

Amk

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

WRIT PETITION NO. 12080 OF 2017

Mr. Vashulal Naraindas Lakhi & Ors. .. Petitioners
Vs.
The Chief Executive Officer,
Pune Metropolitan Regional Development
Authority & Ors. .. Respondents

Mr. G. S. Godbole i/b P. M. Tilak for the Petitioners.
Ms. Nisha Mehra, AGP for the Respondent Nos.3 to 6.

**CORAM : SMT. VASANTI. A. NAIK AND
MR. RIYAZ I. CHAGLA, JJ.**
DATE : 4th DECEMBER, 2017.

P. C. :

By this writ petition, the petitioners seek a direction against the Pune Metropolitan Regional Development Authority to decide the representation of the petitioner, dated 07.11.2016 as expeditiously as possible. The petitioners have sought a direction against the respondent-authority to take immediate action against the encroachers under the provisions of Section 53 of the Maharashtra Regional Town Planning Act, 1966.

The learned counsel for the petitioners states that the petitioners are ready to give up the second prayer pertaining to the removal of the encroachers and the grievance of the petitioners would stand if the Court directs the authority to decide the representation of the petitioner dated 07.11.2016, as early as possible.

We are not inclined to grant the relief sought by the petitioners in the instant writ petition. The petitioners have filed a civil suit against about 10 private parties bearing Special Civil Suit No. 1074 of 2015 for a declaration and injunction. In the said suit, the petitioners have sought a declaration that the sale deed executed by their predecessor-in-title in favour of the

defendants to that suit be declared as null and void. The petitioners have sought a declaration that they are the lawful owner of the suit property. A declaration is sought that the sale deed executed by the defendant Nos.1 to 3 by subsequently transferring the suit property in favour of defendant No.9 is also void and illegal. A prayer is made in the said suit for a direction against the defendants to deliver the vacant possession of the suit property to the petitioners by demolishing the structure constructed by them on the suit property. An order restraining the defendants from making further construction on the suit property is also sought.

When the petitioners have filed civil suit against the defendants for a declaration that they are the owners of the property and the sale deeds executed by their predecessor-in-title in favour of the defendants are null and void and that the defendants should be restrained from making further construction and that they should demolish the illegal construction and hand over the vacant possession of the suit property, the petitioners cannot be permitted to seek similar relief in the writ petition. There is a likelihood of passing conflicting orders if this writ petition is entertained and the prayers made by the petitioners are considered. The question pertaining to the legality or otherwise of the construction made by the so called encroachers in this case who are the defendants in the said suit is in issue before the trial Court along with the issue of title of the petitioners, as also the defendants to the said suit. We are not inclined to entertain the writ petition in the circumstances of the case and direct the Corporation to take action for the removal of the structures.

In the result, the writ petition fails and is dismissed with no order as to costs. The points raised in the petition are kept open.

[RIYAZ I. CHAGLA, J.]

[SMT. VASANTI A. NAIK J.]