

## IN THE HIGH COURT OF JUDICATURE AT BOMBAY

## CIVIL APPELLATE JURISDICTION

## WRIT PETITION NO.4006 OF 2016

Mr.Navnath Dagadu Madhavi.

...Petitioner

Vs.

1.State of Maharashtra &amp; Ors.

...Respondents

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Mr.A.G.Damle, Senior Advocate I/b. Mr.Amil P.Mhatre, for the Petitioner.

Mr.P.P.Kakade, AGP for Respondent Nos.1 and 5.

Mr.A.M.Kulkarni, for Respondent no.6.

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**CORAM : NARESH H. PATIL, ACTING C.J.  
& G.S. KULKARNI, J.**

**DATE: 15<sup>th</sup> OCTOBER, 2018.**

**P.C.**

1. The petitioner who claims to be the owner of the structure in dispute situated at village Ghansoli, Taluka & District Thane, has approached this Court being aggrieved by the action of respondent no.6- City and Industrial Development Corporation of Maharashtra Ltd. (for short 'CIDCO') of demolition of the said structures. The petitioner has made the following prayers:-

“(a) Issue appropriate writ Order or direction in like nature thereby initiate an enquiry against the responsible Officers of the Respondent No.6 CIDCO for undertaking unauthorized and illegal action of demolition without the provisions of law and against the due process of law;

(b) Issue appropriate Writ, Order or directions thereby directing the said Respondents to reconstruct the said premises constructed by the Petitioner as it existed before the said unauthorized demolition

c) Issue appropriate Writ, Order or direction thereby directing the said Respondents more particularly Respondent no.6 to compensate the Petitioner for the loss suffered by the Petitioner by such unauthorized demolition.”

2. The respondent no.6-CIDCO has filed affidavit in reply interalia stating that the petition involves disputed questions of facts and should not be entertained. It is contended that the unauthorised structure was standing on Plot no.16 and 17 at Sector 8, Ghansoli, and for that the CIDCO has issued a notice dated 4 October 2011 under Section 53(1) of the Maharashtra Regional and Town Planning Act,1966. It is submitted that petitioner alongwith his wife Jyoti Navnath Madhavi addressed a letter dated 20 October 2011 to the Controller, Unauthorized Construction, CIDCO stating that the construction on the suit property was made on account of need and same be regularized. It is contended that the CIDCO by a letter dated 20 May 2013 addressed to the petitioner's

wife had informed to remove the said unauthorised structure standing on the property in question. It is contended that in the meantime the CIDCO had issued tender and auctioned the plot in question to the highest bidder, and therefore, the CIDCO issued a letter dated 23 May 2013 informed the petitioner's wife about allotment of plot in question to highest bidder and directed to remove the unauthorized structure. It is contended that CIDCO accordingly filed criminal complaint against the petitioner on 4 December 2015 and ultimately on 31 December 2015 carried out demolition of the unauthorized structure. It is contended that the petitioner has suppressed the material facts and therefore, the petition be dismissed with exemplary cost.

3. We have heard the learned Counsel for the parties. We have perused the record. It is clear to us that the petitioner's wife Jyoti had addressed a letter dated 20 October 2011 (Exhibit AR-3, page 120) to the Chief Controller (Unauthorized Construction of CIDCO) stating that she had constructed a structure namely house No.538/003 on Survey/ Gat No.61 in the year 2003 on account of family need. The letter records that the land belonged to and was of the ownership of her father-in-law late Dagdu Ganpat Madhavi and that by succession the land has come to the

share of her husband/petitioner. It was further recorded by her that though she had constructed the said structure, however, the land now belongs to her husband/petitioner and the structure has been shown in her name in the official record. This letter has been signed by the petitioner and also by his wife Jyoti Madhavi. This letter is placed on record on behalf of CIDCO and it is suppressed in the petition. It is therefore clear that there are diverse claims on the structure.

4. In the above circumstances and perusal of record indicates that there are serious disputed questions of fact. We would not undertake any adjudication of such disputed issues in exercise of jurisdiction under Article 226 of the Constitution.

5. We accordingly dismiss the petition, however, keeping open the remedies of the petitioner to agitate his grievances in appropriate proceedings, if he so desires. No costs.

**(G.S. KULKARNI,J.)**

**(ACTING CHIEF JUSTICE)**