

Varsha

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 5017 OF 2022

Rajkumar Mohanlal Bagla ...Petitioner
Versus
The State of Maharashtra & Ors ...Respondents

Mr Anand Mishra, i/b AM Saraogi, for the Petitioner.
Mr SB Gore, AGP, for the Respondent-State.
Ms Pooja Yadav, for the Respondent-MCGM.

CORAM G.S. Patel &
Kamal Khata, JJ.
DATED: 7th December 2023

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1. Our order of 5th September 2023 reads as follows:

“1. The Petitioner as the owner developer had redeveloped the building in question. It is purely residential. The Petitioner has not applied for any change of user. The complaint is that several occupiers have converted premises to commercial user and have carried out internal unauthorised changes. Some of these changes are structural. There is also an apprehension expressed across the Bar by Mr Saraogi that flammable materials are being sought stored in the premises. The building is on Kalbadevi Road in a congested area. There is a significant fire risk.

2. The MCGM is directed to immediately take action through the ward officer and the Executive Engineer B&F.

The building is to be examined. We are not disposing of the Writ Petition. That inspection is to be carried out within 10 days from today. The results of that inspection report are to be placed on Affidavit before this Court no later than by 29th September 2023.

3. List the matter on 4th October 2023.”

2. Ms Yadav on behalf of the Municipal Corporation of Greater Mumbai (“MCGM”) has instructions to place before us a report dated 25th September 2023. The building was inspected. This was a joint inspection with the staff of the Medical Officer Health (“MOH”) and the License Department of C/Ward.

3. The report says that the building is about 30 years old. It is a ground and four floors composite structure. It has a terrace. The report notes that the terrace is in a partly ruinous condition. This is not mentioned in the Writ Petition itself.

4. Then the report notes that there are two units each on the first, second, third and fourth floors. These were found to be locked or had been vacated or in any case were closed. Possibly this was due to ongoing patch repair, plastering or water proofing. But a specific finding however was that there was no unauthorised ongoing structural work seen or detected during this inspection.

5. At the ground floor level there were a total of 15 shutters or units. Of these, as many as 10 were found to be closed or locked.

6. The report finally notes that the building is not of recent origin. Being a 30 year old structure, it is not possible to detect unauthorised constructions without sanctioned plans to the property. Accordingly, the MCGM had already sent a letter to the Assistant Engineer Building Proposal's City II to provide a copy of the latest sanctioned plans to detect unauthorised constructions if any, in contravention with the approved or sanctioned building plan. Photographs are annexed to the report. The report is taken on record and marked "X-1" for identification with today's date.

7. The allegation in the Petition was that occupiers, some of whom are joined to the Petition had made internal unauthorised changes and that some of these are structural. What is being attempted clearly is to use the process of the writ court and to invoke our writ jurisdiction to ascertain factual disputes between the owner and various occupants in regard to the work being done. Obviously this will lead to some sort of litigation disputes between the owner and the individuals concerned. This is not the purpose for which a Writ Petition can be filed. Once there is a report that no unauthorised structural work can be detected, then the fundamental basis of the Petition, that there is incontrovertibly and demonstrably unauthorised structural work, is lost.

8. It is always open to the Petitioner to approach a civil court or a rent court as jurisdiction permits, for appropriate reliefs including interim and ad-interim reliefs. But we will not permit our writ jurisdiction to be diverted for that kind of a purpose.

9. Reserving liberty to the Petitioner to adopt appropriate proceedings in a jurisdictionally competent court or forum (not a writ court) we dispose of the Petition. There will be no order as to costs.

(Kamal Khata, J)

(G. S. Patel, J)