

Sharayu.

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

WRIT PETITION NO. 1986 OF 2017

Mr. Reginald Crasta

...Petitioner

Versus

**Municipal Corporation of Greater
Mumbai & Ors.**

...Respondents

Ms. Sumedha Rao, Ms. Rumana Bagdadi, for the
Petitioner.

Ms. K.H. Mastakar, for Respondent-M.C.G.M.

Mr. Rajiv Narula, i/b Jhangiani Narula &
Associates, for the Respondent No. 3.

**CORAM : SMT. VASANTI A NAIK AND
RIYAZ I. CHAGLA, JJ.**

DATE : 8 November 2017

ORDER :

By this writ petition, the petitioner seeks a direction against respondent No. 2 - Executive Engineer of the B.M.C. restraining him from sanctioning any plan for stack car parking for Wing B of the building in the society compound. By amending the writ petition, the petitioner has challenged the plan for stack car parking, dated 28th September 2016.

The learned counsel for the petitioner states that the petitioner resides on the 4th

floor in A Wing of the society building from the year 2009 and by sanctioning the plan of the respondent No. 3 for stack parking, the easementary right of the petitioner to air and light, specially the air and light to the kitchen of the petitioner, is affected. It is stated that if stack car parking plan is implemented, the petitioner would be deprived of the right to basic amenities like light and air thereby violating the rights of the petitioner, as enshrined under Article 21 of the Constitution of India. It is prayed that the relief sought by the petitioner may be granted in the aforesaid background.

Apart from the other submissions made by the respondent No. 3 in the affidavit in reply filed on behalf of the respondent No. 3, it is stated that the petitioner is a member of the society and the respondent No. 3 has filed civil suit No. 1708 of 2011 against the society and several others including the petitioner for a permanent injunction restraining them from preventing the enforcement of the Memorandum of Understanding, dated 19th December 2006 executed between the respondent No. 3 and the members of the society. It is stated that the permission for stack parking was granted as early as in the year 2012. It is further stated that in the suit filed by the respondent No. 3, this Court had passed an interim injunction restraining the society and the individual members including the petitioners from creating any hurdle or obstacle for the respondent No. 3 in carrying out the construction/development

activity on the said property. It is stated that when the same issue is being considered in civil suit No. 993 of 2011, this Court may not entertain the writ petition.

We are inclined to uphold the preliminary objection raised on behalf of the respondent No.3. We find that the respondent No. 3 has filed original civil suit No. 993 of 2011 against several members of the society including the petitioner and in the said suit, an interim injunction restraining the defendants from creating any hurdles or obstacles in carrying out of the construction/development activity by the respondent No. 3 is granted. Certain other ancillary prayers made by the respondent No. 3 in the said suit are also granted at the interlocutory stage. Since the suit between the respondent No. 3 and several members of the society including the petitioner is pending before this Court, it would not be proper to take up parallel proceedings that may give rise to conflicting orders. The petitioner has claimed that his easementary rights would be affected due to stack parking. It would be necessary for the petitioner to either file a separate civil suit or to seek appropriate relief in the pending suit, if permissible in law. The petitioner is a party to the civil suit and is joined as defendant No. 25. If the petitioner had intended to challenge the stack parking as it was allegedly affecting the easementary rights of the petitioner, the petitioner could have opposed the prayer made by

the respondent No. 3 in the notice of motion in the civil suit seeking restraint of the defendants from interfering with further construction work in the premises, as per the sanctioned plan. When a civil suit is pending between the parties i.e. the petitioner and respondent No. 3 in this Court, it would not be proper to consider the issue in exercise of the writ jurisdiction, specially when the petitioner has made a claim that his easementary rights are affected. For proving that the easementary rights are affected, material evidence needs to be tendered, both oral and documentary. This cannot be a matter which could be dealt with in exercise of the writ jurisdiction, specially when a civil suit between the petitioner and the respondent No.3 is pending. The judgment reported in **Rufina D'Souza & Ors. Vs. Municipal Corporation of Gr.Mumbai & Ors**¹. and relied on by the learned counsel for the petitioner for seeking the relief cannot be made applicable to the facts of the case. The said judgment is distinguishable on facts.

In the circumstances of the case, we dismiss the writ petition with no order as to costs.

The points in the petition are however, kept open.

[RIYAZ I. CHAGLA J.]

[SMT. VASANTI A NAIK, J.]

¹ 2017(4) Mh.L.J. 821