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

WRIT PETITION (ST.) NO. 22791 OF 2016

with

CIVIL APPLICATION (ST.) NO. 23662 OF 2016

The Lokupvan Phase II
Co-operative Housing Society's
Federation Ltd. Thane & Anr.

... Petitioners.

V/s.

Thane Municipal Corporation & Anr.

... Respondents.

Mr. Sagar Joshi for the Petitioners.

Mr. Mandar Limaye for the Respondent 1 – TMC.

Mr. Sandeep Mishra a/w. Prakash Mishra for the
Applicant/Intervener in CAWST 23662/16.

CORAM : N.M. Jamdar, J.

25 August, 2016.

Oral Order :-

The Petitioners challenge the order dated 10 August 2016 passed by the learned Civil Judge, Senior Division, Thane below Exhibit 27 in Regular Civil Suit No. 619 of 2016. By this Application the Petitioner had sought relief of police protection for implementation of order of status-quo granted by the learned Civil Judge.

2. On a Motion made by the Petitioner, the learned Civil Judge granted an order of status-quo against the Respondent – Municipal Corporation. It is the grievance of the Petitioners that inspite of the order of status-quo, the Petitioners – Corporation has continued activity of construction. When the application seeking police protection was moved, the Respondent – Corporation took a stand that the site has been allotted to the allottees and the construction is carried out by the allottees and not by the Municipal Corporation. The learned Civil Judge observed that there was no direct evidence to show that the construction was carried out by the Corporation and the allottees were not joined as party Respondents.

3. When the matter was moved for production on 18 August 2016, the Petitioner was directed to give notice to the Respondent – Corporation and it was observed that if the order of status-quo has continued the Municipal Corporation is bound by the same and if the Corporation is in breach of the order as alleged, then the Corporation would be held responsible.

4. An application for intervention has been moved on behalf of sixteen persons. In this application it is asserted by the interveners that they are affected party and they are the ones for carrying out the construction. The learned Counsel for the intervener asserts the position that it is the intervener who are

carrying out the construction. Therefore, as on today, the position is that the Corporation has taken a stand that they have allotted the land and the allottees have carrying out the construction and the interveners are claiming that they are the ones responsible for the construction. That being the position, the appropriate course of action for the Petitioners would be to join the interveners in the suit and seek an order of injunction against them. If such application is made, it will be considered on its own merits.

5. Therefore, at this stage, it is not necessary to grant an order of police protection for implementation of order of status-quo as against the Municipal Corporation as the interveners have clearly identified themselves as the ones responsible for the construction. However, it is clarified that the issue as to whether the Municipal Corporation has breached the order of status-quo or not is not a subject matter of this Petition, which issue is kept open. In view of the above position, the Writ Petition need not be entertained. It is accordingly disposed of. Civil Application stands disposed of as above.

(N.M. Jamdar, J.)