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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.12636 OF 2016

Abdul Rehman Abid Chaware & Ors. ...Petitioners
vs.
The Union of India and others ...Respondents

Mr.S.M.Shettigar for the Petitioners
Mr.M.M.Pabale, AGP for the respondent No.4
Mr.Chetan Agarwal for respondent Nos.1 to 3.
Ms Swati H. Sagvekar for respondent No.5

CORAM : A.S.OKA, &
 SMT.VIBHA KANKANWADI, JJ.
DATE : JUNE 13, 2017

P.C.:

1 Heard the learned counsel for the petitioners, the learned counsel for the fifth respondent and the learned counsel for the first to third respondents. According to the case of the petitioners, the Railways have commenced construction of RCC Wall by encroaching upon their property. Further contention of the petitioners is that the wall is being erected without obtaining development permission from the fifth respondent-Municipal Corporation. The contention of the Railways is that in view of the provisions of section 44 of the Maharashtra Regional and Town Planning Act, 1966, it is not necessary for the Railways to apply for grant of a development permission. The submission is that the Railways have not encroached upon the property of the petitioners.

2 Thus, essentially, it appears to us that there is a boundary dispute between the petitioners and the first to third respondents. The boundary dispute will have to be resolved by taking recourse to a remedy before the Civil Court. As regards, alleged illegality committed by the Railways by commencing construction of the compound wall without obtaining development permission, it is for the fifth respondent-Corporation to look into the same.

2 Accordingly, it is not necessary to entertain this petition. We dispose of this petition by making it clear that it will be open for the petitioners to approach the Civil Court for seeking removal of encroachment allegedly made on their property by the first to third respondents. Needless to add that the fifth respondent shall examine whether any illegal construction of wall is being carried out by the first to third respondents. If the fifth respondent finds that illegal construction of wall is carried out, the fifth respondent shall initiate necessary action in accordance with law against the concerned respondents. All contentions on merits are kept open.

(VIBHA KANKANWADI, J.)

(A.S.OKA, J.)