

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

WRIT PETITION (STAMP) NO.23711 OF 2015

Mr. Khanavkar Dilip Manohar

.. Petitioner

Versus

Chief Controller of Authorized Construction

CIDCO Ltd.

.. Respondent

Shri. Uday P. Warunjikar, for the Petitioner.

CORAM : R.M. SAVANT, J.

DATE : 2nd SEPTEMBER, 2015

PC.

1. There is a concurrent finding recorded against the Petitioner as regards his entitlement for the discretionary relief of temporary injunction. Both the Courts below on the basis of the material on record have come to a conclusion that discretion cannot be exercised in favour of the Petitioner. The Petitioner is the original Plaintiff who has filed the suit in question being Regular Civil Suit No.632 of 2012 challenging a notice under Section 54(1) of the MRTP Act, which alleges unauthorized construction of two houses being carried out by the Petitioner. The said notice was challenged by the Petitioner by filing the suit in question being Regular Civil Suit No.632 of 2012. In view of the apprehended action of demolition, the Plaintiff filed an application for temporary injunction numbered as Exh.5. The Planning Authority i.e. Chief Controller of

Authorized Construction CIDCO who had issued the notice filed his Written Statement-cum-reply to the application for injunction Exh.5. In the said reply contention was taken that since the suit challenges a notice under Section 54(1) of the said Act in view of the Section 149 of the said Act, the suit as filed is not maintainable. The CIDCO also took a stand that the benefit of the Government Resolution in respect of the encroachment made by the persons who are project affected and which is within the periphery of 200 meters of the Gaothan cannot be extended to the Petitioner in view of the fact that the Petitioner has constructed the houses illegally after the cut-off date i.e. 01.05.2007. The said application for temporary injunction was considered by the Trial Court and the Trial Court rejected the same by its order dated 15.03.2013. The Trial Court upheld the contention raised on behalf of the Defendant CIDCO that the suit as filed was not maintainable and that the construction having been carried out illegally by the Petitioner/Plaintiff.

2. The Petitioner aggrieved by the said order dated 15.03.2013 filed an Appeal being Civil Misc. Appeal No.31 of 2013. The Lower Appellate Court by relying upon the judgments which are an exposition as regards the bar of jurisdiction contained in Section 149 of the said Act did not find any reason to interfere with the order passed by the Trial Court.

3. It is the submission of the Learned Counsel appearing for the

Petitioner Shri. Uday P. Warunjikar that in terms of the policy decision of the CIDCO as contained in the Board Resolution dated 03.10.2008 which has been approved by the Resolution of the State Government, the structure is regularizable and therefore the said aspect has not been taken into consideration by the Courts below whilst adjudicating the application for temporary injunction. The Learned Counsel seeks to place reliance on the certificates issued by the Gram Panchayat Kalamboli. In one of the certificates it has been mentioned that the construction has been carried out by the Petitioner prior to 01.05.2007. The said certificate has been issued on 13.03.2012 certifying that the construction has been carried out prior to 01.05.2007. This Court does not wish to delve upon the said aspect but suffice it would be to state that the Gram Panchayat has by the said two certificates which have been issued in the year 2013 has mentioned that the construction has been carried out prior to 01.05.2007. In any event, this Court is of the view that whether the structure in question is regularizable, is not a relevant consideration in so far as the grant of temporary injunction in respect of unauthorized construction is concerned. In the light of the concurrent orders passed by the Courts below, no case for interference in the Writ Jurisdiction of this Court is made out. The Writ Petition is accordingly dismissed.

[R.M. SAVANT, J]