

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

WRIT PETITION NO.4540 OF 2024

Ajit K. Dharia,	]	
Senior Citizen, Indian Inhabitant,	]	
Having address at Block No.3,	]	
Suman Niwas, Roshan Nagar,	]	
Chandavarkar Lane, Borivali (West),	]	
Mumbai – 400092.	]	
Presently residing at Flat No.B/410,	]	
B wing, 4 th Floor, Ramdev Park,	]	
Chandavarkar Lane, Borivali (West),	]	
Mumbai – 400092.	]	...Petitioner.

V/s.

- | | | |
|----|--------------------------------------|---|
| 1. | Mumbai Municipal Corporation |] |
| | For Greater Mumbai, |] |
| | Having Office at Mahalika Bhavan |] |
| | Mahapalika Marg, Fort, Mumbai-01. |] |
| 2. | Brihanmumbai Municipal Corporation, |] |
| | Dy. Ch.Eng.B.P (W.S)-II, |] |
| | ‘C’ Wing, 2 nd floor, |] |
| | Municipal office Bldg., |] |
| | Near Sanskruti Complex, |] |
| | Thakur Complex, Kandivali (E), |] |
| | Mumbai – 400101. |] |
| 3. | Assistant Engineer, (BMC) |] |
| | Building & Factory II (Ad/C), |] |
| | R/Central Ward, |] |
| | Borivali, Mumbai. |] |
| 4. | Smile Shelters, |] |
| | A partnership firm, duly registered |] |
| | Having it's office at 1902, Krishna |] |
| | Heritage tower, Near Link Road, |] |
| | Borivali (West), Mumbai – 400092. |] |
| 5. | Rashmi Ramesh Mhatre, |] |
| | Adult, of Mumbai, Indian Inhabitant, |] |

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|----|---------------------------------------|---|-----------------|
| | Residing at 502, New Shilpa Terrace |] | |
| | Kastur Park, Shimpoli, |] | |
| | Borivali (West), Mumbai – 400 092. |] | |
| 6. | Akshay Prabhakar Mhatre, |] | |
| | Adult, of Mumbai, Indian Inhabitant, |] | |
| | Residing at 202, Yamuna, Mansarovar |] | |
| | Park, Near Birla College, Kalyan (W), |] | |
| | Dist: Thane – 421301. |] | |
| 7. | Shalaka Kishore Paitil nee |] | |
| | Shalaka Prabhakar Mhatre, |] | |
| | Adult, of Mumbai, Indian Inhabitant, |] | |
| | Residing at Samadhan Bungalow, |] | |
| | Near Dali Hanuman Mandir |] | |
| | Taluka: Alibaug, Dist-Raigad-402201. |] | ... Respondents |

Mr. Hitesh C. Soni a/w. Adv. Vaishali Soni i/by Adv. Hitesh Soni and Associates for the Petitioner.

Ms. Rupali Adhate for Respondent Nos.1 to 3-BMC.

Mr. Kavyal Prafulla Shah a/w. Adv. Tejas K. Sanghrajka (VC) for Respondent No.4.

Mr. Amol Metkar, Sub.Engg. BP R/N. Ward, present.

**CORAM : A. S. GADKARI AND
KAMAL KHATA, JJ.**

RESERVED ON : 23rd April, 2025.

PRONOUNCED ON : 20th June, 2025.

Judgment (Per : Kamal Khata, J) :-

1) By this Petition under Article 226 of the Constitution of India, the Petitioner a tenant, seeks a writ of mandamus directing the Respondent No.1 Corporation to set aside the Occupancy Certificate (OC) issued in favour of the Respondent No.4-developer, who constructed a new building on the said property. The reliefs sought do not end there. He also seeks that,

the Brihanmumbai Municipal Corporation ('BMC') should be directed to take possession of the flat reserved by the landlord for him and hand over the same to him. As a final plea, he also seeks a direction against the landlord to execute an Agreement on the same terms and conditions as done with the other tenants.

2) The Petitioner is a tenant of Room No.3 in the building known as Suman Niwas situated at Roshan Nagar, Chandavarkar Lane, Borivali (West), Mumbai 400092.

3) The rights and entitlement of a tenant under redevelopment of a tenanted structure are well protected. Section 499 of the Mumbai Municipal Corporation Act, 1888 as well as the Section 17 of Maharashtra Rent Control Act, 1999 and the recent Judgments in the case of *Chandralok People Welfare Association vs. State of Maharashtra & Ors.* reported in 2023 SCC OnLine Bom 2300 and *Anandrao G. Pawar vs. Municipal Corporation of Greater Mumbai and Ors.* reported in 2023 SCC OnLine Bom 2534 have elucidated the rights of the tenants.

4) In our view, the Petition is not maintainable. This litigation for the Petitioner is like buying a lottery ticket that, if luck favours, might bring a windfall (even though illegitimate) but would cost no more than the expenses of litigation. This Petition is nothing else but a sophisticated form of extortion from the landlord or developer as observed by this Court in the case of *Khimjibhai Harjivanbhai Patadia v Municipal Corporation of Greater*

Mumbai & Ors reported in *2024 SCC OnLine Bom 3709*. The tenant cannot dictate terms to the landlord.

5) On the other hand, the landlord is duty bound to enter into an Agreement with the Petitioner on the same terms and conditions as that of the other tenants. If this is not done, then the tenant has his remedy before the jurisdictional Civil Court as this is a civil dispute which must undergo a trial and cannot be decided in our jurisdiction under Article 226 of the Constitution of India. This is now settled, as can be seen from the decision of the Hon'ble Supreme Court in the case of *Shalini Shyam Shetty & Anr. v/s. Rajendra Shankar Patil* reported in *(2010) 8 SCC 239*.

6) In view of the above, the Petition deserves to be dismissed and is accordingly dismissed with costs of Rs.1,00,000/- to be payable by the Petitioner to the Armed Forces Battle Casualties Welfare Fund, within a period of four weeks from the date of uploading of the present judgement on the official website of the High Court of Bombay.

7) Details of the bank account for payment of costs are as under: -

Account Name : Armed Forces Battle Casualties Welfare Fund.

Account Number : 90552010165915

Bank Name : Canara Bank

Branch : South Block, Defence Headquarters,
New Delhi – 110011

IFSC Code : CNRB0019055

8) The Learned AGP must intimate about this Order imposing costs by email, sms or WhatsApp to the Authorised Officer of the Armed Forces Battle Casualties Welfare Fund.

8.1) If the Petitioner fails to deposit the said cost within the stipulated period as noted hereinabove, the Authorised Officer of the Armed Forces Battle Casualties Welfare Fund shall intimate the learned AGP by email or otherwise about the breach, who on such intimation, shall file an application before this Court for execution of the present Order and for recovery of the said amount.

9) Petition is dismissed in aforesaid terms.

(KAMAL KHATA, J.)

(A.S. GADKARI, J.)