

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

WRIT PETITION NO. 2640 OF 2014

Solanki & Associates

... Petitioner

v/s

State of Maharashtra & ors.

... Respondents

Mr.Chirag Balsara i/by Maneksha & Sethana for the petitioner.

Mr.R.J. Mane, A.G.P for the respondent No.1 State.

Ms.Shobha Ajithkumar for the Resp. Nos.2 and 3.

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

DATED : 2ND MARCH, 2015

P.C.:

Heard.

By this petition, the petitioner/developer seeks a direction to the respondent No.3 Corporation to initiate proceedings under Section 351 of the Mumbai Municipal Corporation Act in respect of the illegal structures shown in the plan annexed to the petition and marked as Exh.'A'.

According to the petitioner/developer, some of the residents of the building on the adjoining plot have extended the balconies

beyond the building line and the said illegal construction causes obstruction to the construction of the building on the adjoining plot. It is stated that, though the petitioner had made various representations to the Corporation seeking action under the provisions of Section 351 of the Act against the illegal extensions, the respondent No.3 Corporation has not initiated any action till date. The learned counsel for the petitioner has relied on the affidavit in reply filed on behalf of the respondent No.4 Society in which the flats with illegal construction are located, to contend that there is an admission in regard to the illegal extension of the balconies beyond the building line.

On hearing the learned counsel for the parties and on a perusal of the writ petition as also the affidavit in reply filed on behalf of the respondent No.4, on which great reliance has been placed by the learned counsel for the petitioner for seeking the relief, it appears that the prayer made in the writ petition cannot be granted. It appears from the affidavit in reply filed on behalf of the respondent No.4 that serious allegations are made therein against the petitioner/developer. It is stated in the affidavit in reply filed on behalf of the respondent No.4, that the illegal extension in the flats was done between 1993 to 1997 under the supervision and guidance of the respondent No.5 Co-operative Society and the petitioner himself. It is stated that the petitioner/developer in connivance with the respondent No.5 Society constructed two illegal transit camps over the area of the respondent No.4 Society.

It is stated that the illegal constructions were made by the petitioner/developer himself in connivance with the respondent No.5. It is thus clear from the reading of the affidavit in reply filed on behalf of the respondent No.4 on which the petitioner has placed great reliance that the petitioner/developer was mainly responsible for making the illegal construction. The petitioner has filed the rejoinder that the petitioner was not responsible for the illegal extension as he had completed the construction of the building in the year 2005. We would not permit the petitioner to blow hot and cold by partly relying on the affidavit of the respondent No.4 and asking the Court to discard the part of it which disproves the case of the petitioner. In any case, since disputed questions of facts cannot be determined in writ jurisdiction, we dismiss the writ petition, specially when the petitioner is trying to take advantage of his own wrong.

In the result, the writ petition is dismissed with costs.

(C. V. BHADANG, J.)

(VASANTI A. NAIK, J.)