

Wadhwa

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 3622 OF 2023**

Chetankumar Khimji Momaya ...Petitioner
Versus
State of Maharashtra & Ors ...Respondents

Mr Vivek Sharma, with Bocarro, Tushar Momaiyah, for the Petitioner.
Mr Jagdish Reddy, for Respondent Nos 2, 3 & 4.
Mr Mayur Khandeparkar, with Ashwini Sawant, for Respondent No 12.
Ms Pooja Yadav, for the Respondent-MCGM.
Ms Vaishali Chaudhari, Addl GP with Ms Uma Palsuledesai, AGP, for the Respondent-State.
Mr Bhatekar, Tehsildar Mulund-Present.

**CORAM G.S. Patel &
 Kamal Khata, JJ.**
DATED: 13th March 2024

PC:-

1. The Petition appears us to be overly ambitious. It is true that Respondent No 12 had endeavoured an equally misconceived Testamentary Revocation Petition. Respondent No 12 is a proposed co-operative Society. It has no caveatable interest in the estate of the Petitioner's deceased ancestor. In any case, there is a dispute about whether there is any title that vests in the Petitioner and whether

the Petitioner is indeed an heir of the original owner/holder of the land.

2. What Mr Sharma for the Petitioner seeks is a direction to the Respondents to grant permission to the Petitioner to develop and construct on the property. We cannot issue any such mandamus directing an authority to grant permission.

3. The second mandamus sought is against the Respondents to furnish all necessary documents so that the Petitioner can develop the property. Mr Sharma clarifies that what he really seeks is that his client's application for an entry of the client's name on the relevant Land Revenue Record and Property Register Card should be directed to be accepted.

4. Even that direction is not possible if there is indeed a dispute as to whether or not title has passed to and currently vests in the Petitioner.

5. These are not matters that we can possibly decide in a Writ Petition.

6. To end the controversy, a very brief consideration of the Petition will suffice.

7. The averments from paragraph 2 to paragraph 6 are where the Petitioner sets out how the Petitioner has allegedly come to inherit an interest in the property. The dispute by Respondent No 12

society is in fact noted in paragraph 7 of the Petition itself. That is not the only objection. The several oppositions to the Petitioner's claim are apparent from paragraphs 8, 9 and 10. Then in paragraph 11, the Petitioner claims that there was some political influence used. This is nothing but an allegation of *mala fides*. That again cannot be the subject matter of a writ proceeding. The remaining paragraphs also show that there are disputed questions of fact in regard to ownership, development, vesting of rights and so on.

8. It is not possible to grant the Petitioner any relief. The Petition is rejected.

9. We note and accept the statement made by Respondent No 12 that it will make the necessary application for withdrawal of the revocation Petition before the learned single Judge.

(Kamal Khata, J)

(G. S. Patel, J)