

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 6636 OF 2024

Anandji Padamshi Shah Deleted Since Decd
& Ors.

...Petitioners

Versus

Gorakh Liladhar Patil & Anr.

...Respondents

Mr. Jaydeep Deo, a/w Onkar Gawade, for the Petitioners.

Mr. Harvinder Toor, for Respondent Nos.2(a) to 2(f).

CORAM: N. J. JAMADAR, J.

DATED: 3rd SEPTEMBER, 2025

Oral Order:-

1. Heard the learned Counsel for the parties.
2. The challenge in this petition is to a judgment and order dated 21st February, 2025 passed by the Appellate Bench of the Court of Small Causes in Misc. Appeal No.360 of 2015, whereby the appeal preferred by the petitioners against an order dated 14th July, 2015 passed by the Trial Court on an application for temporary injunction (Exhibit-41) came to be dismissed by affirming the order passed by the Trial Court.
3. The petitioners instituted the suit seeking a declaration that the petitioners were lawful tenants in respect of the suit premises consisting of a shop admeasuring 281 sq. ft., a tin

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shed godown admeasuring 321 sq. ft. and open space admeasuring 365 sq. ft. abutting thereto and upto the Street, at Prabhadevi Road, Dadar, Mumbai ("the suit premises").

4. Defendant No.1 landlord controverted the claim of the petitioners that, they were the tenants in respect of the tin shed godown and the open space. The petitioners were stated to be tenant in respect of the shop premises admeasuring 481 sq. ft. only.

5. In the said suit, the petitioners had filed an application for temporary injunction (Exhibit-9). Initially by an order dated 15th November, 2013 *status quo* was ordered to be maintained. It is the claim of the petitioners that on 25th November, 2013 the petitioners were illegally dispossessed of the tin shed godown and appurtenant open space. Therefore, the petitioners filed another application (Exhibit-41) seeking interim injunction in myriad forms with regard to the tin shed godown and appurtenant land.

6. The Trial Court found that, the petitioners were not in possession of the tin shed godown and the open space. The Trial Court took it into account the report of the Court Commissioner, who had visited the suit premises on 27th November, 2013, a couple of days after the petitioners were

allegedly dispossessed in pursuance of a notice issued by the Bombay Municipal Corporation under Section 351A of the Mumbai Municipal Corporation Act, 1888.

7. The petitioners preferred an appeal before the Appellate Bench. By the impugned order, the appeal also came to be dismissed.

8. Mr. Deo, the learned Counsel for the petitioners, submitted that, the petitioners were in possession of the tin shed godown and the only access to the said tin shed was through the open space. The petitioners were illegally dispossessed of the godown during pending of the suit by the defendants in a high handed manner and in collusion with the officers of the Mumbai Municipal Corporation. Therefore, the courts below were in error in not granting injunctive reliefs to the petitioners.

9. Mt. Toor, the learned Counsel for respondent Nos.2(a) to 2(f), supported the impugned order. It was submitted that the courts below have recorded categorical findings that the petitioners were not in possession of the tin shed godown and the open space. Therefore, in exercise of the supervisory jurisdiction no interference is warranted with such concurrent finding of facts.

10. I have perused the material on record. From the bare perusal of the very prayers in the application (Exhibit-41), it becomes abundantly clear that, the petitioners had not been in the possession of the tin shed godown and the open space. Though the reliefs claimed therein are couched as prohibitory reliefs, yet, in essence, the reliefs partake the character of mandatory injunction. The Appellate Court has, in terms, recorded that, the rent receipt and the certificate issued under the Shops and Establishments Act, refers to only the shop premises; which is indisputably in the possession of the petitioners. No other material was placed on the record of the Court to demonstrate that, the petitioners had not been in possession of the tin shed godown and open space.

11. The submission of Mr. Deo that, the petitioners were illegally dispossessed while the *status quo* was in operation does not carry the matter any further. The trial Court has rightly recorded that what was the *status quo* as of the date of the said order was then not ascertained. Therefore, the order of *status quo* cannot be construed as establishing the fact that the petitioners were in the possession of the tin shed godown and the open space.

12. In the face of the material on record, the *prima facie* findings recorded by the Trial Court and affirmed by the Appellate Court appear to be justified. In exercise of the supervisory jurisdiction this Court is not expected to reappraise the material on record and take a different view on facts. Since the Appellate Court has recorded a categorical finding that the plaintiffs failed to establish their possession over the tin shed godown and the appurtenant open space, the exercise of discretion by the courts below cannot be faulted at. Resultantly, the petition does not deserve to be entertained.

13. The petition stands dismissed.

14. It is clarified that the aforesaid observations are confined to examine the legality, propriety and correctness of the impugned order and the Trial Court shall not be influenced by any of the observations made in this order and the order impugned in this petition, while finally adjudicating the suit.

15. All contentions of all the parties are kept open for consideration at the time of the final adjudication of the suit.

16. The trial court is requested to make an endeavour to decide the suit as expeditiously as possible.

[N. J. JAMADAR, J.]