

Sumedh

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 933 OF 2024**

Piyush Mistry & Ors

...Petitioners

Versus

The Municipal Corporation of Greater Mumbai
& Ors

...Respondents

Mr Sean Wassoodew, with Ashra Shah, for the Petitioner.

Mr Kunal Waghmare, for the Respondent-MCGM.

Mr Kaustubh Patil, for Respondents Nos 5 & 6.

**Mr Digambar Sonawane, Asst Engineer K/E Ward, B/F Dept-
Present.**

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

DATED: 12th March 2024

PC:-

1. We decline to get into disputed questions of fact with regard to the accuracy of an area statement of the sizes of the flats of individual occupancies that are claimed. That area statement was submitted by the developers to the Municipal Corporation of Greater Mumbai (“MCGM”) and has been verified by the MCGM. Mr Wassoodew states that the MCGM has merely rubber-stamped the developers’ area statement and that the Petitioners’ entitlement is considerably more than that stated in the area statement.

2. The developers' advocate states that the area statement is as per the sanctioned plans of 18th April 1968.

3. So far as Shop No 4 is concerned, the area statement shows a carpet area of 11 sq mts for Petitioner No 1. So far as Petitioner No 2 is concerned, the area is shown as 21.3 sq mts. So far as Petitioner No 3 is concerned, there is a dispute as to whether the 3rd Petitioner is or is not a tenant. There is also a dispute as to the occupation. The fact that the 3rd Petitioner was given a notice will not in a Writ Court be sufficient to establish occupancy. Between these three Petitioners, there is a muddling of parties and causes of action. Petitioner No 1 stands on a distinct footing from Petitioner No 2 and Petitioner No 3 certainly stands entirely on a completely different footing.

4. We decline to get into these questions of what are the actual areas to be certified on a per square foot or per inch basis. It is impossible for a writ court to engage in a determination of whether or not the 3rd Petitioner is a tenant (entirely the jurisdiction of another Court) or even an occupant, which would be within the remit of a Civil Court.

5. Again and again, we have these Petitions before us that demand that a writ court, with no regard at all to the limitations on the exercise of writ jurisdiction, should get into technical questions of structural stability, should substitute a judicial opinion for a technical finding by the Technical Advisory Committee ("TAC"), or should actually sit in appeal over the recommendations and

findings of the TAC. We have very recently dealt with this branch of the law in our judgment dated 5th March 2024 in *Sakharam Shankar Navasare & Ors v State of Maharashtra & Ors*¹ concerning the TAC and the guidelines of the MCGM in that regard.

6. The area statement is taken on record and marked 'X' for identification.

7. We reject the Petition.

8. It is open to the Petitioners to adopt such proceedings in a court of competent jurisdiction as the Petitioners may be advised for any remaining relief.

9. The Petitioners must vacate their respective premises. We grant them time until 19th April 2024 to do so. We accept the undertaking that they will not seek an extension of time. If in the meantime, there is any untoward incident given the structural condition of the building, this will be at the sole risk, responsibility and liability of these three Petitioners.

(Kamal Khata, J)

(G. S. Patel, J)

1 Order dated 5th March 2024, 2024:BHC-AS:11329-DB.