

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

**WRIT PETITION NO. 12286 OF 2016**

Sayali Sunil Kadam

...Petitioner

Versus

Konkan Co-operative Hsg. So.c Ltd.  
Through Chairman Ramesh Gaonkar & Ors.

...Respondents

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Mr.S.B.Deore i/b. Mr.Pramod R.Arjunwadkar for the Petitioner.  
Mr. K.S.Dewal i/b. J.M.Joshi for Respondent No.1.  
Mr.Mandar Limaye for Respondent No.2

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**CORAM: Mrs.MRIDULA BHATKAR, J.**  
**DATED: JUNE 14, 2017**

**P.C. :**

1. Rule. Rule made returnable forthwith. By consent, petition is heard finally and disposed of at the stage of admission.
2. This petition is directed against the order dated 07.10.2016 passed by the learned District Judge-8, Thane in Misc. Appeal No. 192 of 2015 whereby the petitioner seeks the order that interim injunction dated 01.08.2015 passed by the learned 4<sup>th</sup> Jt. Civil Judge, Senior Division, Thane (TMC Court) in RCS No. 122 of 2015 below Exhibit 5 in respect of demolition of the suit building is to be restored.

3. The learned counsel for the petitioner submits that she is one of the members of respondent no.1 society and an occupant of building no. 44, Konkan Co-operative Housing Society. The members of the society having connivance with the MHADA and Thane Municipal Corporation had declared that the building is dangerous and therefore, Thane Municipal Corporation i.e. respondent no.2 had issued a notice dated 12.05.2014. The said notice was illegal and therefore, the said notice was challenged by the petitioner and other occupants of the building in Regular Civil Suit No. 122 of 2015 before the Civil Judge, Senior Division, Thane. It is further contended that 70% occupants of the society are illegal occupants and they have played a fraud in respect of getting declaration and notice from the Corporation that the building is dangerous. The petitioner has forcibly removed from the premises. She has relied on the structural report dated 28.01.2015 of Dr. Sanjivkumar Y. Dhamanase. As per the report of Dr.Sanjivkumar Dhamanase, the building is not in a dangerous condition and it does not require demolition. It is further contended that earlier the Corporation and the society had acted upon the structural report of August 2012 of Vinayak Chopdekar & Associates. According to the petitioner, the said report was false because it was done on the basis of visual inspection. He has further submitted that the order dated 01.08.2015 passed by the

learned 4<sup>th</sup> Jt. Civil Judge, Senior Division, Thane, (TMC Court) is legal and the order dated 07.10.2016 passed by the learned District Judge-8, Thane allowing the appeal is to be set aside.

4. The learned counsel for the Corporation and the learned counsel for the society have opposed this Writ Petition. They have pointed out that the entire building is vacated. The building is partly demolished by the Corporation. They have heavily relied on the **order dated 07.04.2016 passed by the learned Single Judge of this Court in Writ Petition No. 3633 of 2016**, wherein same notice dated 12.05.2014 was the subject matter. They have further submitted that Division Bench has refused stay and now, the matter is fixed on 19.06.2017.

5. Perused the reports given by Vinayak Chopdekar & Associates and Dr. Sanjivkumar Y. Dhamanase. On the basis of visual inspection, Vinayak Chopdekar & Associates had stated that the building is in dilapidated condition, not repairable and it requires reconstruction. However, Dr.Sanjivkumar Dhamanase in the report dated 28.01.2015 had given concluding remarks that overall condition of the building is semi dangerous. Obviously the building demands repairs to be completed within 3-4 months by starting the repairing work immediately. It appears that at the relevant time, if at all the repair work had been

started immediately that would have been changed the situation. As on today, 2 ½ years have passed for the statements of these reports and therefore, today the building is partly demolished.

6. Moreover, the learned Single Judge of this Court by order dated 07.04.2016 in Writ Petition No. 3633 of 2016 has dealt with the issue of legality of notice dated 12.05.2014, which is also the subject matter of this Petition, wherein the order dated 07.10.2016 of the learned District Judge-8, Thane is under challenge. It is to be noted that the said order was passed in October 2016. Under such circumstances, no relief can be granted to the petitioner and hence, Writ Petition is dismissed.

7. It appears from the submissions of the learned counsel for the petitioner that the main grievance of the petitioner is in respect of illegal occupants. For that purpose, other remedy is open for the petitioner and she may take recourse of it.

8. In view of the above, Writ Petition is dismissed.

**(MRIDULA BHATKAR, J.)**