

Amol

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 4041 OF 2022**

Vasant Shamji Kenia

...Petitioner

Versus

The Mumbai Municipal Corporation & Ors

...Respondents

WITH

INTERIM APPLICATION (L) 29193 OF 2023

WITH

INTERIM APPLICATION (L) 29182 OF 2023

WITH

INTERIM APPLICATION (L) 29117 OF 2023

WITH

INTERIM APPLICATION (L) 29109 OF 2023

WITH

INTERIM APPLICATION (L) 29107 OF 2023

WITH

INTERIM APPLICATION (L) 23349 OF 2023

IN

WRIT PETITION NO. 4041 OF 2022

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**Mr Mayur Khandeparkar, with Deepa Pohuja, Asfiya Cutchi &
Sarjot Singh, i/b J Law Associates, for the Petitioner.**

**Mr VT Dubey, i/b VT Dubey & Associates, for the Applicants in all
IAs.**

Ms Rupali Adhate, for the Respondent-MCGM.

**CORAM G.S. Patel &
 Kamal Khata, JJ.
DATED: 20th February 2024**

PC:-

1. The Writ Petition was the subject matter of the following order dated 9th August 2023.

“1. Heard.

2. The grievance of the petitioner is that there are certain stall holders who are erecting sign boards, which are called as stall boards in the petition in such a manner as to block the window of the premises of the petitioner who is owner of the land and structure in question and who is running restaurant from one portion of the structure and this is resulting in complete blockage of air and light to the premises of the petitioner.

3. Learned counsel for the petitioner points out that on earlier occasion of the petitioner had approached this Court by filing a Writ Petition No. 2565 of 2018 claiming same relief against the stall holders and it was granted by this Court on 22nd June 2018 when this Court disposed of the petition with detailed directions to the Corporation. She submits that these directions, *inter alia*, required the Corporation to take notices dated 19th June 2018 issued under section 351 of the Mumbai Municipal Corporation Act, 1888 to their logical end.

4. Learned counsel for the petitioner further submits that thereafter, Corporation filed an affidavit of compliance but, the compliance was only of temporary nature as thereafter all the stall holders once again erected the stall

boards of the size which were beyond permissible limit and it again resulted in blockage of ventilation and air to premises of the petitioner. Learned counsel for the petitioner further submits that stall holders are repeatedly committing the violation and officers of the Corporation are not taking any effective action against them.

5. Learned counsel for the Corporation seeks time to obtain instructions in the matter. Meanwhile, we direct the Corporation to prepare squad of the officers and its employees for verifying the claim of the petitioner and if it is found by the squad that the claim of the petitioner is true, the squad shall take immediate action against the violators, in accordance with law and for that purpose, if required police assistance shall be sought by the squad. We also direct the Corporation to consider cancellation of the license of the stall holders permanently, if they are found to be repeat violators of law. Detailed affidavit in this regard shall be placed on record by the Corporation on or before the next date.

6. Stand over to 7th September, 2023.”

2. Mr Khandeparkar for the Petitioner submits that following the directions in paragraph 5 of that order, the Petition is now infructuous.

3. There are several Interim Applications. These claim that the order of 9th August 2023 was limited to certain sign boards but in the guise of that order entire premises had been removed. The interim applicants claim that they are tenants of the Petitioner.

4. A claim of tenancy cannot be adjudicated in our writ jurisdiction. It most certainly cannot be taken up in an Interim Application in a Writ Petition.

5. In any case, paragraphs 13 to 18 of the Petition will show what the concern was and what the focus of the Division Bench was on 9th August 2023. The complaint was not of tenancies. It could not have been. The complaint was in regard to encroachments on a municipal road. It was also a complaint of encroachments not only on the Station Road but also on a municipal gutter. The submission is that all these are unauthorized extensions or encroachments. In fact, Mr Khandeparkar submits that once these were removed, they have immediately come back in a very short time. This is a repeated phenomenon that we notice in this city again and again.

6. It is not possible for us to determine questions of tenancy or the areas of tenancy or what portions of that tenancy are or are not authorized in a Writ Petition. If there is indeed a tenant, her or his remedies lie elsewhere. Now that the Petitioner has no complaint about removal of the unauthorized encroachments pursuant to paragraph 5 of the order of 9th August 2023, we permit the Petition to be withdrawn.

7. The Petition is disposed of in these terms.

8. In view of this, all pending Interim Applications are disposed of as infructuous.

9. In the facts and circumstances of the case, there will be no order as to costs.

10. The remedies of the interim applicants for appropriate proceedings are kept open.

(Kamal Khata, J)

(G. S. Patel, J)