

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION (LODGING) NO.5557 OF 2023

Sakinabi Mohamed Ashiq & Ors. .. Petitioners

V/s.

Brihanmumbai Municipal Corporation & Ors. .. Respondents

- Ms. Panthy Desai i/b. Mr. M.P. Vashi & Associates, for the Petitioners.
- Mr. Kunal Waghmare, for Respondent Nos.1 & 2-MCGM.
- Mr. Ketan Joshi a/w. Mr. Mahesh Mishra i/b. Zakir Basha, for Respondent Nos.3 & 4.

**CORAM : A. S. CHANDURKAR &
ABHAY S. WAGHWASE, JJ.**

DATE : 1st MARCH, 2023.

P.C. :

1. In this writ petition, the challenge has been raised to the orders dated 21.03.2018 and 28.03.2018 issued under Section 55 of the Maharashtra Regional and Town Planning Act, 1966 (for short "the act of 1966). The petitioners had referred Long Cause Suit No.1471 of 2001 seeking a declaration that they were in settled possession of the respective shop premises and had sought perpetual injunction to be issued against

the Municipal Corporation from evicting them without due process of law. The aforesaid civil suit was decided on 10.07.2009 and it came to be dismissed. The aforesaid judgment was the subject matter of challenge in First Appeal No.1196/2009. An interim order was passed in the said First Appeal on 28.05.2018 directing the Municipal Corporation not to take any coercive steps in that regard. The said First Appeal, however, has been disposed of by the learned Single Judge on 27.02.2023 by holding that as notice under Section 55 of the Act of 1966 came to be issued to the appellants therein, the Municipal Corporation had followed the due process of law.

2. Learned counsel for the petitioners submits that insofar as prayer Clause (a) in the Civil Suit is concerned, the petitioners seek to invoke remedy of seeking review of the order dated 27.02.2023 passed in First Appeal No.1196/2009. Vide prayer clause (a), the petitioners have sought a declaration that they are in settled possession of the shops in question. It would be open for the present petitioners to adopt such course, if so advised.

3. To enable consideration of the challenge to the notice issued under Section 55 of the Act of 1966, issue notice to the respondents, returnable on **23rd March, 2023**.

4. Learned AGP waives service of notice for Respondent Nos.1 & 3-State and learned counsel Mr. Ketan Joshi waives service of notice for Respondent Nos.3 & 4. Since there was an interim direction operating in the First Appeal dated 28.05.2018, it is directed that no coercive steps be taken pursuant to the orders dated 21.03.2018 and 28.03.2018 till the returnable date.

5. Stand over to **23rd March, 2023.**

[ABHAY S. WAGHWASE, J.]

[A. S. CHANDURKAR, J.]