

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CIVIL APPELLATE JURISDICTION****WRIT PETITION NO. 13800 OF 2024**

Ramesh Mangalbhai Patel & Ors.

.....Petitioners.

Vs.

Bhiwandi Nizampur City Municipal
Corporation & Ors.

.....Respondents.

Mr. Vishwajeet S. Kapse for the Petitioner.

Mr. Dilip Bodake for Respondents Nos. 1 to 4.

None for Respondent No. 5.

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**CORAM : A. S. GADKARI AND
KAMAL KHATA, JJ.**

DATE : 14th October 2024.

PC:-

1) By the present Petition, the Petitioners have impugned Order dated 30th August, 2024 passed by Respondent No.-4 declaring the suit property as illegal construction and directing Respondent No.5 to demolish/pull it down within a period of seven days from the date of passing of the said Order.

2) Heard Mr. Kapse, learned Advocate for the Petitioners and Mr. Bodake, learned Advocate for Respondents Nos.1 to 4. Perused record produced before us.

3) It is an admitted fact on record that, the Petitioners are the tenants of Respondent No.5. Photocopies of receipts issued by Respondent No.5 indicating that, the Petitioners were/are his tenants are annexed to

the Petition. The relation between the Petitioners as tenants and Respondent No.5 as landlord is not the issue involved in the present Petition.

3.1) Record indicates that in furtherance of Order dated 30th August, 2024, the Corporation has demolished the suit structure. The Petitioners are also claiming a relief of reconstruction of the suit premises.

3.2) A bare perusal of impugned Order dated 30th August, 2024 clearly indicates that, the Petitioners were served with a notice dated 14th August, 2024 calling upon them to give their say as to why the suit structure be not demolished, and to attend the hearing before Respondent No.4. The said notice was issued in consonance with Section 260 of the Maharashtra Municipal Corporations Act, 1949.

3.3) The Respondent No.5, Petitioner No.1 and Petitioner No.10 had attended the said hearing. However, they did not produce any documents to substantiate their claim that the suit structure was legally erected by Respondent No.5. After hearing the said Petitioners, who according to us, were representatives of all the Petitioners, the Respondent No.4 has recorded its finding that the suit structure was illegally constructed by Respondent No.5 and directed to demolish it within seven days from the date of passing of such order. As noted earlier, as a matter of fact, as the Petitioners and/or Respondent No.5 did not pull down the illegal structure at their own cost, and therefore Respondent Nos.1 to 4 have demolished the

suit structure.

4) According to us, in law, the Petitioners have no better right than the landlord, as they were the tenants in the suit structure. It is needless to mention here that, the rights of the Petitioners as the tenants of Respondent No.5 are otherwise also protected under the prevalent law i.e. under the Maharashtra Rent Control Act, 1999. We are of the considered view that, the Petitioners cannot be permitted to immediately reconstruct the said structure which is already demolished by the Respondent Nos.1 to 4. That is the prerogative of the Landlord.

The co-ordinate Bench of this Court of which one of us (Kamal Khata, J.) was a member, in the case of *Anandrao G. Pawar vs. Municipal Corporation of Greater Mumbai and Others* (2023 SCC OnLine Bom 253) in paragraph No.15 has held as under:

“15. But we do not even need to go that distance. Let us take the case at its extremity, namely, that the building is in perfectly sound condition. The owner wishes to redevelop it. Can a tenant be then heard to say that the owner is precluded from undertaking a full-envelope redevelopment and from enjoying the benefits and fruits of ownership of that property just because a few tenants believe that it can be ‘repaired’? We believe the answer to this question in law, on facts and in equity, is firmly in the negative and against the tenants”

5) Thus the Landlord was entitled to demolish a building that was

in a perfectly sound condition as per Section 17 of the Maharashtra Rent Control Act, 1999. Thus the Petitioners cannot complain of the landlord's right to demolish. Although the contention of the Petitioner that the method adopted by the Landlord was not in accordance with law may have some merit.

6) The rights of the tenants are protected. In paragraph 11 of *Anandrao Pawar (supra)* the co-ordinate bench observed as under:

“11. If, however, the landlord of a tenanted building does absolutely nothing at all and allows it simply to go to ruin or even to collapse, the tenants are not without a remedy. This is provided in settled law. It is recognized by both the Rent Act and also the Mumbai MC Act as amended. We considered some of these perspectives with aspects in a recent judgment in Chandralok People Welfare Association v State of Maharashtra and Ors. We reproduce the relevant portion including the quotations of the applicable statutes and the necessary citations.

21. It is hardly contentious that ownership of a property necessarily entails a right to enjoy the benefits and fruits of development of that property. Nobody is denying Respondent No 6 these rights at all. But in law, and especially when there are tenants, these rights come with obligations. If we cast about to look for these obligations, we should find them in two places running in parallel. The first is of course under Section 17 of the Maharashtra Rent Control Act, 1999.

We notice this not because we proposed to fashion any order under that section; clearly, we cannot. We do so only to note that there is not, as the 6th Respondent implicitly suggests, an entire vacuum regarding the rights of tenants whose homes have been demolished, and specifically, their rights to have those homes rebuilt, reconstructed or included in a redevelopment. Section 17 of the Maharashtra Rent Control Act, 1999 reads as follows:

“17. Recovery of possession for repairs and re-entry—

(1) The court shall, when passing a decree on the ground specified in clause (h) of subsection (1) of section 16, ascertain from the tenant whether he elects to be placed in occupation of the premises or part thereof from which he is to be evicted and if the tenant so elects, shall record the fact of the election, in the decree and specify in the decree the date on or before which he shall deliver possession so as to enable the landlord to commence the work of repairs.

(2) If the tenant delivers possession on or before the date specified in the decree, the landlord shall, two months before the date on which the work of repairs is likely to be completed, give notice to the tenant of the date on which the said work shall be

completed. Within thirty days from the date of receipt of such notice the tenant shall intimate to the landlord his acceptance of the accommodation offered and deposit with the landlord rent for one month. If the tenant gives such intimation and makes the deposit, the landlord shall, on completion of the work of repairs, place the tenant in occupation of the premises or part thereof on the terms and conditions existing on the date of the passing of the decree for eviction. If the tenant fails to give such intimation and to make the deposit, the tenant's right to occupy the premises shall terminate.

(3) If, after the tenant has delivered possession on or before the date specified in the decree, the landlord fails to commence the work of repairs within one month of the specified date or fails to complete the work within a reasonable time or having completed the work fails to place the tenant in occupation of the premises in accordance with subsection (2) the court may, on the application of the tenant made within one year of the specified date, order the landlord to place him in occupation of the premises or part thereof on the terms and conditions

existing on the date of passing of the decree for eviction and on such order being made, the landlord and any person who may be in occupation shall give vacant possession to the tenant of the premises or part thereof.

(4) Any landlord who, when the tenant has vacated by the date specified in the decree, without reasonable excuse fails to commence the work of repairs and any landlord or other person in occupation of the premises who fails to comply with the order made by the court under sub-section (3), shall, on conviction, be punishable with imprisonment for a term which may extend to three months or with fine which may extend to one thousand rupees or with both.

(Emphasis added)”

7) Thus, in view of the aforesaid provisions of law, the tenant will have recourse against the Landlord in accordance with the Maharashtra Rent Control Act, 1999.

8) In view of the above, we find that there are no merits in the Petition and is accordingly dismissed.

(KAMAL KHATA, J.)

(A.S. GADKARI, J.)