

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

WRIT PETITION NO.448 OF 2016

Rishika Co-operative Housing Society
Ltd.

...Petitioner

Versus

State of Maharashtra & Ors.

...Respondents

.....

Ms Swapnali Desai i/b. Mr. Mehul Shah for the Petitioner.
Mr. V.P. Malvankar, AGP 'A' Panel to the Respondent Nos.1 to
3-State.

**CORAM : A.S. OKA &
SMT. ANUJA PRABHUDESSAI, JJ.**

DATED: 30th JANUARY, 2017.

P.C.:-

The Petitioner is a co-operative Society registered under the Maharashtra Co-operative Societies Act-1960. The grievance in this Petition under Article 226 of the Constitution of India is against the State of Maharashtra, District Collector and Tahasildar. The case made out in the Petition is that as per a sale deed dated 13th June, 2005 the fourth Respondent became the owner of land bearing Gat No.13 (part) admeasuring 911 sq. meters situated at village Kalambe, Taluka-Shahapur District-Thane. According to the case of the Petitioner, the fourth Respondent applied for permission to construct a building on the said land. It is contended that after completing the construction,

the possession of the plot was handed over by the fourth Respondent to the members of the Petitioner and the entire management of the said land was entrusted to the Petitioner Society. The Writ Petition itself refers to a notice dated 18th March, 2011 issued under Sub Section 3 of Section 50 of the Maharashtra Land Revenue Code, 1966 (for short “the said Code”) addressed to the fourth Respondent calling upon the said Respondent to remove the encroachment made by him to the extent of 194 sq. meters on the land vesting in the State Government for the purposes of a Court. The case made in the Writ Petition is that no such notice was issued to the Petitioner or members of the Petitioner and therefore a civil suit has been filed by the Petitioner in the Court of the learned Civil Judge, Senior Division, Kalyan, which is pending. The allegation is that on 2nd March, 2012 first to third Respondents took forcible possession of the said area of 194 sq. meters.

2. On the last date when we noticed that there is no document on record to show that the Petitioner became the owner and a civil suit filed by the Petitioner for challenging the notice dated 18th March, 2011 is pending, we expressed a prima facie view that present Writ Petition cannot be entertained and the Petitioner will have to adopt appropriate remedy. Today, the learned counsel for the Petitioner

states that in a meeting of the General Body held on 26th January, 2017 no such decision could be taken.

3. We have perused the entire Petition. The Petition proceeds on the footing that fourth Respondent is the owner of the land bearing Gat No.13 (B) on which he constructed the building and handed over the land and building to the Petitioner for managing the same. There is no averment in this Petition that the Petitioner has become the owner of the land. Notice under Sub Section 3 of Section 50 of the said Code was issued to the fourth Respondent who is admittedly the owner of the land. Moreover, a civil suit being Regular Civil Suit No. 16 of 2011 filed by the Petitioner for challenging the said notice dated 11th September, 2011 issued to fourth Respondent is pending in the Court of Civil Judge, Senior Division, Kalyan to which the present Respondents are Defendants. In fact Exhibit 'P' suggests that an application for injunction in the pending suit was made by the Petitioner to which reply was filed by the first to third Respondents. It was contended therein after carrying out survey on 25th January, 2011 by the Assistant Director of Land Records, Shahapur, it was revealed that an area of 191 Sq. meters out of the Government land bearing 194 sq. meters has been encroached upon by the Petitioner.

4. Admittedly, the Petitioner has no right of ownership in respect of the land on which construction has been made by the fourth Respondent. Therefore, we find no error with the notice of removal of encroachment issued under Sub Section 3 of Section 50 by the Tahasildar. The notice was rightly issued to the fourth Respondent, who according to the case of the Petitioner is the owner of the land bearing Gat No.13 (part). Therefore, no case for interference is made out in writ jurisdiction. Though we have not entertained the Petition, this order will not prevent the Petitioner from making an application to the Appropriate Authority for regularisation of its possession the encroached portion.

5. Subject to what is observed above, the Writ Petition is rejected.

(ANUJA PRABHUDESSAI, J.)

(A.S. OKA, J.)