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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 8813 OF 2015

Sharad Jairam Shelke and ors.

.. Petitioners

Vs.

State of Maharashtra and ors.

.. Respondents

Mr. Harshad M. Inamdar for petitioners.

Mr. V. P. Malvankar "A" Pannel Counsel for respondent no.1.

Mr. A. R. Pitale for respondent no.2.

Mr. Shekhar V. Ghaisas with Mr. Bhupesh Saraf for respondent no.3 –
Society.

CORAM: NARESH H. PATIL &
M. S. KARNIK, JJ.

DECEMBER 14, 2016.

P.C.

1. Petitioners pray for following reliefs :-

(a) this Hon'ble Court by its order and/or direction be pleased to direct the Respondent No.2, Thane Municipal Corporation, to decide Petitioner's Application dated 13th May, 2013 for construction of their structures in accordance with law and without being influenced by the order dated 6th April, 2010, passed by this Hon'ble Court.

(b) Cost of the present petition be provided for.

(c) Such further and other reliefs as deemed fit and proper in the facts and circumstances of the case, be granted.

2. In the earlier round of litigation i.e. Criminal Writ Petition No. 250 of 2010 – Sairam Co-operative Housing Society Ltd. vs. the State of Maharashtra, the Division Bench of this court passed order on 6/4/2010, which reads as under :-

“1. Heard learned Counsel for the parties.

2. In this Petition, the petitioner has made following prayers :

“(a) Respondent Nos.1 and 2 to provide and post appropriate number of Police personnel to protect the properties i.e. the said land and the said building described in paragraph No.1 of this petition from unknown anti-social persons who are trespassing upon the said land and the said building for carrying out illegal and unauthorized construction activity;

(b) The Respondent Nos.1 and 2 to lodge a complaint u/s 425, 426 and 441 of Indian Penal Code and also under any other provisions as may be applicable in law with respect to the offence of trespassing and mischief with respect to the said land and the said building and

forthwith take necessary steps by arresting the said unknown anti-social persons carrying on construction activities on the said land illegally and unauthorizedly and also the Respondent No.3 to institute prosecution u/s 52 of the Maharashtra Regional Town Planning Act and also to take appropriate steps against the construction activities being carried out on the said land illegally and unauthorizedly;”

3. This Court is informed that the Assistant Commissioner, Thane Municipal Corporation, Thane has passed the order dated 8.2.2010 under Section 360 of the M.R.T.P. Act in respect of the construction started on the City Survey No. 84, Tika No.23 (for short “ the said plot “). The petitioner society claim a right in the said plot on the basis of the agreement to sale executed in favour of the flat purchasers in 1984. The Corporation in pursuance of the order dated 8.2.2010 has also lodged a complaint against the persons who started construction, under Section 52 of the M.R.T.P. Act. We do not wish to examine the rights of the parties to this petition, so also of the persons who made an attempt to make construction over the said plot.

4. The learned Counsel for the parties have fairly stated that we need not record reasons for the order that we propose to pass. Hence, we dispose of the petition by the following

order :

[i] The Naupada police station shall ensure that no unauthorized construction is carried out on the said plot of land unless the Thane Municipal Corporation issues commencement certificate in respect thereof.

[ii] The concerned police station may also proceed to act on the complaint lodged by the Corporation under Section 52 of the M.R.T.P. Act in accordance with law. It is open for the concerned police station to procure a copy of the complaint lodged by the Corporation under Section 52 of the MRTP Act if they do not have it on their record.

With these observations, the writ petition is disposed of.

While passing this order we shall not be understood to have expressed any opinion on the rights of the parties in respect of the said plot.

3. We have perused the application, annexed at Page 18 of the petition, filed by the petitioner with the Corporation dated 13/5/2013.

4. Issues concerning title, possession, occupation are raised in this petition in exercise of writ jurisdiction. In the facts, we are not

inclined to entertain this petition. The petitioner may resort to alternate remedy as permissible in law.

5. Petition is disposed of accordingly.

(M. S. KARNIK, J.)

(NARESH H. PATIL,J.)