

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

WRIT PETITION NO.289 OF 2017

Lalji Madhubhai Makwana

..Petitioner

Vs.

The State of Maharashtra & Ors.

..Respondents

Mr. Vishal Kanade i/b Mr. Sunil Rawal for the Petitioner.

Mr. B. V. Samant, AGP for Respondent No.1.

Mr. Atul G. Damle, Senior Advocate i/b Mrs. Swati Sagvekar for Respondent Nos.2 to 4.

**CORAM: B. R. GAVAI AND
M.S. KARNIK, JJ.**

DATE: 13th SEPTEMBER 2017

P.C. :

. The Petitioner has approached this Court praying for a direction to the Respondent to take steps under the provisions of the MRTP Act in respect of the structures on the said property of 50 gunthas, which is designated as a playground.

2. Heard Shri Kanade for the Petitioner and Shri Damle for Respondent Nos.2 to 4.

3. Shri Kanade submits that admittedly the structures which are subject matter of this Petition are unauthorized and, therefore it is necessary to direct the Corporation to demolish the same. He further submits that the Petitioner has already stated before this Court that the Petitioner is willing to hand over possession of the land to the Corporation and exploit applicable TDR for commercial purposes. He submits that accordingly the Petitioner has already handed over the said property to the Corporation. He therefore

submits that it is now the duty of the Corporation to remove the unauthorized construction and grant TDR for commercial exploitation to the Petitioner.

4. Shri Damle, learned Senior counsel for the Corporation has stated that the Corporation has issued notices and would take such action as permissible in law.

5. Admittedly, when the Petitioner has purchased the land in 2012, he was very well aware that the land is encroached by private persons and designated for a playground. It appears that the Petitioner has taken recourse of innovative measure, whereby the Petitioner desires this Court to use its jurisdiction under Article 226 of the Constitution and direct the Corporation to use its machinery to remove the encroachment on the private land and thereafter use the TDR available for commercial exploitation.

6. We do not find that jurisdiction under Article 226 of the Constitution can be used to assist the builder who has taken a calculated risk while purchasing the property. It is further to be noted that the Petitioner has not impleaded the persons who have allegedly encroached upon his property. It is thus clear that the Petitioner desires to invoke jurisdiction of this Court under Article 226 of the Constitution to pass an order for removing the persons who have encroached upon the suit property behind their back. Petition is therefore rejected.

(M.S. KARNIK, J.)

(B. R. GAVAI, J.)