

Sumedh

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 2015 OF 2018**

Deshabhimani Co-operative Housing Society Ltd ...Petitioner
Versus
Municipal Corporation of Greater Mumbai & Anr ...Respondents

**WITH
INTERIM APPLICATION (L) NO. 22919 OF 2023
IN
WRIT PETITION NO. 2015 OF 2018**

Deshabhimani Co-operative Housing Society Ltd ...Applicant
In the matter between
Deshabhimani Co-operative Housing Society Ltd ...Petitioner
Versus
Municipal Corporation of Greater Mumbai & Anr ...Respondents

**WITH
CHAMBER SUMMONS NO. 127 OF 2018
IN
WRIT PETITION NO. 2015 OF 2018**

Mohan Kanahiyalal Jain ...Applicant
In the matter between
Deshabhimani Co-operative Housing Society Ltd ...Petitioner
Versus
Municipal Corporation of Greater Mumbai & Anr ...Respondents

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WITH
WRIT PETITION NO. 1886 OF 2012

Siroya FM Constructions Pvt Ltd & Anr ...Petitioner
Versus
Municipal Corporation of Greater Mumbai & Anr ...Respondents

Mr DA Sakhalkar, *for the Petitioner in WP/2015/2018.*

None for Respondent No. 2.

Ms Rupali Shinde, *i/b Sunil Sonawane, for the Respondent-MCGM.*

Mr BL Shingane, *AE (BF) P/South Ward – present.*

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

DATED: 7th December 2023

PC:-

1. This Petition is an ill-conceived action in our writ jurisdiction.
2. The Deshabhimani Co-operative Housing Society is the Writ Petitioner in Writ Petition No 2015 of 2018. It has a grievance against a private Developer, Respondent No 2.
3. No Municipal failure is pointed out. The allegation is that the 2nd Respondent carried out unauthorised construction and therefore prayer 'B' seeks demolition of the unauthorised portion. We are told that this covers floors 5 to 15 of the structure. But then we are told that this prayer is not pressed, and quite understandably, because to accommodate the Petitioner's members at least six floors will be required.

4. The other prayers 'C' and 'D' are against the private Respondent. Prayer clause 'E' is framed as a 'Writ of Prohibition' but without regard to the contours of that writ in the first place and to whom or what it can be issued. It is being confused with a writ of mandamus for an injunctive relief. Then there is a prayer for the appointment of a Court Receiver.

5. What is evident is that between the Petitioner Society and the 2nd Respondent Developer there was a Redevelopment Agreement of 29th April 2008. This has been terminated. There is an arbitration clause. The complaint is of non payment of transit rent and non performance of contractual obligations under the redevelopment agreement. How this can ever be brought into our writ jurisdiction is unexplained.

6. The Writ Petition is without substance. It is rejected.

7. We clarify that we have made no observations regarding the Petitioner's claim against the 2nd Respondent Developer. We have only held that the action does not lie as a Writ Petition.

8. The Petitioners are at liberty to file a civil suit in a Court of competent jurisdiction and seek appropriate remedies including interim and ad interim reliefs or to pursue their remedies in arbitration.

(Kamal Khata, J)

(G. S. Patel, J)