

(1)

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.9264 OF 2014

Dnyaneshwar s/o Raghunath Bhirud,
Age: 42 years, Occ: Business,
Residing at Flat No.3, "Niramaya"
Residency, Plot No.15, Ramdas Colony,
Jalgaon. ..PETITIONER

VERSUS

1. Kishor s/o Ramakant Chaudhary,
Age: 55 years, Occ: Service,
R/o. Flat No.4, "Niramaya"
Residency Plot No.15/3, Ramdas
Colony, Jalgaon.
At present residing at C/o
V. Chaudhary, "Madhumangal"
Plot No.18, Telephone Nagar,
Jilha Peth, Jalgaon.
2. The Commissioner,
Jalgaon Municipal Corporation,
Jalgaon. ..RESPONDENTS

Mr V.T. Chaudhary, Advocate for petitioner;
Mr S.S. Patil, Advocate for respondent

CORAM : NITIN W. SAMBRE, J.

DATE : 3rd NOVEMBER, 2017

ORAL ORDER :

Heard Mr. Chaudhary, learned Counsel for
the petitioner and Mr. Patil, learned Counsel for

(2)

respondent No.2. Respondent No.1-plaintiff though served, none appears.

2. The suit in which present petitioner sought impleadment under Order 1 Rule 10 of the Code of Civil Procedure for declaration and perpetual injunction against respondent-Corporation, as notice was issued to the plaintiff for carrying out illegal construction in apartment in which petitioner is also claimed to owning a tenement.

3. Needless to say that from the pleadings of parties, it is apparent that the plaintiff is claimed to have carried out illegal construction in flat scheme.

4. The fact remains that under the deed of declaration and provisions of Bombay Apartment Ownership Act, each lawful owner of such tenement has equal right to use open space/common space as that of other flat owner.

(3)

5. In view thereof, the order of rejection passed below Exhibit-19, in my opinion, is not sustainable. As such, impugned order is quashed and set aside. The application below Exhibit-19 stands allowed. Appropriate amendment be carried out within two weeks from today and it shall be open for the defendant to file written statement within period of six weeks thereafter.

6. The writ petition stands disposed of in above terms.

(NITIN W. SAMBRE, J.)

Tupe