

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

WRIT PETITION NO.11374 OF 2014

Ashok Kumar Bansilal Sharma

.. Petitioner

Versus

Solapur Municipal Corporation and another

.. Respondents

Shri. Surel S. Shah, for the Petitioner.

Shri. Samir Kumbhakoni, for the Respondents.

CORAM : R.M. SAVANT, J.

DATE : 04th MARCH, 2015

PC.

1. The Writ Jurisdiction of this Court is invoked against the order dated 20th November, 2014 passed by the Learned Adhoc District Judge-2, Solapur, by which order the Misc. Civil Appeal No.221 of 2014 came to be dismissed and resultantly, the order dated 28.10.2014 rejecting the application Exh.5 in Regular Civil Suit No.695 of 2010 came to be confirmed. Hence, there is a concurrent finding recorded by the Courts below as regards the Petitioner's entitlement to the discretionary relief of temporary injunction.

2. The cause of action for filing the suit in question is the notice issued under Section 478 of the Maharashtra Municipal Corporation Act,

1949 on 03.09.2010 which notice was in respect of the alleged unauthorized construction carried out by the Petitioner in the matter of enclosing the open space in front of his shops. By the said notice the Petitioner/original Plaintiff was informed that he should remove the said construction within 24 hours, failing which the Defendant Corporation will remove the same at the cost of the Plaintiff. It is the case of the Plaintiff that he has purchased the open space in front of the shop along with the shop and that he has been given possession of the said front portion by the builder who has developed the property. In the said suit the Plaintiff filed an application for temporary injunction Exh.5 for restraining the Defendant Corporation from taking action pursuant to the said notice. To the said suit and application Exh.5 the Defendant filed its written statement and reply to the application. It is the case of the Defendant Corporation that the builder has not obtained any permission for enclosing the open space in front of the shops. It was the case of the Defendant that the construction of wall and putting up grill and a gate therein amounts to development and therefore, the permission for the same should have been obtained from the Defendant Corporation. In view of the fact that permission was not obtained, the said development is illegal and therefore, the Defendant Corporation was required to issue the notice. The Trial Court considered the said application and in view of the fact that

there was no material placed on record by the Plaintiff as regards permission being obtained for construction of a three feet wall for enclosing the front open space, the Trial Court came to a conclusion that discretion could not be exercised in favour of the Plaintiff and accordingly, rejected the application Exh.5.

3. The Plaintiff carried the matter in Appeal by way of Misc. Civil Appeal No.221 of 2014. The Lower Appellate Court did not deem it appropriate to interfere with the order passed by the Trial Court. The Lower Appellate Court has observed that the open space is the common area available to the shops and that the Plaintiff was not the owner and in exclusive possession of the said common area in front of his shops. The Lower Appellate Court also perused the sanctioned plan of the structure in question and observed that the said portion is marked as open and nowhere it is shown that there is a 3 ft. wall demarcating the said passage. As indicated above, the Lower Appellate Court reiterated the findings of the Trial Court and accordingly dismissed the Appeal. In the light of the concurrent orders passed by the Courts below, there is no merit in the above Petition. No case for interference in the Writ Jurisdiction of this Court is made out. The Writ Petition is accordingly dismissed. Needless to say that the observations in the impugned order as also the instant order are only for the consideration of the application for temporary injunction.

The suit shall be tried on its own merits and in accordance with law. At this stage, the Learned Counsel for the Petitioner seeks continuation of the ad-interim order dated 9th December, 2014 passed in the above Petition. In the facts of the instant case, where prima-facie it is found that the construction is illegal, the said prayer is rejected.

[R.M. SAVANT, J]