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***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION***

WRIT PETITION (L) No. 619 OF 2016

Dube Construction Company

....Petitioner

Vs.

*The Municipal Corporation of
Greater Mumbai & Anr.*

....Respondents

Mr.J.S. Hegde for Petitioner

Ms. Shobha Ajit Kumar for Respondent - BMC

***CORAM : V. M. KANADE &
B.P. COLABAWALLA, JJ.***

DATE : MARCH 9, 2016

P.C. :

1. The Petitioner, by this petition, which is filed under Article 226 of the Constitution of India, is seeking the following reliefs:

“(a) That Rule be issued;

(b) This Hon'ble court may be pleased to direct the Respondent no.1 to initiate and prosecute appropriate action and process against Respondent No. 2 to prohibit them from carrying out any illegal or unauthroized construction work on

the subject property of the Petitioner namely CTS No.31/A to D, 31/B-01 to 11, E1/E-to H, 32, 31/1 to 9 corresponding final plot no. 22A of TPS II of Borivali, Village Kanheri, Taluka : Borivali, Mumbai Suburban District, of Dube Construction Co. and also not to encroach upon the said property of the Petitioner in accordance with law.

(c) This Hon'ble Court may be pleased to direct the Respondent no.1 not to entertain or process or grant any permission or sanction for commencement of any construction work to the Respondent No.2 in the aforesaid property of the Petitioner.

(d) This Hon'ble Court may be pleased to restrain the Defendant no.2, their authorized representative, agents, servants and employees from entering upon and/or encroaching upon the property as the Petitioner namely CTS No.31/A to D, 31/B-01 to 11, E1/E-to H, 32, 31/1 to 9 corresponding final plot no.22A of TPS II of Borivali, Village Kanheri, Taluka : Borivali, Mumbai Suburban District, and also from commencing any construction work therein.

(e) Interim and ad-interim relief in terms of prayer clause (c) and (d) be granted.

(f) Any such other relief that the nature and circumstances of the case may require.”

2. In our view, since the grievance of the Petitioner is that Respondent No.2 is carrying on unauthorized construction on his property, the Petitioner then in that case will have to file a suit before the Competent Court and seek appropriate reliefs.

3. Since the Petitioner has an alternate efficacious remedy available of filing the suit, we are not inclined to entertain the petition. Respondent No.1, however, may consider the representation made by the Petitioner and decide it in accordance with law. Hence, writ petition is disposed of, reserving the right of the Petitioner to exhaust an alternate remedy, if available, in law. All contentions of the Petitioner are kept opened.

B. P. COLABAWALLA, J.

V.M. KANADE, J.