**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**
**CIVIL APPELLATE JURISDICTION**

**WRIT PETITION NO.12668 OF 2024**

Bombay Gowrakshak Mandali,
a Public Charitable Trust, through its
Trustees Haridas Tricumdas Kapadia & Ors. … Petitioners

versus

Municipal Corporation of Brihan
Mumbai and Anr. … Respondents

Mr. Karl Tamboly with Mr. Naozad Golwalla, Mr. Aayush Barat i/by Mr. Mahernosh Humranwala, for Petitioner.
Mr. Som Sinha, Ms. Divya Vishwanath, Mr. Santosh Mali, for Respondent No.1.
Mr. Hamid Mulla, AGP for Respondent No.2.

**CORAM: N.J.JAMADAR, J.**

**DATE : 24 JUNE 2025**

**P.C.**

1. Heard the learned Counsel for the parties.

2. This Petition under Article 227 of the Constitution of India, assails the legality, propriety and correctness of a judgment and order dated 12 June 2024 passed by the Appellate Bench of the Court of Small Causes at Mumbai in Misc. Appeal No.14 of 2024, whereby the Appeal preferred by the Petitioner - Appellant against the order dated 12 February 2024 in T.E.Suit No.101 of 2013 passed by the Trial Court, came to be dismissed affirming the said order rejecting the application preferred by the Petitioner to restrain the Defendant

from carrying out the work of demolition and/or construction and/or reconstruction over the premises bearing CTS No.66 situated at Akurli Road, Kandivali (E), Mumbai (the suit premises).

3. Under an agreement dated 30 August 1956, Bombay Gowrakshak Mandali (the Trust) of which the Petitioners are the trustees, agreed to lease the suit premises i.e. then Plot Nos.15, 15A and 16, Survey No.55, Hissa No.1 admeasuring 5907 sq. yards to Kandivali District Municipality, the predecessor of the Respondent – Corporation. The term of lease was to be 99 years commencing from 15 June 1950. The ground rent was to be paid @ Rs.500/- per year. In Clause 6 of the said agreement, the lessee were entitled to erect a permanent structure (pucca building) for office or for shop or residential premises or for other municipal purposes. The agreement was acted upon, though a registered lease deed was not executed.

4. The Respondent – Corporation erected a structure on the suit premises. In the year 2018, the Respondent – Corporation sought no objection from the Trust to carry out redevelopment. Correspondence ensued. It is the claim of the Respondent – Corporation that the Trust declined to give NOC. Yet, the Respondent went ahead with the demolition of the existing structure and started to erect multi-storied structure on the suit premises. The Petitioners terminated the lease agreement and instituted a suit before the Court of Small Causes seeking to regain the possession of the

suit premises and an order to remove the structures standing on the suit premises and also to permanently restrain the Respondent – Corporation from carrying out the work of demolition and/or reconstruction of any structure on the suit premises without the written permission of the Trust.

5. In the said suit, the Petitioners filed an application for temporary injunction. By an order dated 12 February 2024, learned Judge was persuaded to reject the application. Being aggrieved, the Petitioners preferred an appeal before the Appellate Bench. By the impugned judgment and order, the appeal also came to be dismissed.

6. Mr. Tamboly, learned Counsel for the Petitioners, would submit that the Trial Court as well as the Appellate Bench were swayed by the element of balance of convenience predominantly, without considering the pivotal question as to whether the Respondent had right to carry out construction over the suit premises without the permission of the Trust, who is indisputably the owner of the suit premises.

7. Mr. Tamboly made an endeavour to urge that under the terms of the purported agreement dated 30 August 1956, right to construct a building was circumscribed by the limit of 1/3rd area of the suit premises. Conscious of the said limitation on the right of the Municipal Corporation and the restrictions on development under Regulation 33(20) of the Development Control Regulations 2034, the Respondent had repetitively sought no objection of the

Trust for carrying out redevelopment. Despite categorical refusal of permission by the Trust, the Respondent brazenly went ahead with the demolition of the existing structure and construction of new building. In the circumstances of the case, the fact that the construction is almost complete, according to Mr. Tamboly, does not tilt the scale of balance of convenience in favour of the Corporation, as in the first place, the Respondent has no right to carry out construction without the permission of the Trust. Therefore, even at this stage, appropriate injunctive reliefs can be granted to the Petitioners.

8. Evidently, the Trial Court as well as the Appellate Court have recorded concurrent finding of facts that the Plaintiffs failed to make out a prima facie case and the balance of convenience overwhelmingly tilted in favour of the Respondent. This Court in exercise of supervisory jurisdiction is not expected to appreciate the material afresh as an Appellate Court would do. This Court would be justified in interfering with the impugned order if it appears that the courts below have committed either jurisdictional error or a patent error in law.

9. Prima facie, the submission of Mr. Tamboli that there are restrictions on the development of the suit premises under the terms of the lease agreement does not appear sustainable. The material on record unmistakably indicates that the parties have regulated their action premised on the jural relationship of lessor and lessee for over 60 years. The Trust has accepted rent from the

Respondent – Corporation as late as the year 2018. The endeavour of the Petitioners to question the said jural relationship, prima facie, does not merit acceptance, at this stage.

10. On the aspect of the restrictions in the matter of construction also, the terms of the agreement appear to be, prima facie, explicitly clear. Clause 6 of the Agreement deserves to be extracted. It reads as under :

> "6. The Lessees shall erect at their own cost a pucca building for office or for ship or residential purposes or for other Municipal purposes on one-third area of the said plot or on such area as is permissible under the rules of the Municipality and the Government. The value of such structures so erected shall not be less than Rs.10,000/- (Ten Thousand)."

11. On a correct reading of the aforesaid clause, it appears that the lessee was given a right to erect permanent structure for any purposes on 1/3rd area of the suit premises or on such area as was permissible under the Municipal Rules. With the enhancement in the ratio of developable area under the prevalent DCR, the lessee has prima facie right to erect the construction to the extent permissible thereunder and the limit of 1/3 of the area of the suit premises does not operate.

12. Reliance on the correspondence which ensued between the parties in the wake of the proposed development by the Respondent, does not advance

the cause of the Petitioners. The fact that the Respondent sought no objection of the lessor for the redevelopoment does not detract materially from the right which accrued to the lessee under the said agreement. Reliance on the provisions of DCR 2034 is also of no assistance to the Petitioners as the rights of the Respondent emanate from the said agreement. Therefore, the thrust of the submission of Mr. Tamboly that the Respondent has no right to carry out construction over the suit premises, without the permission of the Trust, cannot be countenanced.

13. Incontrovertibly, the Respondent – Corporation had erected the superstructure, which was demolished. The Plaintiffs, thus, could not have sought injunctive reliefs on the premise that the Respondent was allegedly illegally demolishing the superstructure.

14. In any event, developments in the intervening period, firmly tilt the balance of convenience in favour of the Respondent - Corporation. The construction is almost complete. The Respondent – Corporation proposes to house its conservancy workers in the buildings constructed on the suit premises. Any injunctive reliefs, at this stage, would cause irreparable loss to the Respondent – Corporation. Therefore, no interference is warranted with the impugned orders in exercise of supervisory jurisdiction.

15. The Writ Petition stands dismissed.

16. It is, however, clarified that the Respondent – Corporation shall not be

entitled to claim any equities in case it is held that the Respondent – Corporation could not have carried out development over the suit premises.

**( N.J.JAMADAR, J. )**