

Wadhwa

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**  
**ORDINARY ORIGINAL CIVIL JURISDICTION**  
**WRIT PETITION NO. 2460 OF 2022**  
**WITH**  
**CONTEMPT PETITION (L) NO. 19786 OF 2022**  
**IN**  
**WRIT PETITION NO. 2460 OF 2022**  
**WITH**  
**WRIT PETITION NO. 217 OF 2023**

Khimjibhai Harjivanbhai Patadia ...Petitioner  
*Versus*  
State of Maharashtra & Ors ...Respondents

**Mr Ramchandra Narayanrao Kachare**, *for the Petitioner in both the Writ Petitions.*

**Ms Rita Joshi, AGP**, *for the Respondent-State.*

**Mr Kunal Waghmare**, *for the Respondent-BMC.*

**Mr Mayur Khandeparkar**, *with Ms Dhawani Bokaria & Amita Jasani, i/b M/s Purnanand & Associates, for Respondent No 4 in both the Writ Petitions.*

**CORAM    G.S. Patel &**  
**Kamal Khata, JJ.**  
**DATED:    22nd April 2024**

**PC:-**

1.     The Petitioner claims to be the tenant of a Bungalow at SV Road, Kandivli since 26th July 1995. He says that the 4th Respondent added by amendment is or claims to be the landlord

having taken the property from *the heirs of the* original landlord, Smt Niranjaniben Bubna. The tenant cannot dispute the title of the landlord and especially not if there is a proper attornment. The landlord has filed an eviction suit against the Petitioner which is pending. Now the Petitioner apprehends that the bungalow will be brought down because it is said to be dilapidated or in need of reconstruction and that with this bringing down the Petitioner's tenancy will be lost. There is no substance to this submission or apprehension at all. Under the Rent Act, under the Mumbai Municipal Corporation Act, 1888 and under a series of judgments **first of the Supreme Court<sup>1</sup> and then of a Division Bench of the High Court,<sup>2</sup>** it has been held clearly that a tenancy is not extinguished because the building is brought down for redevelopment or reconstruction.

2. This is the only basis on which the Petitioner obtained an ad interim order on 7th March 2019. The Petition remained on a lodging number for a long time thereafter and has never been moved. The prayers in the Petition are that a notice under Section 53(1) of the Maharashtra Regional and Town Planning Act, 1966 ("**MRTP Act**") be quashed and that in the meantime this be stayed. The only basis for this relief is an allegation that the notice is issued *mala fide* at the instance of the 4th Respondent developer. The apprehension repeated again and again is that the Petitioner will lose

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1 *Shaha Ratanshi Khimji & Sons v Kumbhar Sons Hotel Pvt Ltd & Ors* (2014) 14 SCC 1.

2 *Chandralok People Welfare Association v State of Maharashtra and Ors* 2023 SCC OnLine Bom 2300.

his tenancy. There is no substance to this submission at all for the reason that we have already noted.

3. Mr Khandeparkar on behalf of the owner points out that in 2021 a structural audit report said that the building was in Category C-2A. With the passage of time, it has deteriorated and it is now classified as C-1. Another report obtained by the owner shows that it is now a C-1 category building, i.e., dilapidated and dangerous. Obviously, the Technical Advisory Committee (“TAC”) will need to consider the matter. If therefore the building has to be brought down this will have to be in accordance with law following the established procedure. We make it clear that we are not directing on our own the demolition or pulling down of the building. We are only holding that there is no ground made out for the grant of relief.

4. The second Petition challenges a subsequent notice under Section 53 of the MRTP Act.

5. Both Petitions are rejected.

6. All previous ad interim orders stand vacated.

7. Contempt Petition does not survive, hence dismissed accordingly.

**(Kamal Khata, J)**

**(G. S. Patel, J)**

Note : This order is modified as per order dated 25<sup>th</sup> April 2024. The corrections are shown in bold, italics and underline.