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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION No. 10548 OF 2016

Jaswant Gorakhnath Singh ... Petitioner
Vs.
Vasai Virar Municipal Corporation & Ors. ... Respondents

Mr. Ram U. Singh, for the Petitioner.

Mr. Atul G. Damle, Sr. Counsel i/b Ms. Swati H. Sagvekar, for the
Respondent Nos. 1, 2 & 5.

Mr. Manish M. Pabale, AGP for the Respondent Nos. 3, 4 & 6.

CORAM : A. S. OKA, &
P. N. DESHMUKH, JJ.

DATE : JANUARY 4, 2018

PC :

1. Heard the learned counsel appearing for the first, second and fifth Respondents. According to the case of the Petitioner, a plot of land bearing Survey No. 1, Hissa No. 11 at village More, Taluka Vasai, district Palghar, within the limits of the first Respondent Municipal Corporation, is a reserved plot. His grievance is that

seventh Respondent has carried out illegal construction of buildings on the said plot. However, representation date 13th March, 2015 (Exhibit “F” to the petition) records that the Petitioner has entered into an agreement with the seventh Respondent for acquiring two flats in one of the buildings constructed by the seventh Respondent on the said plot. The learned counsel for the Petitioner, on instructions of the Petitioner who is present in the Court, states that out of the two flats agreed to be sold by the seventh Respondent, he is in possession of one flat which is in the building, illegally constructed by seventh Respondent.

2. Thus, the Petitioner himself is a beneficiary of alleged illegal construction carried out by the seventh Respondent. When we made query to the learned counsel appearing for Petitioner whether the Petitioner is willing to hand over possession of his flat in the illegal building to facilitate the demolition of the illegal building, on instructions, he states that he is unable to make any such statement. Writ jurisdiction under Article 226 of the Constitution of India is always discretionary and equitable. The present Petitioner is a beneficiary of the illegal construction, and perhaps he has taken

recourse under Article 226 of the Constitution of India, as out of two flats agreed to be sold by the seventh Respondent, the possession of only one flat has been handed over. Therefore, this is not a fit case where writ jurisdiction should be allowed to be invoked by the Petitioner considering his conduct. Therefore, we decline to entertain this petition and the same is rejected. We, however, clarify that if the first Respondent finds that the subject buildings are illegal, action in accordance with law be initiated.

Sd/-
[P. N. DESHMUKH, J.]

Sd/-
[A. S. OKA, J.]

Vinayak Halemth