

BDPPS

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 1530 OF 2015
WITH
CHAMBER SUMMONS NO.16 OF 2016
IN
WRIT PETITION NO.1530 OF 2015**

Mr. Umesh Madhusudan Chande
and Anr.

....Petitioners.

V/s

Brihanmumbai Mahanagar Palika
and Anr.

..... Respondents.

Mr. Joaquim Reis, Senior Counsel with Mr. Mehul Rathod i/b Mr.
Kaushik Kothari for the Petitioners.

Ms. Shobha Ajit Kumar for Respondent/BMC.

Mr. Piyush Shah for Respondent No.2.

Mr. Omkar Kulkarni for the Applicant in Chamber Summons No.16 of
2016.

**CORAM: V. M. KANADE &
M.S. KARNIK, JJ.**

DATE: 6th April, 2016

P.C.:-

1 By this Petition which is filed under Article 226 of the
Constitution of India, Petitioners are seeking the following reliefs:-

(a) That this Hon'ble Court be pleased to issue a writ of Mandamus or a Writ in the nature of Mandamus or any other appropriate Writ, Order or Direction directing the Respondent Nos. 1 Corporation to provide "Access" to the Landlock Plot belonging to the Petitioners through the Adjoining Plot belonging to the Respondent No.2;

(b) That this Hon'ble Court be pleased to issue a writ of Prohibition or a Writ in the nature of Prohibition or any other appropriate Writ, Order or Direction restraining the Respondent No.1 Corporation from issuing any Occupation and/or Building Completion Certificate to the Respondent No.2 for the said building "Silver Heights";

(c) That by a mandatory order and injunction of this Hon'ble Court, the Respondent No.1 Corporation be ordered and directed to derive / obtain a road of entry or an "Access" to the Landlock Plot of the Petitioners from the Adjoining Plot of the Respondent No.2;

(d) That pending the hearing and final disposal of this Writ Petition, by an order and injunction of this Hon'ble Court, the Respondents No.1 by themselves and by their servants, agents and representatives, be restrained from issuing an Occupation and/or Building Completion Certificate to the Respondent No.2 in respect of the building "Silver Heights" constructed by the Respondent No.2 upon the Adjoining Plot described in the Second Schedule written in Exhibit "A" hereto and thereby giving permission to any flat

purchaser to occupy any flat in said building “Silver Heights” prior to grant of Occupation and/or Building Completion Certificate by the Respondent No.1 Corporation to the Respondent No.2.

(e) That by an order and injunction of this Hon'ble Court, the Respondent No.2 and by itself and its servants, agents and representatives be restrained from in any manner obstructing the Petitioner's use of the “Access” or “Road” for ingress and egress to the said Plot from the Adjoining Plot belonging to the Petitioners;

(f) that pending the hearing and final disposal of the above Petition, this Hon'ble Court be pleased to appoint a Commissioner for the purpose of visiting the said Plot and the Adjoining Plot for making an inventory and submitting a report thereof to this Hon'ble Court;

(g) that interim and ad-interim reliefs be granted to the Petitioners in terms of prayers (c), (d) and (e) above;

(h) that such further and other reliefs be granted to the Petitioners as nature and circumstances of the case may require;

(i) that the Respondents be ordered to pay the costs of this Petition to the Petitioners.”

2. Preliminary objection is raised by the learned Counsel for the Respondent/Corporation that the Petitioners have an alternate

efficacious remedy of filing a suit. Mr. Reis, the learned Senior Counsel appearing on behalf of the Petitioners, on the other hand, invited our attention to para 8 of the affidavit-in-reply. He submitted that in view of this, the only dispute is regarding payment of consideration to the Respondent/Corporation

3. We are unable to accept the said submission made by the learned Senior Counsel for the Petitioners. Petitioners seek right of access through the adjoining property, which right is denied by the Respondent/Corporation and, as such, since there are disputed questions of facts, Petitioners will have to approach the Civil Court for establishing their right.

4. Petition is therefore disposed of on the ground that the Petitioners have an alternate efficacious remedy of filing a suit. Reserving the said right of the Petitioner, Petition is dismissed.

5. If a suit is filed by the Petitioners and application for ad-interim relief is filed separately, the Court shall consider the contentions of both the parties and decide the question of ad-interim relief expeditiously and, if possible, within a period of six weeks. We also make it clear that it is open for the Petitioners to make a representation to the Corporation or if it is already made, Corporation shall decide the representation expeditiously within a period of four weeks after hearing all the concerned parties. All contentions of all

parties are kept open.

6. Since Writ Petition itself is disposed of, Chamber Summons taken out there in does not survive and the same is also disposed of.

(M.S. KARNIK, J.)

(V.M. KANADE, J.)