

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CIVIL APPELLATE JURISDICTION****WRIT PETITION NO.10747 OF 2018**

Isartunissa Abdul Hakim Shaikh.

...Petitioner

*Versus*1.The Commissioner, Kalyan Dombivli
Municipal Corporation & Ors.

...Respondents

Mr.Rajesh Khobragade with Abhijeet Naik and Gayatri Nayak, for the
Petitioner.

Mr.A.S.Rao, for Respondent Nos.1 and 2.

Mr.P.P.Kakade, AGP for Respondent No.3

**CORAM : NARESH H. PATIL, ACTING CJ. &
G.S. KULKARNI, J.****DATE : 6^h OCTOBER, 2018**

P.C.:

1. The petitioner challenges the order dated 7th June,2018 passed by the Deputy Commissioner, Kalyan Dombivli Municipal Corporation. The order relates to House No.175 containing six rooms.

2. The petitioner claims part ownership of the house area which is numbered as 175 in Survey no.99, Hissa No.1 situated at Shivaji Nagar, Dhondu Patil Chawl, Opposite Laxmi Tower Building, Valdhuni, Katemanavli, Kalyan (East), District Thane. The structure is having a tin shed.

3. The learned Counsel for the petitioner submits that the impugned order does not relate to the entire house area which comprises of six rooms. It is further submitted that the relative of the petitioner has also claimed inheritance and the proceedings are initiated in that regard. On his complaint the Corporation has passed the impugned order.

4. In support of the contention, the learned Counsel has referred to a certificate of grampanchayat which is annexed at page 62 and 63 of the paper book. Copies of the property's assessment receipts issued by Kalyan Dombivali Municipal Corporation are also placed on record, these seems from year 1997-98 onwards. In his submission, Raffikunissa who is grand-mother of the petitioner has purchased the property on 2nd August,1983.

5. The learned Counsel for the Corporation Mr.Rao submits that the petitioner has failed to establish that the construction is authorised one and the petitioner has not constructed the structures by seeking appropriate permission and is not having any occupancy certificate and therefore, the Corporation has initiated a proceedings and has passed the impugned order. The learned Counsel submits that so far no application for regularization has also been received.

6. Perused the record and considered the submissions advanced by the learned Counsel. The impugned order is passed on 7th June, 2018. The issue as to which area belongs to the petitioner and the relative of the petitioner, cannot be gone into in this petition. According to the learned Counsel for the petitioner, the other issue relating to heirship is being contested before the appropriate forum. The only question is as to whether the petitioner's structure is authorised one. As noted above there is an assessment record of the structure-House no.175. In the circumstances, it would be open for the petitioner or such other persons to apply for regularization of the structure, if so permissible in law.

7. It is clear that the Corporation has not specified the area of house no.175, which itself makes it clear that the impugned order applies to the entire house structure having House No.175 and therefore, whoever claims the ownership of the house structure area falling under the part of house no.175, is at liberty to apply for regularization of the said structure or to approach alternate forum for establishing their rights and title in the property, which shall be decided on its own merits in accordance with law.

8. In case the petitioner chooses to file an application for regularization within four weeks, the Corporation shall deal with the said application on its own merits and will take appropriate decision at the earliest.

9. Till the decision is communicated, the Corporation shall maintain status quo as of today.

10. If such an application is not filed within four weeks, it would be open for the Corporation to take appropriate steps.

11. We have not expressed any opinion on merits of the matter.

12. Writ petition is accordingly disposed of.

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signed by
Prashant
Vilas
Rane
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[G.S. KULKARNI, J.]

[ACTING CHIEF JUSTICE]