

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

WRIT PETITION NO.10962 OF 2015

Mr. Rameshchandra Punja Shah ... Petitioner
Versus
The State of Maharashtra
and others ...Respondents

....

Ms. Gayatri Nayak and Avinash Thorat i/b. Mr. Rajesh P.
Khobragade for the Petitioner.
Mr. A.A. Alaspurkar, AGP for Respondent No.1

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**CORAM : A.S. OKA &
SMT. VIBHA KANKANWADI, JJ.**

DATE : 20th JULY, 2017

P.C.:

1. Heard the learned Counsel for the Petitioner.
2. The substantive prayers in this Petition under Article 226 show that the grievance of the Petitioner is that the building, namely Vastu Heritage has been permitted to be occupied by the 7th Respondent though an Occupation Certificate is not granted. There is a further grievance made that though building permission has been granted, the construction is not carried out as per the sanctioned plan.
3. Our attention is invited to the averments made in the Petition and in particular Clauses 'a' to 'c' of Paragraph 3 which read thus:

- “a. The Petitioner states that, the M/s Minaxi Developers, through its proprietor being Respondent No.8 had entered into the Joint venture with Petitioner brother namely Mr. Shantilal Punja Shah, for Development Projects namely “Vastu heritage” situated at Survey No.144 Old 24 Hissa No.3, village Chole (E), District Kalyan admeasuring about 3840.00 Square Meters.
- b. The Petitioner states that thereafter a dispute had been arisen between the Mr. Shantilal Punja Shah and proprietor of M/s Minaxi Developer. The Petitioner's brother had filed the S.c. Suit No.236 of 2012, before Senior Division Court, at Kalyan, the same is pending. The petitioner craves leave to prefer and reply upon the same as and when produced.
- c. The Petitioner states that, as per the development project plan, Respondent No.7 and 6 had constructed the building named “VASTU HERITAGE' on the said plot of land under the name of M/s Minaxi Developers. The Petitioner further states that, since there was dispute going on between the petitioner's brother Mr. Shantilal Punja Shah and respondent No.7 and 8, the petitioner was unaware about the construction undertaken under the name of development project.”

These averments show that the proprietor of the 7th Respondent had a joint venture agreement with the Petitioner's brother for the development of the same building “Vastu Heritage”. Thereafter, there is a dispute between the Petitioner's brother and the 7th Respondent. The Petitioner's brother has filed a Civil Suit in the Court of Civil Judge, Senior Division, Kalyan.

4. The learned Counsel for the Petitioner submits that there is also an assertion that, the construction is not as per the sanctioned plan. However, we find that no details of the violation have been set out. The learned Counsel submits that a part of the building has been allowed to be occupied by the 7th Respondent, though there is no Occupation Certificate granted.

5. When we made a query to the learned Counsel for the Petitioner, as to how the Petitioner is affected by the alleged acts of illegality, she states that the Petitioner has set out the reasons for filing this Petition. Obviously, there is a dispute between the Petitioner's brother and the 7th Respondent, which prompted the petitioner to take up the cause against the 7th Respondent. He is not personally affected by the alleged illegalities.

6. Moreover, no particulars of the extent of unauthorized work carried out have been set out in the Petition.

7. Therefore, no case is made out for entertaining this Petition at the instance of the Petitioner.

8. Accordingly, the Petition is rejected. We, however, make it clear that, if the Municipal Corporation finds that the premises in the subject building have been illegally occupied without grant of Occupation Certificate, it is under an obligation to take action in accordance with law.

(SMT. VIBHA KANKANWADI, J)

(A.S. OKA, J)