

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.6114 OF 2018

Palm Groves Bungalow Co-operative
Housing Society Ltd.

.. Petitioner

Vs.

The Commissioner, Pune Municipal
Corporation & Ors.

.. Respondents

Dr.Birendra Saraf a/w Ms.Raksha Thakkar, Ms.Shradha Achliya and
Mr.Rupesh Gite i/by Juris Corp for the petitioner.

Mr.Rushikesh M.Pethe for the respondent nos.1 to 4.

Mr.A.G.Damle, Senior Advocate with Mr.G.H. Keluskar i/by Mr.Pathan
Ayyubkhan Ahmedkhan for the respondent no.5.

CORAM : R.D. DHANUKA, J.

DATE : 1st October 2018

P.C.:

. By this petition filed under Article 227 of the Constitution of India, the petitioner (original plaintiff) has impugned the order dated 19th May 2018 passed by the Appellate Court in Misc. Civil Appeal No.133 of 2018 thereby quashing and setting aside the order dated 28th March 2018 passed by the learned trial Judge below Exhibit-5 which was filed by the original plaintiff. The suit is filed by the petitioner inter alia praying for injunction and for other reliefs.

2. Mr.Damle, learned senior counsel appearing for the respondent no.5 produces two photographs for consideration of this Court and would submit that the structural work of the building is substantially completed. He further states, on instructions that the building constructed by his client would be used only for residential purposes and not for commercial purposes as canvassed by the petitioner. He submits that out of 8 flats being constructed, third party rights in

respect of 4 flats have already been created. He agrees to furnish the details of those third party right already created by his client to the petitioner's advocate within two weeks from today. Statement is accepted. Statement of the learned senior counsel that the flats would be sold only for residential purposes is accepted.

3. Learned counsel appearing for the Municipal Corporation states that the Municipal Corporation has sanctioned the plan in respect of the building in question exclusively for residential purposes and they would not permit the commercial activities in those flats sold or proposed to be sold in favour of the respondent no.5. Statement is accepted.

4. The grievance of the petitioner appears to be that in the agreement entered into between the members of the petitioner society with the original owners before formation of the society, there was covenant that the entire property would be used only for residential purposes and not for commercial purposes.

5. In my view, the statement made by the learned senior counsel and also the learned counsel for the Municipal Corporation would take care of apprehension of the petitioner. Since the construction of the building is substantially completed, third party rights in respect of the 4 flats, out of 8 flats have already been created as stated by the learned senior counsel for the respondent no.5, I am not inclined to interfere with the impugned order passed by the trial Judge thereby quashing and setting aside the order dated 28th March 2018 passed by the learned trial Judge below Exhibit-5.

6. The second apprehension of the petitioner is that the respondent no.5 has committed violation of the resolution passed by the society restricting the height of the building is concerned, in my view, it is for the Municipal authorities to look into the issue as to whether the respondent no.5 has committed any construction contrary to the sanctioned plan. Alleged breaches of the resolution, if any, as canvassed by Dr.Saraf, learned counsel for the petitioner can be considered by the learned trial Judge at the stage of final hearing of the suit.

7. The respondent no.5 shall inform all the flat buyers about the pendency of the suit including the parties who have already purchased the flats. The respondent no.5 shall not claim any equity at the stage of final hearing of the suit. With the aforesaid clarification, writ petition is dismissed. No order as to costs. Hearing of the suit is expedited.

8. Dr.Saraf, learned counsel for the petitioner seeks continuation of the ad-interim order passed by this Court. In view of the fact that the construction of building came to be stayed by an ad-interim order passed by this Court and various safeguards already having been provided aforesaid, I am not inclined to accept the request of the learned counsel for the petitioner to continue the ad-interim order passed by this Court. Application for continuation of the ad-interim order is rejected.

R.D. DHANUKA, J.