

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

WRIT PETITION NO.9823 OF 2017

Smt. Manisha Dinkar Barne
and another

... Petitioners.

Versus

Municipal Commissioner,
Pimpri Chinchawad Municipal
Corporation and others

... Respondents.

....

Mr. Anirban Tripathi for the Petitioner.

Mr. Deepak R. More for Respondent Nos.1, 8 and 9.

Mr. Avinash B. Avhad a/w Mr. Mahesh Rawool for Respondent
No.7.

....

***CORAM : Smt.Vasanti A Naik &
Riyaz I. Chagla, JJ.***

DATE : 10th October, 2017.

P.C. :

By this writ petition, the petitioner seeks a direction against the respondent-Corporation to remove the persons from the construction site in survey no.22/3/2 and to further prevent the entry of respondent nos.2, 3 and 7 or any other person into or upon the said site. A direction is also sought against the respondent-Corporation to lodge a complaint/first information report against respondent nos.2, 3 and 7 in the police station.

The petitioners had filed special civil suit no.1092/2005 in the Court of 3rd Additional Judge, Small Causes Court and Joint Civil Judge (S.D.), Pune seeking for partition and separate

possession against the defendants therein. According to the petitioners, they had a share and interest in the suit property. The suit was partly decreed and the trial Court granted some of the prayers made by the petitioners. By the judgment and decree, the trial Court had restrained the defendants by a perpetual injunction, from transferring the suit property by sale, mortgage etc. and creating any third party interest in the suit property till the suit property is partitioned and separate possession is granted to the plaintiffs-the present petitioners. It is the case of the petitioners that despite the specific directions against the defendants in the said suit, the defendants had illegally transferred the property to the developer-respondent no.7 and the respondent nos. 2, 3 and 7 are carrying on some construction on the said property. In the aforesaid background, the petitioners have sought a direction against the corporation to remove the persons from the said site and also lodge a complaint/first information report against the respondent nos. 2, 3 and 7.

We are afraid that the relief sought by the petitioners cannot be granted in exercise of the writ jurisdiction, specially when the dispute between the petitioners on one hand and the other persons-defendants. Claiming to be the owners of the property on the other, was decided by the trial Court on 30.08.2010 and perpetual injunction was granted in favour of the petitioners. The defendants to the suit were restrained from creating any third party interest in the suit property. If the said judgment has attained finality and if the defendants have created third party interest in the suit property by entering into an agreement with the developer -respondent no.7,

the petitioners would have other remedies. Instead of availing the appropriate remedy that is available to the petitioners in law, the petitioners have approached this Court for a directions against the Corporation that they should remove the respondent nos.2, 3 and 7 from the suit property. In view of the alternate remedy, we are not inclined to entertain the writ petition.

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

(Riyaz I. Chagla J)

(Smt.Vasanti A Naik, J)