

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 3344 OF 2018

Mr.Kishor Sohoni. ... Petitioner.
V/s.
State of Maharashtra and others. ... Respondents.

Ms.Sadhana Kumar for the petitioner.
Mrs.R.A.Salunkhe, AGP for respondent No.1.
Mr.Sandeep D. Shinde for respondent No.2.
Mr.Nitesh Zimur i/b. Ms.A.R.S.Baxi for respondent No.3.

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

DATE : 15th March 2018.

PC.:

Not on board. Taken up on board.

2. Heard the learned counsel for the petitioner. The document annexed at page-6 of the petition shows that the petitioner himself entered into an agreement for acquiring a flat in a building which is constructed without obtaining permission. Paragraph-4 of the petition reads thus:

“4. The petitioner states that he had purchased a flat from respondent no 4 on 28/06/2017 and a sale agreement was prepared however the said agreement was not registered and it was notarised. The petitioner was informed by the respondent no 4 that the construction is not approved by the competent authority hence it can not be registered. The copy of the said sale agreement is attached hereto and marked as Ex-A.”

3. Thus, the petitioner has admitted that when he entered into an agreement for the purchase of a flat in the subject building, he was aware that the said building was illegally constructed. In fact, the petitioner has stated that he was informed by the respondent No.4 that the construction was not approved and, therefore, agreement was not registered and it was notarised.

4. Writ jurisdiction under Article 226 of the Constitution of India is a discretionary and equitable jurisdiction. The grievance in the petition is as regards the failure of the Municipal Corporation to take action in respect of 75,000 illegal buildings. The petitioner himself is the beneficiary of the illegal construction which is the subject matter of this petition. The petitioner has taken the benefit of illegal construction by entering into an agreement with full knowledge about the fact that the construction of the building is illegal. Hence, at the instance of the petitioner, we refuse to exercise writ jurisdiction under Article 226 of the Constitution of India.

5. The petition is dismissed. We, however, make it clear that notwithstanding the dismissal of the petition, the second respondent shall proceed to take action in accordance with law in respect of all the illegal buildings including the building in which the flat of the petitioner is situated.

(RIYAZ I. CHAGLA, J.)

(A.S.OKA, J.)