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

WRIT PETITION NO.346 OF 2006

Mukund Nagar Satyam Co-operative Housing Society Ltd.	... Petitioner
Vs.	
The Municipal Corporation of Greater Mumbai and Ors.	... Respondents

None for the Petitioner.

Mr. Vinod Mahadik, for the Respondent No.1 - BMC.

Ms. Geeta Shastri, Additional Government Pleader, for Respondent Nos.2 and 3.

Mr. A.M. Kulkarni, for Respondent No.4.

**CORAM : A.S. OKA &
A.K. MENON, JJ.**

DATE : 11th MARCH, 2015

PC.

. This Petition was called out on two occasions for final hearing. However, none appears for the Petitioner. Counsel for the Respondents are present.

2. The Petitioner claims to be a Society registered under the Maharashtra Co-operative Societies Act, 1960. The dispute raised in this Petition is as regards the open space admeasuring 130' feet x 150' feet which according to the Petitioner is reserved as a recreation ground.

The contention is that on the said plot which is allegedly reserved for recreation ground, a permanent structure admeasuring 1200 square feet consisting of a ground plus one upper floor, a R.C.C. stage and office has been constructed. It is stated that in the building a gymnasium is being run. The substantive prayer in this Petition is for enjoining the first to third Respondents to demolish the construction done on the recreation ground forming a part of the land bearing City Survey No.181 (part) at Dambar Compound, Mukund Nagar, Dharavi (E) Mumbai. The allegation is that the construction has been carried out at the instance of the fourth Respondent who is an elected Councillor of the first Respondent – Municipal Corporation.

3. There is an affidavit filed by Shri A.H.A.R. Shaikh, Sub-Engineer of the first Respondent – Municipal Corporation. In paragraph 4 of the said affidavit, it is stated that the land in question belongs to the first Respondent – Municipal Corporation. It is stated that the gymnasium and R.C.C. stage have been constructed under the Municipal grant (unforeseen works) of the first Respondent – Municipal Corporation. It is stated that the proposal was moved by the fourth Respondent who is a local Councillor. The said proposal was approved on 30th September, 1999 by the Deputy Municipal Commissioner. It is further stated that the said land is in a residential zone. Lastly, it is

stated that the Petitioner had filed a Suit in the City Civil Court at Mumbai. In an Appeal preferred against the interim order passed in the said Suit, this Court directed the Municipal Corporation to conduct investigation about the offending construction and to submit a report to the City Civil Court. It is stated that a report was submitted to the City Civil Court and thereafter, the Suit was dismissed on 2nd December, 2005. There is also an affidavit filed by the fourth Respondent. He has stated that gymnasium and the R.C.C. stage is owned by the first Respondent which is constructed for the benefit of the residents of the locality. He has stated that he is not personally interested in the construction.

4. Considering the statements made in the affidavits referred to above, no case is made out for interference in the writ jurisdiction inasmuch as the structures have been constructed by the Municipal Corporation and the same are in possession of the Municipal Corporation.

5. Subject to what is observed above, the Petition is rejected. Rule is discharged with no orders as to costs.

(A.K. MENON, J)

(A.S. OKA, J)