

Sharayu.

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

WRIT PETITION NO. 5828 OF 2014

Tejkaran Rupchand Heda & Anr. ...Petitioners

Versus

The State of Maharashtra & Ors. ...Respondents

Mr. Sandesh Deshpande, a/w Mr. Bhavesh Mugan, for
the Petitioners.

Mr. A.P. Vanarase, AGP, for the Respondents No. 1
& 4 to 6.

Mr. N.R. Bubna, for Respondents No. 2 & 3.

Mr. Harshad Bhadbhade, for Respondents No. 7 to
14.

**CORAM : SMT. VASANTI A NAIK AND
 RIYAZ I. CHAGLA, JJ.**

DATE : 31 October 2017

ORDER :

By this writ petition, the petitioners
seek a direction against the respondent No. 2-
corporation to immediately demolish the structure
in survey No. 27-B in village Kaneri.

The learned counsel for the petitioners
states that the respondent Nos. 7 to 14 are
occupying the illegal structure constructed on the

plot of land belonging to the petitioners. It is stated that since illegal structure is erected on the plot of the petitioners, a direction to the respondent No. 2 to demolish the structure is necessary. It is stated that police protection may be provided to the corporation for demolition of the structure.

The learned counsel for the respondent Nos. 7 to 14 states that a civil suit is filed by the respondent Nos. 7 to 14 against the notice of the corporation under Section 260 of the Bombay Provincial Municipal Corporations Act, 1949. It is stated that temporary injunction is granted by the Trial Court in favour of the respondent Nos. 7 to 14 and an appeal filed by the corporation against the order granting temporary injunction is dismissed. It is stated that the petitioners have filed the writ petition against the order passed by the Trial Court and the appellate court in favour of the respondent Nos. 7 to 14. It is stated that the present petition would be premature. It is stated that the issue whether the structure in which the respondent Nos. 7 to 14 are residing is entitled for regularisation, is also pending. It is stated that the respondent Nos. 7 to 14 are the bona fide purchasers of the flats that are constructed on the concerned plot and since the suit filed by the respondent Nos. 7 to 14 is still pending and an injunction granted in their favour, the writ petition is liable to be dismissed.

We are not inclined to grant any relief

in favour of the petitioners at this stage, specially when the civil suit filed by the respondent Nos. 7 to 14 is pending and an injunction is operating against the corporation and in favour of the respondent Nos. 7 to 14 in the said suit. It appears that the petitioners have challenged the orders passed by the Trial Court and the first appellate Court in a writ petition that is pending in this Court. If that be so, it would not be proper to entertain this writ petition so as to take up two proceedings in respect of the same subject matter at the same point of time. In case, the respondent Nos. 7 to 14 ultimately fail in the suit and/or the injunction granted in favour of the respondent Nos. 7 to 14 is vacated, the petitioners would be entitled to take up appropriate proceedings, if so advised.

Hence, we dispose of the writ petition by keeping the points raised in the petition open. No order as to costs.

[RIYAZ I. CHAGLA J.]

[SMT. VASANTI A NAIK, J.]