joined. Yet demolition of the *entire* structure was sought, including the shops of Respondents Nos 3 to 8. The mischief is plain.

14. It is clear that the Petitioners have absolutely no right, title or interest in the commercial premises of Respondents Nos. 3 to 8. Ms Chandnani at this point agrees that the Petitioners are unable to show that they have any rights over the shops.

15. It makes no difference at all that the entire structure was once put up, then partly demolished and that reconstruction of the upper floors was held up because Respondents Nos 3 to 8 have not consented to re-development. We must remember that we are being asked to exercise our discretionary and equitable *writ* jurisdiction. That means there must be demonstrated some failure to perform a statutory or constitutional duty by an instrumentality of the state. Private disputes cannot be the subject matter of a Writ Petition under Article 226 of the Constitution of India. Clearly, all that the Writ Petition seeks is to compel Respondents Nos 3 to 8, all private parties, to succumb to the re-development demands of Mirani and

his fellow Petitioners. We have every reason to doubt the bona fides and locus of the Petitioners and the maintainability of the Petition.

16. It is not for the Petitioners without establishing a legal right in these shops to demand that they be demolished.

17. In our view, the Petition is thoroughly mischievous. The extent of the mischief can be seen from the fact that Mirani goes to length of saying that his own shop is illegal and should also be demolished. Nobody has prevented him from demolishing his own shop. Now that this submission is made, we leave it to the Corporation to demolish Mahesh Mirani's (and only Mahesh Mirani's) shop structure without affecting the structures of Respondents Nos. 3 to 8, i.e., Shops Nos 1, 2, 3, 4 and 5.

18. The Petition is singularly without merit. It is rejected.

(Kamal Khata, J)

(G. S. Patel, J)