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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.7539 OF 2017

Abhay Vasant Khinvasara	... Petitioner
V/s.	
The Executive Engineer, Pimpri Chinchwad Municipal Corporation and Ors.	... Respondents

Mr. Nitin Padmakar Deshpande for the Petitioner.
Mr. Rohit Pramod Sakhadeo for the Respondent Nos.1 to 3.

CORAM : A.S.OKA AND RIYAZ I. CHAGLA, JJ.

DATE : 6th AUGUST 2018.

P.C.:

1 Heard the learned counsel appearing for the petitioner and the learned counsel appearing for the respondents. It is not in dispute that the land admeasuring 3051.49 sq. mtrs. bearing Survey No.137/1/2 City Survey No.5105 at village Akurdi within the limits of the third respondent – Municipal Corporation was surrendered by the petitioner to the said Municipal Corporation in December 2016. The said land was affected by reservation of a road in the sanctioned Development Plan. There is no dispute that a Development Rights Certificate (DRC) in respect of an area of 3051.49 sq. mtrs. was issued to the petitioner on 12th January 2017. It is also not in dispute that the name of the third respondent – Municipal Corporation has been mutated in the revenue records in respect of the said area of 3051.49 sq. mtrs.

2 By the impugned notice, the petitioner was informed that he has illegally constructed a compound wall in the area admeasuring 3051 sq. mtrs. surrendered by him. Therefore, the petitioner was called upon to remove the wall.

3 The learned counsel appearing for the respondents, on instructions, submitted that the respondents are willing to get survey and demarcation of the said area of 3051.49 sq. mtrs. done after notice to the petitioners and demarcate the location of the compound wall constructed by the petitioner. We accept the statement. If the petitioner has constructed the compound wall in the area of 3051.49 sq. mtrs. in respect of which he has already received the DRC, the said wall will have to be immediately demolished. From the file tendered across the bar, it appears that there is no survey carried out to demarcate the portion admeasuring 3051.49 sq. mtrs.

4 In view of the aforesaid statement made by the learned counsel appearing for the respondents, the petition need not be kept pending and the same is disposed of by passing the following order :-

ORDER

- (i) We direct the respondents to get the land admeasuring 3051.49 sq. mtrs. (which was surrendered by the petitioner to the third respondent – Municipal Corporation) surveyed and demarcated on the site either through a surveyor in the employment of the third respondent or a survey officer under the Maharashtra

Land Revenue Code, 1966. The survey shall be carried out after due advance notice to the petitioner who will be entitled to remain present at the time of survey;

- (ii) After carrying out the survey and demarcation, a plan shall be drawn showing location of the wall allegedly constructed by the petitioner. If the said wall is found to be constructed on the said area of 3051.49 sq. mtrs, the respondents shall serve a notice to the petitioner calling upon the petitioner to demolish the wall within a period of two weeks from the date on which the notice is served. A copy of the survey map and survey report shall be forwarded along with the notice;
- (iii) We have made no adjudication on the question whether the wall allegedly constructed by the petitioner or any part thereof forms a part of the said area of 3051.49 sq. mtrs. However, we make it clear that if the wall is found to be constructed by the petitioner on the area of 3051.49 sq. mtrs., the petitioner has no right to retain the said wall in as much as in respect of the said area, the petitioner has received DRC;
- (iv) The petition is disposed of on above terms.

(RIYAZ I. CHAGLA, J.)

(A.S.OKA, J.)