

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.1397 OF 2021

Cafe Garden & Ors. .. Petitioners

Vs.

Municipal Corporation of Greater Mumbai & Ors. .. Respondents

ALONG WITH

INTERIM APPLICATION NO.2960 OF 2021

IN

WRIT PETITION (L) NO.25948 OF 2021

Dharmendra Pannalal Vyas & Anr. .. Applicants

IN THE MATTER BETWEEN

Mrs. Moti Keki Nagarwalla ...Petitioner

Vs.

Municipal Corporation of Greater Mumbai & Anr. .. Respondents

- Mr. R.D. Soni a/w. Mr. V.R. Kasle i/b. Ram & Co., for the Petitioners in WP/1397/2021.
- Mr. A. Y. Sakhare, Senior Advocate a/w. Mr. Kunal Waghmare i/b. Mr. Sunil K. Sonawane, for Respondent-BMC.
- Ms Mona Vyas, for Respondent No.4 in WP/1397/2021.
- Mr. S.B. Gore, AGP for Respondent-State.
- Respondent No.4 present in Court in WP/1397/2021 .
- Applicant present in Court in IA/2960/2021.

**CORAM : SUNIL B. SHUKRE &
RAJESH S. PATIL, JJ**

DATE : 20th JULY, 2023.

ORAL JUDGMENT : (PER : SUNIL B. SHUKRE, J).

1. Heard. Rule. Rule made returnable forthwith by consent of learned counsel for the respective parties.
2. The petitioners are claiming to be tenants occupying Ground Floor of Ganga Niwas building and are aggrieved by the notice issued by the Corporation under Section 354 of the Mumbai Municipal Corporation Act, 1888 (hereinafter referred to as the MMC Act, 1888) for eviction of the building and its consequent demolition on the ground that the building falls in C-1 Category, a structure so dilapidated as would require its demolition.
3. Before the impugned notice was received by the petitioners, the petitioners had consulted their own Structural Audit Engineer and obtained his report, which was submitted to the Corporation. The report was in conflict with the structural audit report obtained by Respondent No.4, the new landlord/owner of the building, who is desirous of redevelopment of the building after its demolition.
4. Considering the fact that there were two conflicting reports, the Corporation referred both the reports to Technical Advisory Committee (TAC) for their appropriate consideration. TAC then thought it fit to refer the matter to a third party auditor like VJTI/IIT SPCE and accordingly, took its decision for referring the matter to a third party

auditor in its meeting dated 07.05.2021. The matter came to be referred to VJTI, an Expert Technical Institute in such cases and the VJTI submitted its report on 02.11.2021 finding that the building was in extremely dilapidated and dangerous condition requiring its demolition without any further loss of time. The report of VJTI was duly considered by the TAC and it came to the conclusion that there was no other material available to express any disagreement with the conclusions drawn in the report of VJTI, and therefore, confirming the report of the VJTI, TAC gave its report dated 22.12.2021 categorizing Ganga Niwas building as of C-1 type.

5. It was after the aforesaid report that notice under Section 354 of the MMC Act, 1888 was issued to the landlord/owner and all the occupants of the building, calling upon them to vacate, for the purpose of demolition of the building. It is this notice which is under challenge in the present petition.

6. During the course of the argument, learned counsel for the petitioners submitted that the petitioners were not in principle against demolition of Ganga Niwas building, but the petitioners required due recognition of their rights as the tenants occupying the ground floor of the building, which rights are sought to be denied by Respondent No.4. Learned counsel further submits that if the rights are recognized and

benefits flowing from those rights are made available to the petitioners, the petitioners would have no objection in vacating the ground floor of Ganga Niwas building.

7. Learned counsel for Respondent No.4, the main contesting party to this petition, however, disagrees on the submission that the petitioners should be considered to be tenants of Respondent No.4. According to her, as regards the premises of Petitioner No.1, the original tenant was a Partnership Firm, which came to be dissolved and after dissolution of the Partnership Firm, the tenancy also expired and was not continued, which is in consonance with the provisions made under the Indian Partnership Act, 1932. She further submits that in view of discontinuation of the Partnership Firm on account of dissolution of the Partnership Firm, there can be no question of Respondent No.4 recognizing any rights of the petitioners as tenants of Respondent No.4 and requiring Respondent No.4 to offer any benefits such as making arrangements for payment of transit rent and offering permanent alternate accommodation after redevelopment of the building, in accordance with the guidelines of the Corporation.

