

Sharayu.

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

WRIT PETITION NO. 8539 OF 2015

Anil Vasant Patil

...Petitioner

Versus

State of Maharashtra & Ors.

...Respondents

Mr. Sandeep Mishra, a/w Mr. Prakash Mishra, for the Petitioner.

Mrs. Nisha Mehra, AGP, for the Respondent No. 1-State.

Mr. Mandar Limaye, for the Respondents No. 2 and 3-Corporation.

Mr. Indrajeet R. Kulkarni, for the Respondents No. 4 to 14.

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

DATE : 8 November 2017

ORDER :

By this writ petition, the petitioner seeks a direction against the respondent Nos. 2 and 3 to demolish the unauthorised construction made by respondent Nos. 4 to 14 on survey No. 11/1/A/2, situated at Reti Bunder Mumbra, Thane.

According to the petitioner, the

respondent Nos. 4 to 14 have made illegal construction on the land of the government that abuts the land owned and possessed by the petitioner. It is submitted that after the petitioner complained to the Corporation about the illegal structure erected by the respondent Nos. 4 to 14, the Corporation served a notice on the concerned respondents, but failed to take any further action. In the aforesaid, the petitioner seeks a direction against the Corporation to demolish the unauthorised construction made by the respondent Nos. 4 to 14.

Mr. Limaye, the learned counsel for the corporation, submits that though initially the Corporation had served a notice on the respondent Nos. 4 to 14, further action could not be undertaken, as the respondent Nos. 4 to 14 had moved for regularization of the structures. It is stated that the applications made by the concerned respondents for regularization of the structures were rejected but they have filed an appeal against the said order under Section 47 of the Maharashtra Regional and Town Planning Act, 1966 that is pending. It is stated that when the appeal filed by the respondent Nos. 4 to 14 is pending and the interim order is passed by the State Government in favour of the respondent Nos. 4 to 14, the corporation cannot take any action for demolition of the construction.

Mr. Kulkarni, the learned counsel for the respondent Nos. 4 to 14, states that the petitioner has not approached this Court with

clean hands. It is stated that the petitioner has falsely averred in the writ petition, specially in paragraphs 2 and 3 thereof that the petitioner is the owner of the entire land bearing survey No. 11-A Hissa 1/1 area admeasuring 28 gunthas situated at village Mumbra District Thane. It is stated that it is falsely averred in paragraph 3 of the writ petition that in the year 2012, the petitioner became aware that the respondent Nos. 4 to 14 had illegally and fraudulently changed the land records pertaining to the petitioner's land with the aid of the corrupt revenue officers. It is stated that the appeal filed by the petitioner and the respondent Nos. 4 to 14 was decided by the Additional Commissioner, Konkan Division, Mumbai by the order dated 7th April 2017. It is stated that the application filed by the petitioner was rejected while the application filed by the respondent Nos. 4 to 14 was allowed and it was observed by the said Authority that the petitioner would not be entitled to secure the possession of the land possessed by the respondent Nos. 4 to 14.

It appears from a reading of the writ petition that though the learned counsel for the petitioner has submitted that the respondent Nos. 4 to 14 have made illegal construction on the government land that abuts the land of the petitioner, the said statement does not find place in the writ petition. It is averred in the writ petition that the petitioner is the owner of the land and by taking help of corrupt revenue officers, the respondent Nos. 4 to 14 have changed

the entries pertaining to the land of the petitioner in the names of the respondent Nos. 4 to 14. We do not find that the petitioner has approached this Court with clean hands. Even otherwise, it would not be possible for this Court to direct the Corporation to take action against the respondent Nos. 4 to 14 for demolition of the alleged illegal structures, as the appeal filed by the respondent Nos. 4 to 14 for regularization of the structures is pending before the State Government. Unless the said appeal is decided, the petitioner would not have any right, whatsoever to seek the demolition of the structures erected by the respondent Nos. 4 to 14, specially when the State Government has passed an interim order in favour of the respondent Nos. 4 to 14.

In the aforesaid set of facts, we dismiss the petition, with no order as to costs.

[RIYAZ I. CHAGLA J.]

[SMT. VASANTI A NAIK, J.]