

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION  
WRIT PETITION NO. 6624 OF 2015**

Prashant Vishnu Kamble. .. Petitioner.  
v/s.  
The State of Maharashtra & ors. .. Respondents.

Mr. U.B. Bobde I/b. J.H. Kuril, advocate for petitioner.

Mrs. M.P. Thakur, AGP, for State.

Mr. D.P. Adsule, advocate for respondent No. 5.

Ms. Radhika V. I/b. S.R. Page, advocate for respondent No. 7.

Ms. Gauri Godse, advocate for respondent No. 9.

**CORAM : RANJIT MORE &  
SMT. SADHANA S. JADHAV, JJ.**

**DATE : APRIL 19, 2018.**

**P. C. :**

1 Heard the learned Counsel for the respective parties.

2 The petitioner has purchased a flat in a building constructed by respondent No. 9 builder/developer within the limit of Kulgaon-Badlapur Municipal Council. The petitioner's case is that the building construction permission to the building in question is granted to the respondent No. 9 on 9/6/2009 and completion certificate/occupation certificate was granted on 1/7/2009. He submits that construction of the building was completed within the period of 22 days. He further submits that consequently, the building was developed cracks and is at

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present in dilapidated condition. In the light of the above allegation, the petitioner has invoked the jurisdiction of this court under article 226 of the Constitution of India praying for setting aside/cancellation of the occupation certificate granted by the respondent No. 2 Municipal Council in respect of the subject building to respondent No. 9.

3           Ms. Godse, learned Counsel for respondent No. 9 disputes that the building is in dilapidated condition. On the last date of hearing, she has submitted that if the petitioner is ready and willing to sell the flat, the respondent No. 9 will purchase the same. In view of the said statement, we adjourned the matter today.

4           Today, however, parties are not on agreeable term regarding price of the petitioner's flat and therefore, we proceeded to hear the matter on merits. In short, it is grievance of the petitioner that construction of the building was completed within 22 days and therefore, the same is in dilapidated condition. The same is required to be reconstructed. The assertion of the petitioner is disputed by the respondent No. 2 by filing affidavit of one Prakash Borse the Chief Officer, Kulgaon-Badlapur Nagar Parishad, Badlapur, District Thane. In paragraph-4 following averments are made :

4.           I say that on 31/3/2000 the respondent No. 9 had

submitted a plan through his Architect for construction of ground floor + 3 structure on Survey No. 40, Hissa No. 3, Plot No. 9 of maujeKatrap, Tal. Ambernath to the KulgaonBadlapur Nagar Parishad. I say that after examining the proposed plan of the respondent, the Asst. Town Planer and the Chief Officer had approved the plan and plan was sanction on 31/3/2000 by a letter कुबनप/नरवि बाप/1281-285. I crave leave to refer and rely upon the sanctioned plan dated 31/3/2000 as and when required by this Hon'ble High Court for it's kind perusal. I further say that the respondent no. 9 had submitted modified plan on 31/01/2009 for construction permission and accordingly modified plan was sanctioned on 09/06/2009 on certain conditions as mentioned in the letter."

5           It appears from the above that the permission to commence the construction was granted way back in the year 2000 and only on 9/6/2009 amended building plans were sanctioned. The affidavit does not support the petitioner's contention that the subject building was constructed within a period of 22 days.

6           In the light of the above, the disputed question raised by the Petitioner cannot be gone into while exercising writ jurisdiction under Article 226 of the Constitution of India. We therefore decline to entertain this petition. Therefore, the same is dismissed.

**[SMT. SADHANA S. JADHAV, J.]**

**[RANJIT MORE, J.]**

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