

Shephali

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 2735 OF 2021**

Anil Agrawal ...Petitioner
Versus
Municipal Corporation of Greater Mumbai & Ors ...Respondents

**WITH
WRIT PETITION NO. 2648 OF 2021**

Mahendrakumar Ambalaji Sankhala ...Petitioner
Versus
Municipal Corporation of Greater Mumbai & Ors ...Respondents

Mr Sharad Bansal, *with Jayesh Mestry, for the Petitioner in WP/2648/2021.*

Mr Anuj Singh, *with Bhavin Bhatia, Nirav Karia, Sameer Pandey & Rohit Yadav, i/b Bhavin Bhatia, for the Petitioner in WP/2735/2021.*

Ms Dhruti Kapadia, *with Vandana Mahadik & Pooja Yadav, i/b Sunil Sonawane, for the Respondent-MCGM in both Writ Petitions.*

Mr Karl Tamboly, *with Nilesh Gala & Minil Shah, i/b Law Square, for Respondent No. 2 in WP/2735/2021 and for Respondent No. 3 in WP/2648/2021.*

Mr Mayur Khandeparkar, *with Vinay Nair, for Respondent No. 3 in both Writ Petitions.*

SHEPHALI
SANJAY
MORMARE

Digitally signed by
SHEPHALI SANJAY
MORMARE
Date: 2023.09.16
09:46:41 +0530

**CORAM G.S. Patel &
 Kamal Khata, JJ.
DATED: 15th September 2023**

PC:-

1. There is no doubt that if the Petitioner is entitled in law whether by means of tenancy or otherwise to redeveloped premises, then, the law demands that he be treated on parity with others similarly placed. This necessarily applies to questions of area, transit rent, if any, fungible FSI, bearing cost of construction etc. It is not possible for the Writ Court to enter into questions of terms of contractual arrangements between parties nor to dictate to parties what contract they should form.
2. If the Petitioner has any grievances in regard to area, costs or any other aspect, the Petitioner is at liberty to adopt appropriate civil remedies.
3. On the face of it we do not see how, the building having been demolished, we can possibly entertain these disputed questions that arise even on a plain reading of prayer clauses (a) and (b). Our statement that the Petitioner is entitled to parity is at least sufficient for the purposes of prayer clause (b).
4. The exact amount of the entitlement whether in rupees or in square feet or square meters is either a matter of negotiation and contract or a dispute that must necessarily lie before and only before a Civil Court. It cannot be the subject matter of a writ proceeding. We leave those remedies of the Petitioner expressly open. We leave

open contentions on both sides because Mr Tamboly claims that if the Petitioner, for instance, is shown to have carried out unauthorised changes then he cannot at the time of redevelopment, obtain benefit of such unauthorised works. This contention is disputed by Mr Singh, but we make it clear that we are not entering into that controversy. We have only noted a statement made by Mr Tamboly and all contentions in that regard have been kept open.

5. On the last occasion, Mr Singh attempted to take us through some documents with a view to establish that his client was solely or jointly entitled to inherit or continue a commercial tenancy. Several names were shown to us and it was at one point even argued that although records were in one name, there should be held to be equivalent to another name because that betokens the home town or place of origin of the family. Again, that is not a dispute that we can entertain. We note this because there may even be a question of whether this sole Petitioner has an exclusive entitlement to the tenancy to begin with. These are matters that the Petitioner must establish in a jurisdictionally competent forum.

6. Writ Petition No. 2735 of 2021 is disposed of in these terms. No costs.

7. The Writ Petition No. 2648 of 2021 is separated and is to be listed at the request of the Petitioner on 10th October 2023.

(Kamal Khata, J)

(G. S. Patel, J)