

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 3744 OF 2017

M/s. Srushti Enterprises ... Petitioner

V/s.

Bhiwandi Nizampur City Municipal
Corporation & ors. ... Respondents

Mr. R.D. Suryawanshi for the petitioner.

Mr. N.R. Bubna for respondents 1 and 2.
Mr. Bhupendra Parekh for respondents 3 and 4.
Ms. R.A. Salunkhe, AGP for respondent no.5.

CORAM : NARESH H. PATIL AND
A.M. BADAR, JJ.

7th April, 2017.

P.C.

The petitioner prayed for following substantive reliefs:

“(a) this Hon'ble Court be pleased to quash and set the order dated 7.3.2017 passed by the Assistant Director, Town Planning Department, Bhiwandi Nizampur City Municipal Corporation;

(b) this Hon'ble Court be pleased to issue writ of mandamus, order, directions or any other appropriate writ in that nature directing the Respondent No.1 to forthwith take action of demolition of sixth and seventh floor unauthorizedly and illegally constructed by the Respondent Nos. 3 and 4 on Type-B building, lying, being and situated on Survey No.142, Hissa No.1, admeasuring 4233 sq. mtrs., Kamatghar, Bhiwandi, District Thane and within the municipal limits of the Respondent No.1.”

2. It is the petitioner's contention that Respondents 3 and 4 purchased a property alongwith third person. They submitted a proposal for construction of the building. Initially, the Assistant Town Planner by communication dated 1st June, 2016 rejected the permission to construct 6th and 7th floor of the building but later on by communication dated 7th March, 2017 permitted the respondent to carry on the construction.

3. During the course of hearing it was submitted that petitioner had filed a Suit being RCS No.408/2016 before the Civil Judge, Junior Division, Bhiwandi against respondents 1, 3 and 4. The petitioner had prayed for injunction, in respect of the flats in the building, that no third

party interest be created in the same. The Suit was filed on 15th June, 2016. An application for status-quo was filed by the petitioner on 22nd June, 2016. By an order passed below Exhibit 15 on 22nd June, 2016, the trial Court rejected the said application with liberty to plaintiff to file an application in future. The suit is still said to be pending before the trial Court.

4. The Counsel appearing for the petitioner raises objection to the communication passed by the Assistant Town Planner dated 7th March, 2017 which is annexed at **Exhibit 'S'**. We have perused the said communication. The Assistant Town Planner has referred to the transaction entered into by the parties and the relevant property record. The Assistant Town Planner had recorded that the trial Court had rejected an application for interim-relief in a Suit filed by the petitioner.

5. The Counsel appearing for the respondent submitted that in view of the filing of the Civil Suit the present petition is not maintainable. The Suit relates to same subject property. The petitioner can approach the Civil Court and seek necessary reliefs, if he chooses to do so.

6. We find substance in the submissions of the Counsel appearing for

respondents. In the facts of the case, it would not be appropriate to enter into the issues relating to the transfer of the shares, entries made in the revenue record (7/12 entries), contractual rights of the parties. In the peculiar facts of the case, we find that as petitioner had already resorted to filing of a Civil Suit, no interference is warranted in exercise of writ jurisdiction of this Court. All the issues raised before this Court in the petition are kept open. In the facts, we are not inclined to interfere in the matter. Petition stands rejected.

(A.M. BADAR, J)

(NARESH H. PATIL, J.)

L.S. Panjwani, P.S.