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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO.1700 OF 2016

Mangal Murty Plaza Tenants
Association & Ors. ...Petitioners
vs.
Municipal Corporation of
Greater Mumbai & Ors. ...Respondents

Mr.Yadunath Choudhari i/b Mr.Omkar Kulkarni for the
Petitioners
Ms K.H.Mastakar for the respondent-MMC
Mr.N.V.Khaladkar for respondent No.4
Mr.S.Gadre i/b Utangale & Co. for respondent Nos.5
and 6.
Mr.Susmit Phatale for applicant in CHSW.

CORAM : A.S.OKA, &
RIYAZ.I.CHAGLA,JJ.
DATE : MARCH 5, 2018

P.C.:

1 Heard the learned counsel appearing for the
parties. Perused the order dated 26th February 2018.

2 The first substantive prayer in this petition
is prayer clause (a) which reads thus:

(a) this Hon'ble Court be pleased to issue
writ of mandamus or any other writ, directing
or order in the nature of mandamus, directing
Respondent No.1 to take immediate action of
demolition of the legal additions and
alterations including the iron barricades
over the said property in compulsory open
space."

3 The allegation in the petition is as regards illegal additions and alterations made by the fourth respondent. We have perused the consent terms filed on record on 26th February 2018 and marked 'C-1' for identification. The consent terms record that the fourth respondent has agreed to pay an amount of Rs.2 crores to a co-operative society of which the second to fourth petitioners appear to be the members. It is pertinent to note that out of the said amount, the second to fourth petitioners will receive a sum of Rs.2,00,000/- each. Perusal of the consent terms show that there is not even a reference to any illegality alleged by the petitioners in respect of the construction carried out by the fourth respondent.

4 Essentially, the grievance made in this petition under Article 226 of the Constitution of India is about failure of the first respondent-Municipal Corporation to take action against the fourth respondent in respect of the alleged illegal additions and alterations including the construction of iron barricades over the compulsory open space. It seems that during the pendency of this petition, there is some monetary transaction between the petitioners and the private respondents.

5 Filing of the writ petition under Article 226 of the Constitution of India containing aforesaid prayer cannot be used as a tool to enter into an agreement with the person who has allegedly carried

out the illegal construction.

6 Considering the conduct of the petitioners, they cannot be allowed to invoke the discretionary and equitable jurisdiction of this Court under Article 226 of the Constitution of India. We therefore, decline to entertain this petition.

7 However, we direct the concerned Designated Officer of the concerned ward to visit the property subject matter of this petition with a view to ascertain whether there is any illegal addition and alteration made by the fourth respondent as alleged in the petition. If the Designated Officer finds that such illegalities have been committed, he shall initiate appropriate action in accordance with law.

8 Subject to aforesaid directions, writ petition is disposed of. We however make it clear that we have made no adjudication on the legality and validity of the settlement reflected from the consent terms taken on record and marked 'C-1' for identification. Pending Chamber Summons does not survive and the same is also disposed of.

(RIYAZ.I.CHAGLA,J.)

(A.S.OKA,J.)