

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

7 WRIT PETITION NO. 5862 OF 2015
WITH CA/10562/2016 IN WP/5862/2015

MAHENDRA KANHAIYALAL JAIN
VERSUS
THE MUNICIPAL CORPORATION, JALGAON AND OTHERS

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Advocate for Petitioner : Mr. Sant Kishor C.
AGP for Respondents State: Mrs. P. V. Diggikar
Advocate for Respondents 1 and 2 : Mr. Shrikant S. Patil
Advocate for Respondent No.4 : Mr. S. P. Brahme h/for Mr. M.
V. Navandar
Advocate for the applicant in CA/10562/2016: Mr. G. R. Syed

**CORAM : S. V. GANGAPURWALA &
K. L. WADANE, JJ.**

DATE : 14th December, 2016

ORDER:

1. The petitioner who has invoked the jurisdiction of this Court under Article 226 of the Constitution of India, assails the construction carried out by respondent No.4. In fact he is a stranger to the said construction. The petitioner is no way concerned with the property over which the construction is carried out by respondent no.4. Even the property of the petitioner is not abutting to or adjacent to the construction carried out by respondent No.4.

2. Mr.Sant, the learned counsel for the petitioner submits that respondent No.4 and respondent Nos. 1 and 2 were duty bound to comply with the building bylaws.

Respondent No.4, without obtaining any legal and valid construction permission, carried out the construction. In 2014, the grievance was made by the petitioner that the construction carried out by respondent No.4 is illegal. This Court, in Writ petition bearing No. 5853/2014 directed the Corporation to complete enquiry within a period of 12 weeks and to take appropriate action, if warranted, after extending an opportunity of hearing to all concerned. 21 points were raised by the petitioner in the enquiry that was conducted. No satisfactory reply was given. The Authorities, on the contrary, were expecting that respondent no.4 would file an application seeking permission for construction of second floor. Even no finding was given about the parking space not being left so also the margin space of 3 meters was not being left by respondent No.4. The authorities, when had come to the conclusion that respondent No. 4 had not given any application for construction permission for the second floor, ought to have taken action. However, the authorities were waiting for respondent No.4 to file an application seeking permission. The said act of the authorities have to be deprecated. In fact, during the pendency of the present writ petition and when the cognizance

was taken by this Court, respondent No.4 moved an application seeking construction permission for the second floor and with a jet speed, the same was granted by the authority. In fact, the same amounts to contempt of the orders of this Court. When this Court was seized with the matter, the authorities could not have permitted or regularized the illegal construction of respondent No.4. The learned counsel relies on the judgment of the Division Bench of this Court in case of **Sindhu Education Society Vs. Municipal Corporation of city of Ulhasnagar**, reported in 2001(1) Mh.L.J.894.

3. The learned counsel submits that if the construction is illegal and unauthorized then the same has to be raised to the ground. Equities also cannot be used in favour of such a construction and the Court should also refrain from regularizing the same. The learned counsel relies on the judgment of the Apex Court in case of **Esha Ekta Apartments Vs. Municipal Corporation of Mumbai**, reported in 2013 (5)Mh.LJ 13.

4. Learned counsel for the petitioner further relies on Section 478 of the Maharashtra Municipal Corporation Act to suggest that if any work or thing requiring the written permission is done without

obtaining such permission, then such work is deemed to be unauthorized and same has to be removed and pulled down. The Authorities, instead of resorting to section 478 of the Act, on the contrary, allowed respondent No.4 to go ahead with the illegal construction. The authorities ought to have taken action then and there itself. However, during the enquiry also, the reply and the reason given by them depict that they wanted to ignore the illegal construction and were waiting for an application for permission for that illegal construction. The learned counsel submits that the petitioner wants the provisions of the laws to be abided and that is why, has moved this Court.

5. Mr. Bramhe, the learned counsel for respondent no.4 submits that it is not a case that without permission, the construction was carried out. Permission for construction of basement and upper ground floor was already granted in February, 2010 and then on 21st August, 2010 further permission was granted to raise first and second floor. Some revision was sought in the construction permission of second floor and that revised permission was granted in October, 2016. The completion certificate has also been granted in respect of the said construction. Learned counsel

submits that the provisions of bylaws have been adhered to.

6. Mr. Patil, the learned counsel for the Corporation submits that the petitioner has a personal grievance against respondent no.4 and the same is sought to be raked up by filing the present writ petition. According to the learned counsel, while granting completion certificate, the provisions of bylaws have been adhered to and upon satisfaction of the construction being as per the construction permission and the bylaws, completion has been granted.

7. We have considered the submissions canvassed by the learned counsel for the respective parties.

8. As on date, respondent No.4 has produced the occupancy certificate for the entire building. The construction permission is on record. On 21.08.2010, construction permission is given for first and second floor and also, earlier the construction permissions appears to have been given for the basement and the ground floor.

9. In writ jurisdiction, it would not be possible to enter into the arena of disputed question.

10. As on date, as even the occupancy certificate has been granted by the Municipal Corporation, we cannot presume that the construction of respondent No.4 would be against the bylaws. As such, the directions as sought cannot be given today. However, one thing is manifest that when the enquiry was being conducted, the authorities had come to the conclusion about the second floor not having a valid permissions and had opined that the owner would be filing application for the same. At that time, the Corporation could have taken further action. Be that as it may, thereafter it appears that revised permission sought for the same was granted and even occupancy certificate was granted. Initially on 21.08.2010, it appears that permission was granted to erect first and second floor also. The permission to erect second floor is purely for residential purpose, whereas ground floor and first floor is partly for commercial and partly for residential purpose. Naturally, if the permission is granted for part commercial and part residential, the construction has to be in consonance with the same and the user also has to be in consonance with the same. It is for the authorities to consider whether the user is as per the occupancy certificate, which the

authorities are bound to consider.

11. Considering the fact that as on date occupancy certificate has been granted in favour of respondent No.4 of the entire building, it would not be possible to accept the contention of the petitioner, who is in no way affected by the said construction, as he is neither abutting nor adjacent to the property of respondent No.4.

12. Writ petition is accordingly disposed of. No costs.

13. In view of disposal of writ petition, civil application also stands disposed of.

(K. L. WADANE, J.)

(S. V. GANGAPURWALA, J.)

JPC