

Ashwini

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 606 OF 2024

Christian Faith Centre ...Petitioner
Versus
Municipal Corporation of Greater Mumbai & Ors ...Respondents

Mr Arvind Tiwari, *with Atal Bihari Dubey & Rahul Mishra, for the*
Petitioner.

Mr Saket Mone, *with Amol K Tembe & Devansh Shah, i/b Vidhi*
Partners, for Respondent No. 3.

Mr Kunal Waghmare, *for the Respondent-MCGM.*

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CORAM G.S. Patel &
Kamal Khata, JJ.
DATED: 15th February 2024

PC:-

1. In our view, this Petition is thoroughly misconceived. The reasons are many.

2. To begin with, we are not even remotely satisfied that the Petitioner has the locus to maintain a Petition like this. It claims to be in occupation of premises in the Star View Cooperative Housing

Society Ltd. The question is whether the Petitioner is an occupant, tenant or owner of these premises.

3. Documents annexed to the Petition itself, particularly the share certificate of society at page 150, show that the premises in question are in the name of the South India Assemblies of God, Maharashtra District Council. It is therefore not possible to conclude that the Petitioner is the “owner of the premises”. The grievance of the Petitioner seems to be that the Petitioners occupancy is not being accepted but that it is only being shown in the name of South India Assemblies of God while a redevelopment proposal is being pursued.

4. The Petitioner also maintains that the structure in question is not liable to be brought down and is in a repairable condition. We have repeatedly held including in *Vadilal Kunwarji Gada & Ors v The Brihanmumbai Municipal Corporation & Ors*¹ that the entire purpose of setting up a Technical Advisory Committee (“TAC”) was not to open up a completely impermissible avenue of challenge by converting the Writ Court into a first appellate court sitting in appeal over findings of the TAC. It is equally not possible for a Writ Court to decide on the structural stability of buildings across the city. Indeed, the interim order that fashioned the TAC was itself criticized in the final disposal of that very Writ Petition.² We have visited this aspect of the matter in our order dated 12th September 2023 in *Andheri Purab Paschim Cooperative Housing Society Limited v*

1 2024:BHC-OS:1675-DB.

2 *Municipal Corpn. of Greater Mumbai v. State of Maharashtra*, 2018 SCC OnLine Bom 816

*Municipal Corporation of Greater Mumbai & Ors*³ and associated matters.

5. We have repeatedly held that tenancies are protected both under the Maharashtra Rent Control Act 1999 and under the Municipal Corporation of Greater Mumbai Act 1888 (“MCGM Act”). Occupancies are certainly protected under the MCGM Act even if the Rent Act does not apply to those.

6. We have also expressed doubts whether the rights of an owner of a property can be compromised by occupants in this fashion. Once there is a statutory protection to an occupancy right under the MCGM Act, then there is no basis for the apprehension that the demolition of the structure will result in an eradication of those occupancy rights.

7. But this is all predicated upon the Petitioner being able to establish rights over the premises in the first place. Conflicting claims are canvassed before us. On the one hand, it is being said that the Petitioner pays maintenance charges to the society. But at the same time the Petitioner is not a member of the society. The member is, as we have noted, the entity whose name is shown on the share certificate namely the South India Assemblies of God. Whether there is a fiduciary relationship between the Petitioner and the South India Assemblies of God is not a matter that we are called upon to determine in this Writ Petition.

3 2023 SCC OnLine Bom 2522 : (2023) 5 Bom CR 515 : 2023:BHC-OS:9825-DB.

8. The Petitioner's remedy lies elsewhere. The Writ Petition is rejected. Liberty to the Petitioner to adopt appropriate proceedings in a Court of competent jurisdiction. There will be no order as to costs.

(Kamal Khata, J)

(G. S. Patel, J)