

Sequeira

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

WRIT PETITION NO. 12129 OF 2015

Shri Umesh N.Kulkarni & ors.

.. Petitioners.

Vs.

Smt.Sujata Digambar Pawar & ors.

.. Respondents

Mr.Yuvraj Narvankar, for Petitioners.

Mr.S.K.Chaurasia, for Respondent Nos.1 & 2.

Mr.R.S.Khadapkar, for Respondent Nos.3 & 4.

***CORAM : N.M.Jamdar, J.
Thursday, 22 September 2016.***

P.C. :

Heard learned counsel for the parties. Considering the nature of controversy, taken up for final disposal forthwith.

2. The Respondents-Plaintiffs have filed a suit bearing No.2034 of 2014 in the Court of Civil Judge Senior Division, Pune seeking a declaration that the building extension plan for panel flat holders of flat No.E/8/86, E/8/90 and E/8/94 is not in consonance with the building bye laws and it should be cancelled as it affects the easementary rights of light and air of the Respondents-Plaintiffs. Further a prayer for permanent injunction is sought. The learned Civil Judge by the order dated 1 January 2015, rejected the

application filed by the Respondents-Plaintiffs below Exhibit 5. Miscellaneous Appeal No.22 of 2015 was filed by the Respondents-Plaintiffs in the district court Pune. The learned District Judge set aside the order passed by the learned Civil Judge and restrained the Petitioners from carrying out extension activities in respect of the buildings in question. The learned District Judge gave liberty to the parties to move the learned Civil Judge for appointment of architect and expedited the suit.

3. I have heard Mr.Yuvraj Narvankar, the learned counsel for Petitioners, Mr.S.K.Chaurasia, learned counsel for Respondent Nos.1 and 2 and Mr.R.S.Khadapkar, learned counsel for the Municipal Corporation.

4. Apart from the dispute between the parties regarding the violation of bye laws and whether the construction is in consonance with the plan sanctioned, one of the grounds on which the Respondents-Plaintiffs had sought relief in the suit is that the construction would affect the easementary rights of light and air. The learned District Judge, prima facie, came to the conclusion that there is a violation of building bye laws. The learned District Judge also held that the Respondents-Plaintiffs were not given opportunity to be heard before sanction of building permission. The learned District Judge held that no harm will be caused to the Petitioners if they are asked to wait for further few months for decision on the

question such as legality, location and whether it hampers air, light and ventilation.

5. It is the grievance of the Petitioners that Respondents-Plaintiffs have used the additional FSI and when it has come to the Petitioners using the same, an objection is taken. It is the contention of the learned counsel for the Respondents-Plaintiffs that the construction is on the drainage line and it would seriously affect air, light and ventilation.

6. The reasoning of the learned Judge that no harm is caused to the Petitioners if they are asked to wait till the disposal of the civil suit and therefore, of injunction is necessary, is not correct. The question regarding the location of the construction and whether it hampers air, light and ventilation could have been resolved by appointing a Commissioner / architect, which need in fact the learned District Judge has referred to. The learned District Judge could have sought for this report and decided the Miscellaneous Appeal accordingly. Once this report is placed on record, the position as on site would be clear and the learned District Judge would be in a position to appreciate the controversy with greater focus. It will be therefore necessary to remand the proceedings to the learned District Judge for consideration of the Miscellaneous civil appeal. The learned District Judge will appoint a suitable

architect, if possible by consensus between the parties, to submit a report and then decide the Miscellaneous Appeal accordingly.

7. As far as the order of injunction is concerned, the can be continued till the disposal of the Miscellaneous Appeal. However since the continuation is in above circumstance it shall not be construed as reflection on merits of the controversy by the learned District Judge.

8. The Writ Petition is disposed of as under -

a) The order dated 31 January 2015 passed by the learned District Judge, Pune, is quashed and set aside.

b) Miscellaneous Civil Appeal No.22 of 2015 is restored to the file of learned District Judge.

c) The learned District Judge will appoint suitable Commissioner/ Architect to visit the site and submit a report with such parameters as the learned District Judge may specify.

9. The parties will appear before the learned District Judge, Pune on 17 October 2016. The learned District Judge will make an endeavour for disposal of the Miscellaneous Civil Appeal No.22 of 2015 within period of four months from the parties appearing before the learned District Judge, subject to earlier time bound

commitments. All parties will cooperate with the learned District Judge for early disposal.

10. The restraint on the Petitioners not to carry out the extension activities as specified by the learned District Judge to continue till the disposal of the Appeal or till further orders to be passed by the learned District Judge.

11. The learned District Judge, Pune will decide the Appeal uninfluenced by the continuation of the restraint as above. The contentions of the parties in this Petition are kept open.

(N.M.Jamdar, J.)