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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.844 OF 2016

Arvind Feruram Jaiswar ...Petitioner
vs.
Municipal Corporation for the
city of Bhiwandi Nizampur,
Nizampur, Bhiwandi & Ors. ...Respondents

Mr.Shakeeb Shaikh i/b Mr.Mangesh Nalawade for the
Petitioner
Mr.S.R.Nargolkar i/b Mr.Chetan Agrawal for the
respondent No.4
Mr.Manish M. Pabale, AGP for respondent No.5

CORAM : A.S.OKA, &
RIYAZ.I.CHAGLA, JJ.
DATE : MARCH 5, 2018

P.C.:

1 Heard the learned counsel appearing for the parties. If paragraphs 2 and 3 of the petition are perused, on conjoint reading thereof, it appears to us that the grievance of the petitioner in this petition under Article 226 of the Constitution of India is as regards the failure of the first respondent to initiate action of demolition in respect of the unauthorised construction of ground plus four floors on the property bearing House No.1142/0 at Nizampur Bhiwandi. However, in the prayer clause relief is sought in respect of the illegal construction on House No.1420/0 Nizampur Bhiwandi. The documents annexed to the petition starting from Exhibit-A are in respect of property bearing House No.1142/0. Even the additional compilation tendered across the bar is in respect of

the property bearing House No.1142/0.

2 To the additional affidavit filed by the petitioner which is dated 12th January 2018, a representation is annexed in respect of the illegal construction on property bearing House No.1420. There is an affidavit in reply filed by the first respondent. The affidavit deals with the construction made on the property bearing House No.1142/0. In paragraph 5 it is stated that due process of law is completed in respect of House No.1142/0 and not in respect of the structure seen in the photographs are annexed on page 16 of the petition. Paragraph 3 records that the fourth respondent is the owner of the property bearing House No.1142/0. In paragraph 4 of the said affidavit, Shri Rahul Ingale, the Designated Officer of Ward Committee No.5 has stated that the photographs annexed on page 16 of the petition are in respect of the building on the property bearing House No.1461. It is stated that by order dated 17th October 2016 passed by the Civil Court at Bhiwandi in a suit filed by the fourth respondent's brother, the first respondent has been restrained from taking action against the structure bearing House No.1461 without following due process of law. Paragraph 5 of the affidavit records that accordingly a notice has been issued on 5th February 2018 in respect of the illegal construction on the property bearing House no.1461 and the same has been served upon the fourth respondent. The learned counsel for the first respondent on instructions states that now an

order has been passed on the basis of the notice issued on 5th February 2018. We direct the first respondent to serve a copy of the said order to the persons affected thereby. A copy of the said order shall also be provided to the petitioner.

3 There is an affidavit filed by the Constituted Attorney of the fourth respondent in which he has stated that he is not the owner of the property bearing House No.1420/0 but he is the owner of the property bearing House No.1142/0.

4 In paragraph 7 of the said affidavit, it is claimed that in the civil suit filed by the fourth respondent interim injunction has been granted preventing the Municipal Corporation from demolishing the structure on the property bearing House No.1142/0. The learned counsel for the fourth respondent states that the said respondent has relied upon the Commencement Certificate and the Completion Certificate in the said suit and that the order of injunction continues to remain in force.

5 Considering the aforesaid discussion, it is not necessary to entertain this petition and the same is accordingly disposed of. If the petitioner has any grievance about the illegal construction on the property bearing House No.1420/0, he is free to make appropriate representation to the Municipal Commissioner which shall be dealt with in accordance with law.

(RIYAZ.I.CHAGLA,J.)

(A.S.OKA,J.)