

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.5365 OF 2015

[Abhishek Sheth .vs. The State of Maharashtra and others]

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Ms. Jyoti Chavan, Advocate for the petitioner,
Mr. C.G. Gamekar, Advocate for respondent no.5,
Mr. K.P. Anilkumar, Advocate for respondent nos.7 to 10.

**CORAM : NARESH H. PATIL &
S.B. SHUKRE, JJ.**

DATE : AUGUST 05, 2015.

PC :

Heard.

The petitioner raises issues in respect of alleged illegal construction made by respondent nos.7 to 10 herein. Admittedly, the petitioner is adjacent plot owner of respondent nos.7 to 10.

It is submitted by the learned counsel for the petitioner that respondent nos.7 to 10 had constructed upper floor of the building against the building construction permission which was granted by the corporation. They have violated mandatory conditions and, therefore, unauthorized construction deserves to be demolished. It is further submitted that respondent nos.7 to 10 are encroaching upon the petitioner's land. There is a dispute in respect of boundary between the petitioner and respondent nos.7 to 10.

During the course of hearing, it was submitted

that RCS No.156/2011 filed by the petitioner against respondents nos.7 to 10 is pending in the court of Civil Judge, Senior Division, Alibag. In the said suit, the petitioner has prayed for injunction against the respondents prohibiting them to construct in the suit premises. Learned counsel for the petitioner submits that the representation has been made to the State Government that due to agreement executed between respondent nos.7 to 10 and 11, State is suffering revenue loss.

Respondent nos.7 to 10 had filed affidavit-in-reply. They have disputed the contentions raised by the petitioner. Learned counsel for the respondents submits that the petitioner is adjacent plot holder. The suit has already been filed and is pending in the court of Civil Judge, Senior Division, Alibag against the respondents.

Learned counsel appearing on behalf of the Municipal Council submits that pursuant to order passed by the High Court, at page 32, in Writ Petition Nos.9665/2012, 10268/2012, dated 26.3.2015, the subject site was surveyed and the construction was regularized.

We have perused the record. A copy of order passed by the Civil Court below Exh.5 in R.C.S. No.156/2011 is placed before us today. Para 3 and 4 of the said order reads as under :

“Defendants are having no any right, title or interest with the suit properties which belong to plaintiffs. Defendants have contravened the terms and conditions imposed by the Alibag Municipal Council and taking undue advantage of the fact that plaintiffs are residing at Mumbai, encroached upon the suit properties by raising the compound wall and construction. Plaintiffs got their

properties measured from T.I.L.R. Alibag in which it revealed that encroachment to the extent of 50 sq. mtrs. was done by the defendants from the northern side of C.T.S 588. Inspite of plaintiffs request, defendants continued the construction up to second floor.

Defendants failed to get their plots measured before raising the construction so also failed to observe the terms and conditions imposed by the Alibag Municipal Council. In view of the complaint regarding violation of terms and conditions, stop work notice was issued by the Alibag Municipal Council to them, in spite of same they have raised construction. If the construction work is not stopped, in that event plaintiffs will suffer irreparable loss which cannot be compensated in terms of money, therefore, they prayed that temporary injunction restraining defendants, their servants, agents, relatives from raising further construction till the final decision of the suit.”

We find that in respect of the subject property, a suit has already been filed by the petitioner which is pending consideration of the Civil Court. The issue raised in this petition relates to alleged illegal construction on upper floor of the same building. This issue could also be raised by the petitioner in the pending suit. Determination of such issue would require investigation and inquiry, leading of evidence as regards alleged illegal construction beyond the permissible limits and alleged encroachment on the petitioner's property.

It is submitted by the learned counsel for the petitioner that as regards payment of deficit stamp duty, representation has been made by the petitioner to the Sub-Registrar, Alibag. Without expressing any opinion, we

observe that the petitioner may pursue the representation made with appropriate authority.

We are, therefore, of the view that all these issues could be raised by the petitioner in the suit which is pending. In this view of the matter, no interference is warranted in writ jurisdiction. All the issues on merits are kept open. It is clarified that we do not express any opinion on merits of the issues. Writ Petition is disposed of.

[S.B. SHUKRE, J.]

[NARESH H. PATIL, J.]