8. Learned counsel for the petitioners submits that there is ample evidence to show that the petitioners have continued to be tenants occupying ground floor of Ganga Niwas building and that there are

receipts issued by the landlord acknowledging the payment of rent by these tenants from time to time. He also points out that there are four civil suits pending before the Court of Small Causes at Mumbai, namely, RAE No.23 of 2022, RAD No.364 of 2021, RAD No.346 of 2021 and RAE Suit No.446 of 2021. In one of the suits i.e. RAD No.364 of 2021, which is in respect of Shop Nos.1, 2 and 3, there is an interim injunction granted by the Small Causes Court, Mumbai, restraining the landlord from dispossessing the plaintiffs i.e. Cafe Garden (Petitioner No.1 herein) without following due process of law. He further submits that RAE No.23 of 2022 filed against the petitioners as defendants by Respondent No.4, would also indicate that the status of the Petitioner No.1 as tenants is not in dispute. Of course, this has been disagreed to, by the learned counsel for Respondent No.4 and she submits that basically the stand of Respondent No.4 is that Cafe Garden is a mere encroacher after dissolution of the original Partnership Firm.

9. From the facts discussed above what becomes clear is that, there is an internal dispute between the petitioners on the one hand and Respondent No.4 on the other in respect of their claim about the petitioners being tenants in the property and the counterclaim about the petitioners not being tenants in the property. These facts further show that the Small Causes Court has also granted injunction in RAD

No.364/2021 filed in respect of Shop Nos.1, 2 and 3 situated at Ground Floor, whereby the landlord has been restrained from dispossessing the plaintiff i.e. Cafe Garden.

10. Similarly, another RAE Suit No.446 of 2021 concerning Petitioner No.3 is pending for adjudication before Small Causes Court, Mumbai. With regard to Petitioner No.4 as well, yet another RAD Suit No.346 of 2021 filed by Petitioner No.4 in regard to Shop No.9 is pending for adjudication before Small Causes Court, Mumbai.

11. If such are the facts of the case, we are of the view that the dispute about respective rights of the parties would have to be decided appropriately by the Small Causes Court, Mumbai and till such adjudication is made by the Small Causes Court, Mumbai, appropriate directions are required to be issued by this Court, in order to protect the claims and counterclaims of the respective parties. Accordingly, we issue the following directions:-

- (i) As there is no dispute about the first and second floor, we direct that they shall be demolished in compliance with the notice issued u/s.354 of the MMC Act, 1988 by the Corporation without any further loss of time.
- (ii) As there is a dispute in respect of the shops situated on the ground floor and in respect of some of the shops, there is also an order of injunction passed by the Court of Small Causes, Mumbai, we direct that the ground floor of the building shall not be demolished till the dispute is

appropriately adjudicated upon by the Small Causes Court, Mumbai.

(iii) We further direct that Respondent No.4 shall, in the meantime, make suitable arrangements for payment of transit rent and also providing of permanent alternate accommodation after redevelopment to the occupants/tenants of the shops situated on the ground floor, subject to final outcome of the civil suits referred to above.

(iv) We make it clear here that any further occupation by the occupants/tenants of the shops situated on the ground floor of the building, shall be at the risk and responsibilities of these tenants/occupants.

12. Rule is made absolute in the above terms.

13. Writ Petition is disposed of.

14. Parties to act on an authenticated copy of this order.

15. At this stage, learned counsel for Respondent No.4 submits that the hearing of suits be expedited. Considering the nature of dispute involved in this petition, we direct the Small Causes Court, Mumbai to make an endeavour to expeditiously dispose of the suits, in accordance with law.

16. In view of final order passed in Writ Petition, the Interim Application, if any, does not survive and the same is disposed of accordingly.

[RAJESH S. PATIL, J.]

[SUNIL B. SHUKRE, J.]