

hvn

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 6607 OF 2016

Mr. Nitin Nathuram Mhatre and Ors. ... Petitioners

Versus

M/s. Villa Collection Cooperative Housing
Society Limited and Ors. ... Respondents

Mr. Mahesh Vishwakarma i/by M/s. Vishwakarma & Associates
for the petitioners.

Mr. M.A. Sayed for respondent no. 1.

Mr.C.G. Gavnekar a/w Mr. G.S. Hiranandani i/by Mr.Suhas
Deokar for respondent no. 10.

Ms. M.P. Thakur, AGP for State.

**CORAM : SHANTANU KEMKAR &
MAKARAND KARNIK, JJ.**

DATED : JUNE 16, 2016.

P.C.

Not on Board. Mentioned for urgent production.

Production granted in view of urgency.

2. Feeling aggrieved by the notice dated 7.5.2016 issued by the Talshildar, Panvel whereby ordering demolition of the structure of the petitioner standing on survey No. 73/E/3, the petitioner has filed this petition seeking quashment of the said notice and also praying for compensation of Rs.20,000/- for harassment and mental agony caused to him by issuance of the impugned notice.

3. In the earlier round of litigation, this court in W.P. No. 3954 of 2006 while dismissing the petitioner's writ petition recorded the following statements made by the parties :

“2. Learned counsel for the petitioner submits that the petitioner has erected structure on Gavthan land after getting permission of Group Grampanchayat Kon and therefore, the structure is not unauthorized and therefore, cannot be demolished.

3. Mr. Gavnekar, learned counsel for the Grampanchayat, stated that the Grampanchayat has not allowed the petitioner to construct on the Gaothan land. He also denies grant of any permission to the petitioner.

4. Mrs. Thakur, learned AGP having taken instructions from Mr. B.T. Gosavi, Naib Thsildar, who is present in the Court, makes statement that the land in question i.e. survey No.73/E/3 is allotted to Gaothan and reserved for VJNT. The Petitioner has encroached on the same. She further makes statement that after carrying measurement and after following due procedure, petitioner's construction will be demolished.

5. In the above circumstances, we are not inclined to entertain this petition. The petition is accordingly dismissed”

4. The contention of the petitioner is that without carrying out the measurement as directed by this Court vide order dated 5.4.2016 passed in WP No. 3954 of 2016, the impugned order of removal of structure has been passed.

5. The respondent State has filed reply and has stated that after the order passed by this Court survey/measurement was carried out by the Deputy Superintendent of Land Records, Panvel and accordingly map Exh. R-3 was submitted showing unauthorized construction. It has been stated that the said measurement was carried out on 20.4.2016 in regard to which the endorsement was made in the said map Exh. R-3. As per the survey report and the map, the notice was issued to the petitioner for demolition of the structure on 21.4.2016 for carrying out demolition on 28.4.2016. However, the demolition could not take place on 28.4.2016 on account of some administrative conditions. Thereafter again notice was issued on 7.5.2016 for demolition of the said structure on 12.5.2016. Thus according to respondents, the structure which has been found unauthorized is required to be removed and therefore, the impugned notice has been issued.

6. Learned counsel for the petitioner submits that the action in question is not being taken against the other similarly placed occupants whereas only the petitioner has been selected and his structure is directed to be removed with mala fide intension.

7. Having considered the submissions made by the learned counsel for the parties, we are of the view that in terms of the order passed by this Court in the earlier round of litigation, the measurement has been carried out by the respondents and thereafter having found that the structure in question is unauthorized, the same is asked to be removed. The impugned action of the respondent cannot be said to be illegal warranting interference by this court in writ petition under Article 226 of the Constitution of India. The grievance of the petitioner that other similar structures have not been removed and only petitioner has been asked to remove the structure and as such the action of the respondent is mala fide, cannot be accepted. The respondent has stated that they are taking action against all the encroachers. Thus it cannot be said that it is the case of discrimination. Even otherwise, unless petitioner is able to establish that his construction is valid, he cannot make such grievance.

Writ petition is accordingly dismissed.

(MAKARAND KARNIK, J.) (SHANTANU KEMKAR, J.)