

*Sharayu Khot.*

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

**WRIT PETITION (L) NO. 2715 OF 2018**

**Vayu Co-operative Housing Society Ltd.      ...Petitioners  
& Anr.**

*Versus*

**The Commissioner                                      ...Respondents  
The Municipal Corporation of Greater  
Mumbai & Ors.**

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Mr. Venkatesh Dhond, Senior Counsel, Mr. Akshay Korse Patil,  
a/w Mr. Amol Borase, i/by Pragnya Legal, for the Petitioners.

Ms. Geeta Joglekar, for the Respondents No. 1 to 5-BMC.

Mr. A.G. Damle, Senior Counsel, a/w Mr. Amol Mhatre, Mr.  
Vipul Shukla, i/by Mr. Jayesh R. Vyas, for the Respondent No. 6.

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**CORAM : ABHAY S. OKA AND  
RIYAZ I. CHAGLA, JJ.**

**DATE : 16 August 2018**

**ORDER :**

1. Not on board. Taken on board.

2. Heard the learned Senior Counsel appearing for the Petitioners, the learned Counsel appearing for the 1st to 5th Respondents and the learned Senior Counsel appearing for the 6th Respondent.

3. According to the case of the Petitioners, the 6th Respondent has illegally encroached upon FSI free common areas by enclosing the entrance lobby on the ground floor of 'B' Wing of the subject building. It is alleged that the 6th Respondent wants to start a nursing home. The contention of the learned Counsel appearing for the 1st to 5th Respondents is that the report of the inspection carried out by the Municipal Officers on 6th August 2018 shows that the Petitioners have made unauthorized construction of MS gate in the compulsory open space as a result of which the Officers could not enter into the premises occupied by the 6th Respondent. The material placed on record by the learned Counsel appearing for the 1st to 5th Respondents shows that on 8th August 2018, a notice under Section 55 of the Maharashtra Regional and Town Planning Act,

1966 has been issued to the Petitioners as regards unauthorised construction of the gate.

4. The learned Senior Counsel appearing for the Petitioners states that whenever the Municipal Officers desire to visit the premises of the 6th Respondent, the Petitioners will ensure that the gates are open so that the Municipal Officers can enter the property.

5. The learned Counsel appearing for the 6th Respondent states that there is no illegality committed by the 6th Respondent and in fact, there is an occupation certificate granted. He states that in fact, the Petitioners are preventing the entry of the 6th Respondent in her own premises.

6. The learned Counsel appearing for the 1st to 5th Respondents states that on instructions of Shri. Kirankumar Annamwar, Designated Officer-II, G/N Ward, who is personally present in the Court that the Municipal Officers will visit the

premises of the 6th Respondent on Monday, i.e. 20th August 2018 at 11.00 a.m. with a view to verify whether any illegality as alleged has been committed by the 6th Respondent. The learned Senior Counsel appearing for the Petitioners on instructions states that on Monday i.e. 20th August 2018 at 11.00 a.m., the Petitioners will ensure that the Municipal Officers are able to enter the property and inspect the premises of the 6th Respondent.

7. The Petitioners and the 6th Respondent shall be entitled to remain present at the time of inspection taken by the Municipal Officers. The Petitioners and the 6th Respondent shall co-operate with the Municipal Officers to enable the Municipal Officer to take inspection of the premises in possession of the 6th Respondent.

8. After carrying out the inspection as aforesaid, a Reply shall be filed along with a copy of the inspection report, Panchanama and sketch, if any, drawn at the time of inspection.

9. Place the Petition under the caption of “Fresh Admission” on 28th August 2018.

10. If any illegal construction has been made by the Petitioners and the 6th Respondent, the Municipal Corporation is free to take action in accordance with law.

11. A Copy of this order will not be immediately available. As this order is dictated in the open Court, the parties are bound to implement the said order, even if a copy of this order is not available.

**[RIYAZ I. CHAGLA J.]**

**[ABHAY S. OKA, J.]**