

Shephali

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 4042 OF 2022**

Uvesh Imtiyaz Pothiyawala ...Petitioner
Versus
Executive Engineer, Building Proposal (City) 1 & ...Respondents
Ors

**Mr Ram Upadhyay, with Anuj Pande & Dhiraj Dubey, i/b Law
Competere Consultus, for the Petitioner.**
Mr Vinay Nair, i/b Arun Panickar, for Respondent No. 7.
**Mr Milind More, Addl GP, with Uma Palsuledesai, AGP, for the
Respondent-State.**
Mr Kunal Waghmare, for the Respondent-MCGM.
Mr Dhiraj Karande, AE, B/F 'D' Ward, Present in Court.
Mr Uvesh Imtiyaz Pothiyawala, Petitioner appears through VC.

**CORAM G.S. Patel &
 Kamal Khata, JJ.**
DATED: 28th February 2024

PC:-

1. On 16th February 2024, we noted that Writ Petition (L) No. 20867 of 2022 was still on a lodging number and we said that it had to be finally numbered by 26th February 2024, failing which, it would stand summarily rejected and all ad-interim orders will stand vacated.

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2. Our records show, and we have checked it personally, that the office noted the filling defects as long ago as 2nd July 2022. This means that for nearly two years this Petitioner has done nothing to remove office objections but has simply continued an ad-interim order.

3. Following our order of 16th February 2024, Writ Petition (L) No. 20867 of 2022 stood disposed of as rejected on 26th February 2024 and the ad interim orders in that pending Petition stood vacated.

4. It is the present 7th Respondent Fairdeal Construction that was the Petitioner in the disposed of Writ Petition No. (L) 20867 of 2022.

5. The present Petition is utterly without substance. On the face of it, the relief sought in this Petition cannot be granted. There are allegations that there are illegal works carried out by the 7th Respondent and the Municipal Corporation of Greater Mumbai (“MCGM”) is ignoring these. There are allegations that the MCGM has collusively granted permissions to the 7th Respondent. There are allegations that the MCGM has admitted these illegalities in Advocates’ correspondence or in legal notices. The body of the Petition is replete with allegations of fraud and collusion (for example paragraph 9 at page 7).

6. In response to our query, counsel for the Petitioners was not able to identify a single specific violation. Just because the Petitioner makes allegations does not mean that these are matters of

undisputed facts in a Writ Court. If the Petitioner desires, the Petitioner may adopt civil proceedings. This is complete answer to the unnecessary question posed by counsel to the Bench “Where should the Petitioner go?”

7. The reliefs sought in prayer clauses (a), (b), (c) (d) and (e) of the Petition at pages 15 and 16 run like this:

“(a) This Hon’ble Court be pleased to direct the Respondents to immediately demolish all the illegal work and account for huge loss to Government, Flat owners etc.

(b) This Hon’ble Court be pleased to appoint team of the honest officers/Architect of good repute to inspect the building Ocean – 360 located at Walkeshwar, ban ganga road, Mumbai: – 400006 and submit their report before this Hon’ble court verifying the illegalities as set out herein.

(c) This Hon’ble Court be pleased to direct the Respondent no. 5 to invoke above Bank Guarantee and recover Rs. 1.65 crores due to non-compliance of the Terms of the Bank Guarantee.

(d) This Hon’ble Court be pleased to call upon the Respondent no. 7 to indemnify the BMC and Flat purchasers i.e. victims to compensate in accordance with last para of the undertaking and indemnity Bond.

(e) This Hon’ble Court be pleased to restrain the Respondent no. 7 from selling, transferring, creating third party rights in respect of Flats to any other person as majority of Flats are in the name of Partners and their relatives or friends and such transfer to any other person, if not restrained, shall result into fraud upon the gullible person.”

8. On the face of it none of these reliefs can be granted in a writ petition. We do not grant reliefs in generalities asking the MCGM to demolish “all illegal work and account for huge loss to Government”. There is no question of asking the MCGM to inspect the building. This is a fishing enquiry. Prayer clauses (c) and (d) are monetary claims. Prayer clause (e) is essentially a disputed question of fact.

9. The Petition is rejected. There will be no order as to costs.

(Kamal Khata, J)

(G. S. Patel, J)