

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

Solanki Plaza Co-operative Housing Society ... Petitioner
vs.
State of Maharashtra & Ors. ... Respondents

**CORAM : A.S.OKA, &
A. K. MENON, JJ.**

P.C.

1. Heard the learned counsel appearing for the petitioner, the learned counsel appearing for the respondent no.7, the learned AGP appearing for the respondent nos.1 and 2 and the learned counsel appearing for the respondent nos.3 to 6.

2. The prayer clauses (a) and (b) of this petition read thus:-

“(a) This Court be pleased to issue writ of mandamus or any other writ or orders in the nature of writ against the respondent nos.1 to 6 directing them to forthwith remove illegal construction/encroachment made by the respondent no.7 on CTS no.954, Survey no.325, Hissa no.5, Final Plot no.119, New Pipe Line Road, Behind Shahana Hall, Luis

Wadi, Thane(W)-400 604.

(b) This Court be pleased to issue appropriate direction to respondent nos.1 to 6 to implement their order dated 23/09/2011 in true spirit and to file a report before this Court of its due compliance.”

Prayer clause (c) is a consequential prayer based on the order dated 23rd September, 2011.

2. We have perused the order dated 23rd September, 2011 passed by the Executive Engineer. The first direction issued by the Executive Engineer of the Thane Municipal Corporation is of directing that the permanent enclosed parking of the respondent no.7 society on the western side shall be removed. As far as this direction is concerned, by order dated 31st July, 2012 passed by the same Officer, the said direction has been cancelled and it is further directed that if the developer fails to obtain Occupation Certificate in respect of the said enclosed parking within a period of three months from the said date, action will be taken by the Municipal Corporation in accordance with law.
3. The second direction issued under the order dated 23rd September, 2011 is that on the area of Recreation Ground (RG)

including centre RG, the right of the society will subsist. No reasons are required to hold that the Executive Engineer of the Municipal Corporation has no right to decide the issue of rights in relation to the property. He could not have directed restoration of RG which he has purported to do under clause (3) of the said order. Therefore, clauses (2) and (3) of this order cannot be implemented. As far as clause (4) is concerned, the Executive Engineer records therein that the issues involved in the first three directions is purely an internal affair of the petitioner and the respondent no.7.

4. The first prayer which we have quoted above is for removal of encroachment and illegal construction on the property mentioned in prayer clause (a). If as of today, permission/Occupation Certificate is not granted in respect of enclosed parking which is the subject matter of clause (1) of the order dated 23rd September, 2011, the Municipal Corporation will have to take action of demolition in accordance with law as directed in the order 31st July, 2012.
5. If the petitioner is claiming to be the owner of the property which is the subject matter of prayer clause (a), the petitioner will have to adopt appropriate remedy for removal of encroachment

allegedly made on the said property as the respondent nos.1 to 6 cannot be directed to remove the encroachment on the alleged private property.

6. Hence, we dispose of the petition by passing the following order:-

- (i) If there is no development permission and/or Occupation Certificate in respect of the constructed enclosed parking which is the subject matter of clause (1) of the order dated 23rd September, 2011 and the clause (1) of the order dated 31st July, 2012, we direct the Municipal Corporation of the City of Thane to take action of demolition in accordance with law;
- (ii) Needless to add that no action of demolition shall be taken without giving an opportunity of being heard to all the affected parties;
- (iii) As far as removal of encroachment is concerned, the petitioner has remedies under the law;
- (iv) We make it clear that we have made no adjudication on the disputed question of title to the property which is the subject matter of prayer clause (a) and all the questions are left open to be decided by the appropriate forum.

(A. K. MENON, J.)

(A. S. OKA, J.)