

Wadhwa

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 801 OF 2024

Abhishek Anand Chavan & Anr ...Petitioners
Versus
Municipal Corporation of Greater Mumbai & Ors ...Respondents

WITH
WRIT PETITION NO. 2260 OF 2024
WITH
INTERIM APPLICATION (L) NO. 23377 OF 2023
IN
WRIT PETITION NO. 2260 OF 2024

Ashok Sohanlal Jain ...Petitioner
Versus
The Municipal Corporation of Greater Mumbai ...Respondent

Mr Simil Purohit, *with Arshil Shah, i/b Parisha Shah, for the
Petitioner in WP/2260/2024.*

Dr Uday Warunjikar, *with Jenish Jain, for the Petitioner in
WP/801/2024.*

Ms Purnima Kantharia, *with Kunal Waghmare, i/b Sunil Sonawane,
for Respondent-BMC in WP/801/2024.*

Ms Pooja Yadav, *i/b Sunil Sonawane, for the Respondent-BMC in
WP/2260/2024.*

Mr Krishnaji Parab, *AE TP, G/South Ward, Officer present in
Court.*

Mr Ganesh Borbat, *AECBF, G/South, Ward-Officer present in*

Court.

**CORAM M.S. Karnik &
 Kamal Khata, JJ.**
DATED: 8th May 2024

PC:-

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1. The Petitioner by this Petition is seeking a direction to the Respondent-Corporation to decide the Petitioner's application for transfer of tenancy in respect of the subject property. An Affidavit has been filed by the Respondent-Corporation. Learned counsel for the Petitioner submits that he will be satisfied if the Petitioner's application for transfer of tenancy is decided by the Corporation on its own merits and in accordance with law after hearing the Petitioner.

2. Accordingly, the Petition is disposed of by directing the Respondent-Corporation to decide the Petitioner's application for transfer of tenancy in respect of the said property within eight weeks from the date this order placed for the consideration before the Assistant Commissioner of Municipal Corporation, G South, after hearing the Petitioner.

3. So far as the notice issued under Section 351A as mentioned in the order dated 24th August 2023 passed by this Court is concerned, it is open for the Petitioner to challenge the said notice by resorting to appropriate proceedings before the competent Civil

Court. For a period of four weeks from today, to enable the Petitioner to take steps to challenge the notice under Section 351(1) (A) dated 23rd August 2023, the interim protection granted to the Petitioner by the order dated 24th August 2023 passed by this Court is continued.

4. The competent Civil Court shall decide the challenge to notice under Section 351(1)(a) of the Mumbai Municipal Corporation Act, 1888 on its own merits and in accordance with law without being influenced by the observations made by this Court. Application for interim reliefs be considered on its own merits. All contentions kept open.

5. Petition is disposed of. No costs.

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6. Heard the learned counsel for the Petitioner and the learned counsel for the Respondent-Corporation. We have perused the Affidavit filed by the Respondent-Corporation and also perused the order dated 13th June 2023 passed by this Court.

7. Mr Warunjikar's grievance is that the Corporation is proceeding only against some of the structures. Having perused the Affidavit in Reply dated 1st September 2023 filed by the Respondent-Corporation and the notice under Section 488 of the Municipal Corporation Act, we find that the Corporation has initiated action against all the structures which are subject matter of the Petition.

8. The learned counsel for the Corporation submits that the notice dated 3rd August 2023 and the action which has been initiated will be taken to its logical conclusion in accordance with law. In such view of the matter the reliefs prayed for in the Petition are worked out.

9. Learned counsel Mr Warunjikar submitted that the Corporation be directed to take steps to ensure that there is no encroachment on the plot no. 1049, TP No. 4, Mahim. Learned counsel for the Corporation, on instructions, assures this Court that every possible endeavour will be made to ensure that there are no encroachments on the municipal property which is the subject matter of the Petition.

10. In view of this assurance, the Petition is disposed of.

(Kamal Khata, J)

(M. S. Karnik, J)