

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

WRIT PETITION NO.1612 OF 2024

- | | | | |
|----|--------------------------------------|---|-----------------|
| 1. | Om Vishwashanti CHS (Proposed), |] | |
| | Through his Chief promoter |] | |
| | Sadhashiv Nanekar, having his |] | |
| | address at Nevatia Municipal Colony, |] | |
| | Nevatia Road, Malad (East), |] | |
| | Mumbai 400 097. |] | |
| 2. | Okhawala Shelter, Builders & |] | |
| | Developers, having its office at |] | |
| | 402, Morya Land Mark II, |] | |
| | New Link Road, Andheri West, |] | |
| | Mumbai 400 053. |] | ...Petitioners. |

V/s.

- | | | | |
|----|---|---|--|
| 1. | Mumbai Municipal Corporation |] | |
| | Through Municipal Commissioner, |] | |
| | Head office, Mahalika Bhavan |] | |
| | Mahapalika Marg, Opp. CSMT, |] | |
| | Mumbai – 400 001 |] | |
| 2. | Executive Engineer (D.P), |] | |
| | P & R Ward, Municipal Head Office, |] | |
| | Mahapalika Marg, Fort, |] | |
| | Mumbai – 400 001. |] | |
| 3. | Slum Rehabilitation Authority, |] | |
| | Administrative Building, Anant |] | |
| | Kanekar Marg, D. Block, BKC, |] | |
| | Naupada, Bandra East, |] | |
| | Mumbai – 400 051. |] | |
| 4. | The Additional Municipal Commissioner, |] | |
| | BMC Western Suburbs, |] | |
| | Brihanmumbai Mahanagarpalika, |] | |
| | Municipal Head Office, Annexe Building, |] | |
| | 2 nd Floor, Mahapalika Marg, Fort, |] | |
| | Mumbai – 400 001. |] | |

5. The Assistant Municipal Commissioner,]
P/North Ward & Competent Authority,]
Near Liberty Garden, Mamletdarwadi]
Marg, Malad – West, Mumbai – 400 064.] ... Respondents

Mr. Yash Tiwari for the Petitioners.

Dr. Milind Sathe, Senior Advocate a/w. Adv. Joel Carlos, Adv. S.V. Tondwalkar i/by Adv. Komal Punjabi for Respondent Nos.1, 2, 4 & 5-BMC.

Mr. Jagdish G. Aradwad (Reddy) for Respondent No.3-SRA.

Mr. Rohan Kharat, Asst. Engg. (Main) P/N Ward, BMC, present.

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

RESERVED ON : 2nd May, 2025.

PRONOUNCED ON : 20th June, 2025.

Judgment (Per : Kamal Khata, J) :-

- 1) By this Petition under Article 226 of Constitution of India, the
Petitioners seek the following prayers:

“(b) That by a writ of mandamus, writ in the nature of mandamus or any other writ, order and direction, the Order dated 10th January 2024 passed by the Respondent No. 4, copy of which is at Exhibit ‘Q’ to this petition may kindly be quashed and set aside and by the same order the Respondent Nos. 1, 2, 4 and 5 may kindly be directed to sanction the building proposal submitted by the Petitioners on 8th January 2024 and permit the petitioners to commence and complete the construction of the building in accordance with that proposal.

(c) By a suitable order interim effect, operation and implementation of the Order dated 10 January 2024, copy of which is at Exhibit ‘Q’ to the petition may be kindly stayed during the pendency of this petition.

2) We heard Mr. Yash Tiwari, learned Advocate for the Petitioners, Dr. Milind Sathe, learned senior counsel for the Respondent Nos.1, 2, 4 and 5-BMC and Mr. Jagdish Aradwad Advocate for the Respondent No.3-Slum Rehabilitation Authority ('SRA') and perused the papers.

3) A bare perusal of the Order dated 10th January 2024 demonstrates that it is well-structured and reasoned and does not exhibit any bias or perversity. The Respondents have followed the due process of hearing the parties and thereafter has terminated the developer i.e. Respondent No.2.

4) Upon hearing Mr. Tiwari and perusing the Petition, we enquired how the Petition was maintainable. The learned Advocate was unable to demonstrate any right that the slum society or, worse still, even the Petitioner No.2-developer possessed under Article 14 of the Constitution of India to file the Petition.

5) Having examined the papers on record, we find that the grounds raised would require detailed examination of the parties' claims which are essentially in the nature of a private dispute. The disputed issues concerning the planning and design of the building, specifically how the building should or should not be structured, are not the issues to be decided within the jurisdiction of this Court under Article 226 of the Constitution of India. Such matters squarely fall within the realm of the Brihanmumbai Municipal Corporation (BMC). Likewise, the developer's contentions regarding deviations in the plans due to the floor plate or the size of the

plot cannot be adjudicated by this Court.

5.1) Furthermore, the slum society has no right to select or determine the developer, which is a prerogative of the BMC in consultation with the Slum Rehabilitation Authority (SRA).

6) It would be appropriate to observe that, the slum colonies are creations of slumlords and a direct result of the State's inaction through its Municipal Corporation and the police, who bear principal responsibility for their removal as stated by the Single Bench of this Court in *Reverend Father, Peter Paul Fernandes, Parish Priest and Sole Trustee of the Church of St. Francis Xavier vs. State of Maharashtra* reported in *AIR 1991 Bom 445*, *Abdul Majid Vakil Ahmad Patvekari vs. Slum Rehabilitation Authority* reported in *2021 SCC OnLine Bom 13719*, *Abdul Aziz vs. AGRC* reported in *2024 SCC OnLine Bom 744* and *Bishop John Rodrigues vs. State of Maharashtra & Ors* reported in *2024 SCC OnLine Bom 1632*.

7) Would we be justified in granting this Petition and permitting these squatters or slum dwellers, who are ex facie illegal occupants and who have no lawful entitlement to the land in the first place, to dictate the choice of their developer and impose terms on the State? The answer is an emphatic negative.

8) We therefore find that, this Petition is a guise filed by the developer himself under the cover of the slum dwellers designed solely to continue his appointment. It is evident that, this is in essence a private

dispute. The real motive behind filing this Writ Petition is to circumvent the appropriate legal remedy of filing a civil suit for termination of the contract, which is a private dispute at its core.

9) We find no justification to interfere with the decision of the Respondents. Accordingly, the Petition is dismissed.

(KAMAL KHATA, J.)

(A.S. GADKARI, J.)