

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**APPELLATE SIDE CIVIL JURISDICTION****WRIT PETITION NO. 9585 OF 2011**

Shivshankar Shardaprasad Pathak and anr.Petitioners

Vs.

The State Government of Maharashtra and 2 ors.Respondents.

Mr. H. R. Sharma for the Petitioners.

Ms. S.S. Bhende, AGP for the Respondent No.1.

Mr. Atul G. Damle, Senior Advocate with Mr. Sandeep Aole i/by Vidhi Partners for the Respondent No.2.

**CORAM : SMT. VASANTI A. NAIK AND
C.V. BHADANG, JJ.**

DATE : 19.01.2015

PC.:-

By this Petition, the Petitioners seek a direction to the Respondent No.3 to obtain proper permission and sanction plan for the construction of the building known as "Madhu Industrial Estate". The Petitioners seek a direction to the Respondent No.3 to hand over the ownership of the gala to the Petitioners. The Petitioners also seek a direction to the Respondent Nos. 1 and 2, the Corporation authorities, to take stern action against the Respondent No.3 for making illegal construction on the site in question.

The Petitioners claim to be the tenants of one gala/room in the chawl on old survey No.55. The Respondent No.3 is the owner of the land and

had executed Memorandum of Understanding (MOU) with the Petitioners and the other tenants of the property. It is stated that the Respondent No.3-owner has not acted in terms of the MOU and though a building has been constructed by the Respondent No.3 in violation of the Development Control Regulations and the sanctioned plan, the Respondent Nos. 1 and 2-authorities are not taking any action against the Respondent No.3.

The prayers made by the Petitioners in prayer clauses (a) and (b) cannot be considered in exercise of the jurisdiction under Article 226 of the Constitution. The dispute is between the Petitioner-alleged tenant and the Respondent No.3-owner of the property. If there is any breach of the undertaking, the Petitioners have other remedies.

In regard to the prayer for a direction to the Respondent Nos. 1 and 2 to take action against the Respondent No.3, it would be necessary to consider the reply filed on behalf of the Corporation. It appears from the reply filed by the Corporation that no building is constructed on survey No.204, old survey No.55, i.e. the site in question. It is stated that the plot of land is completely vacant and no construction of any nature exists on the plot. The Petitioners have disputed this position and it is the case of the Petitioners that indeed some construction is made by the Respondent No.3 on the plot in question and it would be necessary for the authorities to take action against the Respondent No.3. Since the fact of making of the construction is asserted by the Petitioner and disputed by the Respondent

Nos. 1 and 2, it would not be possible for this court to decide the issue in exercise of the writ jurisdiction, specially when both the parties have tendered some documents to substantiate the statements.

In view of the aforesaid, we dismiss the writ petition with no order as to costs. However, the points raised in the writ petition are kept open.

(C.V. BHADANG, J.)

(VASANTI A. NAIK, J.)